

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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

ADMINISTRATIVE

Notice 2026-61, page 518.

This Notice announces that Treasury and the IRS intend to amend the section 871(m) regulations to delay the effective/applicability date of certain rules in those final regulations and extends the phase-in period provided in Notice 2022-37, 2022-37 I.R.B. 234, for certain provisions of the section 871(m) regulations.

REG-116506-25, page 534.

This document contains proposed regulations that would implement annual information reporting and furnishing requirements by qualified opportunity funds (QOFs) and applicable qualified opportunity zone businesses (QOZBs). Under these rules, QOFs would be required to report certain information regarding their business operations to the IRS and furnish statements to investors in the QOF that had disposition events with respect to their QOF investments during each calendar year. The proposed regulations would also require applicable QOZBs to furnish information statements regarding their business operations to each QOF that holds an interest in the QOZB. Finally, these proposed regulations would also clarify the existing QOF self-certification rules and provide procedures by which a QOF may revoke an inadvertent QOF certification or voluntarily decertify a QOF certification.

ADMINISTRATIVE, EXCISE TAX

Notice 2026-52, page 513.

This notice extends relief provided in Notice 2025-55, 2025-43 I.R.B. 625, related to the failure to deposit penalty imposed by § 6656 of the Internal Revenue Code (Code) and the deposit safe harbor provided in § 40.6302(c)-1(b)(2) of the Excise Tax Procedural Regulations, as those penalties

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relate to the excise tax imposed on remittance transfers by § 4475 of the Code. This notice will extend relief to semi-monthly periods ending before the applicability date of final regulations issued under section 4475.

ADMINISTRATIVE, INCOME TAX

Notice 2026-60, page 513.

Optional special per diem rates. This notice provides the 2026-2027 special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The notice includes (1) the special transportation industry rate, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method.

Rev. Proc. 2026-20, page 528.

This revenue procedure describes a safe harbor for trusts that otherwise qualify as investment trusts under § 301.7701-4(c) and as grantor trusts to stake their digital assets without jeopardizing their tax status as investment trusts and grantor trusts for Federal income tax purposes. This revenue procedure also provides a limited time period for an existing trust to conform its governing instrument (trust agreement) and procedures to the requirements of the safe harbor. This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2025-31, 2025-48 I.R.B. 743.

INCOME TAX

AOD 2026-2, page 510.

Acquiescence in the result only that the extraordinary disposition rules in Treas. Reg. §1.245A-5T are invalid as being in excess of the Secretary of the Treasury's rulemaking authority.

AOD 2026-3, page 510.

Acquiescence to the holding that legal expenses incurred in defending abbreviated new drug application (ANDA) suits brought under 35 U.S.C. § 271(e)(2) during the pendency of a generic drug manufacturer's ANDA with the Food and Drug Administration are not required to be capitalized under I.R.C. § 263 and instead are deductible as ordinary and necessary business expenses under I.R.C. § 162.

AOD 2026-4, page 510.

Acquiescence to the holding that legal expenses incurred in defending abbreviated new drug application (ANDA) suits brought under 35 U.S.C. § 271(e)(2) during the pendency of a generic drug manufacturer's ANDA with the Food and Drug Administration are not required to be capitalized under I.R.C. § 263 and instead are deductible as ordinary and necessary business expenses under I.R.C. § 162.

Notice 2026-62, page 521.

This notice describes novel investment fund strategies that purport to produce tax results that may be inconsistent with the purpose and proper application of the relevant federal tax rules. This notice also requests comments and information regarding the transactions described in the notice and similar transactions.

Rev. Rul. 2026-20, page 511.

Revenue Ruling 2026-20 provides guidance on the treatment of a person who transfers appreciated securities to a newly formed exchange traded fund when some or all of the securities transferred to the exchange traded fund are distributed to redeem shares of the exchange traded fund held by another person.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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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 recommendation 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 Internal Revenue Service does ACQUIESCE IN RESULT ONLY to the following decision:

Siemens Medical Solutions USA, Inc. v. Commissioner, 167 T.C. No. 6 (2026).¹

The Internal Revenue Service does ACQUIESCE in the following decisions:

Actavis Laboratories, FL, Inc. v. The United States, 131 F.4th 1345 (Fed. Cir. 2025), aff’g 161 Fed. Cl. 334 (2022).²

Mylan, Inc. v. Commissioner, 76 F.4th 230 (3d Cir. 2023), aff’g 156 T.C. 137 (2021).³

¹Acquiescence in the result only that the extraordinary disposition rules in Treas. Reg. §1.245A-5T are invalid as being in excess of the Secretary of the Treasury’s rulemaking authority.

²Acquiescence to the holding that legal expenses incurred in defending abbreviated new drug application (ANDA) suits brought under 35 U.S.C. § 271(e)(2) during the pendency of a generic drug manufacturer’s ANDA with the Food and Drug Administration are not required to be capitalized under I.R.C. § 263 and instead are deductible as ordinary and necessary business expenses under I.R.C. § 162.

³Acquiescence to the holding that legal expenses incurred in defending abbreviated new drug application (ANDA) suits brought under 35 U.S.C. § 271(e)(2) during the pendency of a generic drug manufacturer’s ANDA with the Food and Drug Administration are not required to be capitalized under I.R.C. § 263 and instead are deductible as ordinary and necessary business expenses under I.R.C. § 162.

Part I

Section 1001. — Determination of Amount of and Recognition of Gain or Loss

26 CFR 1.1001-1: Computation of gain or loss.
(Also §§ 351, 852; 1.351-1)

Rev. Rul. 2026-20

ISSUE

Should a transfer of securities to a newly formed exchange traded fund that is intended to qualify as an exchange to which § 351 of the Internal Revenue Code (Code)¹ applies fail to qualify as such if, as part of the same plan, some or all of the transferred securities are distributed pursuant to § 852(b)(6) in redemption of shares held by an “authorized participant”?

FACTS

As part of a plan, an investor (Investor) transfers a portfolio of securities to a newly formed exchange traded fund (ETF). For Federal income tax purposes, ETF is a corporation that intends to qualify as a regulated investment company (RIC) under § 851 and to meet the requirements to be taxed under subchapter M of the Code. At the time of Investor’s transfer to ETF the securities are appreciated, and the transferred portfolio is diversified within the meaning of § 1.351-1(c).

Pursuant to the same plan that includes the transfer of securities by Investor to ETF, the following two transactions take place. First, ETF issues shares to a person serving as an “authorized participant” (AP) in exchange for securities that are consistent with the ETF’s investment thesis or cash that ETF intends to use to acquire such securities. Second, and shortly thereafter, ETF redeems those shares, in a transaction intended to qualify under § 852(b)(6), in exchange for securities transferred to ETF by Investor.

Upon completion of the planned transactions, ETF holds a portfolio of securities that is consistent with its investment thesis and materially different from the portfolio transferred by Investor.

LAW AND ANALYSIS

A RIC, as defined in § 851, is a domestic corporation for Federal income tax purposes that meets requirements specified in § 851. A RIC that meets the requirements of § 852 is taxed under part I of subchapter M of chapter 1 of the Code (subchapter M). Taxation of RICs and their shareholders under part I of subchapter M is generally more favorable than taxation of non-RIC corporations subject to subchapter C of chapter 1 of the Code (subchapter C). Like other corporations subject to subchapter C, a RIC generally must recognize gain upon a distribution of appreciated property under § 311(b). However, § 852(b)(6) provides that § 311(b) shall not apply to certain RIC distributions. Specifically, § 311(b) does not apply to any distribution by a RIC to which part I of subchapter M applies, “if such distribution is in redemption of its stock upon the demand of the shareholder.”

Section 351 provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and, immediately after the exchange, such person or persons are in control (as defined in § 368(c)) of the corporation. “[T]he purpose of [§ 351] [is] to save the taxpayer from an immediate recognition of a gain, or to intermit the claim of a loss, in certain transactions where gain or loss may have accrued in a constitutional sense, but where in a popular and economic sense there has been a mere change in the form of ownership and the taxpayer has not really ‘cashed in’ on the theoretical gain, or closed out a losing venture.” *Portland Oil Co. v. Commissioner*, 109 F.2d 479, 488 (1st Cir. 1940).

Under generally applicable principles of law, such as the substance over form and step-transaction doctrines, an interme-

diary’s transitory ownership of property may be disregarded for Federal income tax purposes and the transaction recharacterized in accordance with its substance. *See generally Stewart v. Commissioner*, 714 F.2d 977, 987 (9th Cir. 1983) (observing that the purpose of the substance over form doctrine is to deny legal effect to transactions that comply with the formal requirements of a statute but violate the purpose of the statute). In this regard, transactions effectuated as part of a single integrated plan may be recharacterized to ensure that “[a] given result at the end of a straight path is not made a different result because reached by following a devious path.” *Minnesota Tea Co. v. Helvering*, 302 U.S. 609, 613 (1938). For example, in *Commissioner v. Court Holding Co.*, 324 U.S. 331, 334 (1945), the Supreme Court stated that a “sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.”

Courts and the Internal Revenue Service have found that contributions of property to a corporation followed by a distribution of the contributed property or a redemption of shares in exchange for the contributed property may be recharacterized. For example, in *Kuper v. Commissioner*, 533 F.2d 152 (5th Cir. 1976), shareholders of one corporation (KE) contributed all shares in KE to another corporation (KV) owned by the same shareholders. On the following day, KV distributed the KE stock to one shareholder in complete redemption of its interest in KV. The Fifth Circuit held that, where shareholders of one corporation (KE) contributed all shares in KE to another corporation (KV) owned by the same shareholders and, on the following day, KV distributed the KE stock to one shareholder in complete redemption of its interest in KV, (i) the contributing shareholders who continued to own shares

¹ Unless otherwise provided, all “Section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

of KV would be treated as engaging in a taxable disposition of their KE shares with the shareholder being redeemed, and (ii) the redeemed shareholder would be treated as engaging in a taxable disposition of its KV shares with the shareholders who retained their KV shares. Rev. Rul. 71-336, 1971-2 C.B. 299, similarly concludes that where, pursuant to a pre-arranged plan, a group of shareholders contributes, appreciated stock in a corporation (Y) to another corporation (X) and, shortly thereafter, X redeems its stock held by another historical X shareholder in exchange for the appreciated Y stock transferred by the group of shareholders, the transactions should be recharacterized as a taxable stock-for-stock exchange among the shareholders.

Similarly, pre-acquisition distributions have been recharacterized as sale proceeds in situations in which the distribution or redemption has not aligned with the economic reality of the transaction. See, e.g., *Waterman Steamship Corp. v. Commissioner*, 430 F.2d 1185 (5th Cir. 1970) (holding that the distribu-

tion of a promissory note by a subsidiary corporation to its parent was in substance part of the purchase price paid by a third party to the parent for the subsidiary's stock); Rev. Rul. 75-360, 1975-2 C.B. 110 (integrating a cash redemption of target preferred stock with an acquisition of common stock for common stock as a transaction that does not qualify as a reorganization under § 368(a)(1)(B) because the acquisition is not solely for voting stock).

In the situation at hand, the transactions undertaken as part of the plan were designed to enable Investor to exchange Investor's appreciated portfolio of securities for a materially different portfolio that aligns with the ETF's investment thesis without recognizing any built-in gains in those securities, and ETF was merely a conduit through which securities transferred from Investor to AP pursuant to the plan. Based on the foregoing, Investor is treated as having disposed of these securities for other property differing materially in kind or extent from that which Investor transferred to ETF.

HOLDING

The transfer of securities by Investor to ETF is recharacterized to reflect the substance of the transactions carried out pursuant to the plan. Accordingly, Investor is treated as undertaking a taxable exchange under § 1001 with AP of the securities contributed to ETF by Investor that are used by ETF to redeem AP. The result would be the same if there were multiple investors engaging in the transaction.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 71-336, 1971-2 C.B. 299, is amplified; Rev. Rul. 75-447, 1975-2 C.B. 13, and Rev. Rul. 88-32, 1988-1 C.B. 833, are distinguished.

DRAFTING INFORMATION

The principal author of this revenue ruling is the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, call (202) 317-3181 (not a toll-free call).

Section 351—Transfer to Corporation Controlled by Transferor

26 CFR 1.351-1 *Transfer to corporation controlled by transferor*

Should a transfer of securities to a newly formed exchange traded fund that is intended to qualify as an exchange to which § 351 of the Internal Revenue Code (Code) applies fail to qualify as such if, as part of the same plan, some or all of the transferred securities are distributed pursu-

ant to § 852(b)(6) in redemption of shares held by an "authorized participant"? See Rev. Rul. 2026-20, page 511.

Section 852—Taxation of Regulated Investment Companies and Their Shareholders

Should a transfer of securities to a newly formed exchange traded fund that

is intended to qualify as an exchange to which § 351 of the Internal Revenue Code (Code) applies fail to qualify as such if, as part of the same plan, some or all of the transferred securities are distributed pursuant to § 852(b)(6) in redemption of shares held by an "authorized participant"? See Rev. Rul. 2026-20, page 511.

Part III

Extension of Relief from Penalty for Failure to Deposit Remittance Excise Tax

Notice 2026-52

SECTION 1. PURPOSE

This notice extends the relief provided in Notice 2025-55, 2025-43 I.R.B. 625, in connection with the excise tax imposed on certain remittance transfers by section 4475 of the Internal Revenue Code¹ (remittance transfer tax). Specifically, this notice extends relief for remittance transfer providers related to the failure to deposit penalty imposed by section 6656 and the deposit safe harbor provided in § 40.6302(c)-1(b)(2). This relief is available for semimonthly periods ending before the applicability date of final regulations issued under section 4475.

SECTION 2. BACKGROUND

Section 3 of Notice 2025-55 provides temporary relief for the failure to deposit penalty imposed by section 6656 in relation to the remittance transfer tax. Specifically, section 3 of Notice 2025-55 provides that a remittance transfer provider will be deemed to have satisfied the reasonable cause standard under section 6656 if: (i) the remittance transfer provider makes timely deposits of the applicable remittance transfer tax, even if the deposit amounts are computed incorrectly, and (ii) the amount of any underpayment of the applicable remittance transfer tax for each calendar quarter is paid in full by the due date for filing the Form 720, *Quarterly Federal Excise Tax Return*, for that quarter.

Section 3 of Notice 2025-55 also provides that a remittance transfer provider's ability to use the deposit safe harbor under § 40.6302(c)-1(b)(2) will not be affected by a failure during the first three calendar

quarters of 2026 to make deposits of the remittance transfer tax as required under part 40, provided the remittance transfer provider satisfies the reasonable cause standard for those quarters.

The temporary relief provided in section 3 of Notice 2025-55 does not apply to calendar quarters beginning after September 30, 2026.

SECTION 3. EXTENSION OF RELIEF

To continue the transition period while the rules governing the scope and application of the remittance transfer tax are being finalized, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to extend the relief provided in section 3 of Notice 2025-55.

(a) *Extension of deemed satisfaction of reasonable cause standard.*

For semimonthly periods ending before the applicability date of final regulations issued under section 4475, a remittance transfer provider will be deemed to have satisfied the reasonable cause standard under section 6656 if: (i) the remittance transfer provider makes timely deposits of the applicable remittance transfer tax, even if the deposit amounts are computed incorrectly, and (ii) the amount of any underpayment of the applicable remittance transfer tax for each calendar quarter is paid in full by the due date for filing the Form 720 for that quarter.

(b) *Extension of ability to use deposit safe harbor.*

A remittance transfer provider's ability to use the deposit safe harbor under § 40.6302(c)-1(b)(2) will not be affected by a failure to make a deposit of the remittance transfer tax as required under part 40 with respect to a semimonthly period ending before the applicability date of final regulations issued under section 4475, provided the remittance transfer provider satisfies the reasonable cause standard with respect to that failure.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2025-55 is modified and amplified.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Michael H. Beker of the Office of the Associate Chief Counsel (Energy, Credits, and Excise Tax). For questions regarding this notice, contact Mr. Beker at (202) 317-6855 (not a toll-free number).

2026-2027 Special Per Diem Rates

Notice 2026-60

SECTION 1. PURPOSE

This annual notice provides the 2026-2027 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

SECTION 2. BACKGROUND

Rev. Proc. 2019-48, 2019-51 I.R.B. 1392 (or successor), provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274-5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers using the rates and list of high-cost local-

¹ Unless otherwise specified, all "section" or "§" references are to the Internal Revenue Code or the Excise Tax Procedural Regulations in 26 CFR part 40 (part 40).

ities provided in this notice must comply with Rev. Proc. 2019-48 (or successor). Notice 2025-54, 2025-41 I.R.B. 479, provides the rates and list of high-cost localities for the period October 1, 2025, to September 30, 2026.

SECTION 3. SPECIAL M&IE RATES FOR TRANSPORTATION INDUSTRY

The special M&IE rates for taxpayers in the transportation industry are \$80 for any locality of travel in the continental United States (CONUS) and \$86 for any locality of travel outside the continental United States (OCONUS). *See* section 4.04 of Rev. Proc. 2019-48 (or successor).

SECTION 4. RATE FOR INCIDENTAL EXPENSES ONLY DEDUCTION

The rate for any CONUS or OCONUS locality of travel for the incidental expenses only deduction is \$5 per day. *See* section 4.05 of Rev. Proc. 2019-48 (or successor).

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

1. *Annual high-low rates.* For purposes of the high-low substantiation method, the *per diem* rates in lieu of the rates described in Notice 2025-54 (the *per diem* substantiation method) are \$329 for travel to any high-cost locality and \$230 for travel to

any other locality within CONUS. The amount of the \$329 high rate and \$230 low rate that is treated as paid for meals for purposes of § 274(n) is \$86 for travel to any high-cost locality and \$74 for travel to any other locality within CONUS. *See* section 5.02 of Rev. Proc. 2019-48 (or successor). The *per diem* rates in lieu of the rates described in Notice 2025-54 (the meal and incidental expenses only substantiation method) are \$86 for travel to any high-cost locality and \$74 for travel to any other locality within CONUS.

2. *High-cost localities.* The following localities have a federal *per diem* rate of \$280 or more, and are high-cost localities for the specified portion of the calendar year:

Key City	County or Other Defined Location	Portion of Calendar Year
Alabama		
Gulf Shores	Baldwin	June 1 – July 31
Arizona		
Phoenix/Scottsdale	Maricopa	February 1 – March 31
Sedona	City limits of Sedona	October 1 – December 31 and March 1 – September 30
Tucson	Pima	January 1 – March 31
California		
Los Angeles	Los Angeles, Orange, and Ventura, and Edwards AFB, less the city of Santa Monica	October 1 – September 30
Mammoth Lakes	Mono	December 1 – March 31
Monterey	Monterey	October 1 – September 30
Napa	Napa	October 1 – September 30
Palm Springs	Riverside	October 1 – April 30
San Diego	San Diego	October 1 – September 30
San Francisco	San Francisco	October 1 – September 30
San Luis Obispo	San Luis Obispo	June 1 – July 31
San Mateo/Foster City/Belmont	San Mateo	October 1 – September 30
Santa Barbara	Santa Barbara	October 1 – September 30
Santa Monica	City limits of Santa Monica	October 1 – September 30
South Lake Tahoe	El Dorado	October 1 – March 31 and June 1 – September 30
Sunnyvale/Palo Alto/San Jose	Santa Clara	October 1 – September 30
Yosemite National Park	Mariposa	December 1 – April 30
Colorado		
Aspen	Pitkin	December 1 – September 30
Denver/Aurora	Denver, Adams, Arapahoe, and Jefferson	October 1 – October 31 and April 1 – September 30

Key City	County or Other Defined Location	Portion of Calendar Year
Silverthorne/Breckenridge	Summit	December 1 – March 31
Steamboat Springs	Routt	December 1 – March 31 and June 1 – September 30
Telluride	San Miguel	December 1 – March 31
Vail	Eagle	October 1 – September 30
Delaware		
Lewes	Sussex	June 1 – August 31
District of Columbia		
Washington, D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George’s in Maryland) (See also Maryland and Virginia)		October 1 – September 30
Florida		
Boca Raton/Delray Beach/Jupiter	Palm Beach and Hendry	January 1 – April 30
Bradenton	Manatee	February 1 – March 31
Cocoa Beach	Brevard	February 1 – March 31
Fort Lauderdale	Broward	January 1 – April 30
Fort Myers	Lee	January 1 – April 30
Fort Walton Beach/DeFuniak Springs	Okaloosa and Walton	June 1 – July 31
Gulf Breeze	Santa Rosa	June 1 – July 31
Key West	Monroe	October 1 – September 30
Miami	Miami-Dade	December 1 – May 31
Naples	Collier	December 1 – April 30
Sarasota	Sarasota	February 1 – April 30
Sebring	Highlands	February 1 – March 31
Stuart	Martin	February 1 – March 31
Tampa/St. Petersburg	Pinellas and Hillsborough	February 1 – April 30
Vero Beach	Indian River	December 1 – April 30
Georgia		
Atlanta	Fulton and DeKalb	January 1 – March 31
Jekyll Island/Brunswick	Glynn	March 1 – July 31
Idaho		
Boise	Ada	October 1 – October 31 and June 1 – September 30
Coeur d’Alene	Kootenai	June 1 – August 31
Sun Valley/Ketchum	Blaine and Elmore	December 1 – March 31 and June 1 – September 30
Illinois		
Chicago	Cook and Lake	October 1 – November 30 and April 1 – September 30
Maine		
Bar Harbor/Rockport	Hancock and Knox	October 1 – October 31 and May 1 – September 30
Kennebunk/Kittery/Sanford	York	July 1 – August 31
Portland	Cumberland and Sagadahoc	October 1 – October 31 and June 1 – September 30

Key City	County or Other Defined Location	Portion of Calendar Year
Maryland		
Ocean City	Worcester	June 1 – August 31
Washington, D.C. Metropolitan Area	Montgomery and Prince George’s	October 1 – September 30
Massachusetts		
Boston/Cambridge	Suffolk and city of Cambridge	October 1 – September 30
Falmouth	City limits of Falmouth	June 1 – August 31
Hyannis	Barnstable less the city of Falmouth	July 1 – August 31
Martha’s Vineyard	Dukes	October 1 – September 30
Nantucket	Nantucket	June 1 – September 30
Michigan		
Mackinac Island	Mackinac	July 1 – August 31
Petoskey	Emmet	June 1 – August 31
Traverse City	Grand Traverse	July 1 – August 31
Minnesota		
Duluth	St. Louis	October 1 – October 31 and June 1 – September 30
Montana		
Big Sky/West Yellowstone/Gardiner	Gallatin and Park	June 1 – September 30
Kalispell/Whitefish	Flathead	July 1 – September 30
New Jersey		
Toms River	Ocean	June 1 – August 31
New Mexico		
Albuquerque	Bernalillo	October 1 – March 31
New York		
Glens Falls	Warren	July 1 – August 31
Lake Placid	Essex	July 1 – August 31
New York City	Bronx, Kings, New York, Queens, and Richmond	October 1 – September 30
Saratoga Springs/Schenectady	Saratoga and Schenectady	July 1 – August 31
North Carolina		
Kill Devil Hills	Dare	June 1 – August 31
Oregon		
Bend	Deschutes	June 1 – August 31
Eugene/Florence	Lane	June 1 – July 31
Seaside	Clatsop	July 1 – August 31
Pennsylvania		
Hershey	Hershey	June 1 – August 31
Philadelphia	Philadelphia	October 1 – November 30 and September 1 – September 30
Rhode Island		
Jamestown/Middletown/Newport	Newport	October 1 – October 31 and June 1 – September 30
South Carolina		
Charleston	Charleston, Berkeley, and Dorchester	October 1 – September 30
Hilton Head	Beaufort	April 1 – August 31

Key City	County or Other Defined Location	Portion of Calendar Year
Tennessee		
Nashville	Davidson	October 1 – September 30
Utah		
Moab	Grand	October 1 – October 31, March 1 – June 30, and September 1 – September 30
Park City	Summit	October 1 – September 30
Vermont		
Burlington	Chittenden	October 1 – October 31 and May 1 – September 30
Manchester	Bennington	October 1 – October 31 and July 1 – September 30
Montpelier	Washington	October 1 – October 31 and June 1 – September 30
Virginia		
Virginia Beach	City of Virginia Beach	June 1 – August 31
Wallops Island	Accomack	July 1 – August 31
Washington, D.C. Metropolitan Area	Cities of Alexandria, Falls Church, and Fairfax; counties of Arlington and Fairfax	October 1 – September 30
Washington		
Port Angeles/Port Townsend	Clallam and Jefferson	June 1 – September 30
Seattle	King	October 1 – September 30
Wyoming		
Cody	Park	June 1 – September 30
Jackson/Pinedale	Teton and Sublette	October 1 – September 30

3. *Changes in high-cost localities.* The list of high-cost localities in this notice differs from the list of high-cost localities in section 5 of Notice 2025-54.

a. The following localities have been added to the list of high-cost localities: Tucson, Arizona; San Mateo/Foster City/Belmont, California; Albuquerque, New Mexico; Cody, Wyoming.

b. The following localities have changed the portion of the year in which they are high-cost localities: Napa, California; South Lake Tahoe, California; Yosemite National Park, California; Aspen, Colorado; Steamboat Springs, Colorado; Telluride, Colorado; Fort Myers, Florida; Falmouth, Massachusetts; Toms River, New Jersey; New York City, New York; Philadelphia, Pennsylvania; Hilton Head, South Carolina; Manchester, Vermont; Montpelier,

Vermont; Port Angeles/Port Townsend, Washington.

c. The following locality has been removed from the list of high-cost localities: Panama City, Florida.

d. The following locality has a correction to the portion of the year in which the locality is a high-cost locality: Sun Valley/Ketchum, Idaho.

SECTION 6. EFFECTIVE DATE

This notice is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only, that are paid to any employee on or after October 1, 2026, for travel away from home on or after October 1, 2026. For purposes of computing the amount allowable as a deduction for travel away from home, this notice is effective

for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2026. *See* sections 4.06 and 5.04 of Rev. Proc. 2019-48 (or successor) for transition rules for the last 3 months of calendar year 2026.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2025-54 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Bruce Chang of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Chang at 202-317-7005 (not a toll-free call).

Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m)

Notice 2026-61

I. PURPOSE

This Notice provides taxpayers with additional guidance for complying with the final regulations with respect to dividend equivalents under sections 871(m), 1441, 1461, and 1473 of the Internal Revenue Code (the Code) (collectively referred to as the section 871(m) regulations) in 2027,¹ 2028, and 2029. Specifically, this Notice extends the transition relief provided in Notice 2024-44, 2024-25 I.R.B. 1737, for two years, as described in more detail below. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend the section 871(m) regulations to delay the applicability date of certain rules in those final regulations.

The anti-abuse rule provided in §1.871-15(o) will continue to apply during the phase-in years described in this Notice. As a result, a transaction that would not otherwise be treated as a section 871(m) transaction (including as a result of this Notice) may be a section 871(m) transaction under §1.871-15(o).²

II. BACKGROUND

On June 14, 2010, the Treasury Department and the IRS published Notice 2010-46, which addresses potential over-withholding in the context of securities lending and sale-repurchase agreements. Notice 2010-46 provides a two-part solution to the problem of overwithholding on a chain of dividends and dividend equivalents. First, it provides an exception from withholding for payments to a qualified securities lender (QSL). Second, it provides a proposed framework to credit forward prior withholding on a chain of sub-

stitute dividends paid pursuant to a chain of securities loans or stock repurchase agreements. The QSL regime requires a person that agrees to act as a QSL to comply with certain withholding and documentation requirements. The Treasury Department and the IRS permitted withholding agents to rely on transition rules described in Notice 2010-46, Part III, until guidance was developed that would include documentation and substantiation of withholding.

On September 18, 2015, the **Federal Register** published final regulations and temporary regulations (TD 9734, 80 FR 56866) (2015 final regulations and 2015 temporary regulations, respectively). The 2015 final regulations finalized a portion of a 2013 notice of proposed rulemaking (78 FR 73128). The 2015 temporary regulations were based on comments received with respect to the 2013 notice of proposed rulemaking and were accompanied by a notice of proposed rulemaking cross-referencing the 2015 temporary regulations (80 FR 56415). The Treasury Department and the IRS stated in the preamble to the 2015 temporary regulations that the final qualified derivatives dealer (QDD) regulations would supplant the proposed regulatory framework described in Notice 2010-46. 80 FR at 56878.

On July 18, 2016, the Treasury Department and the IRS published Notice 2016-42, 2016-29 I.R.B. 67, which contained the proposed qualified intermediary agreement (QI Agreement) that included provisions relating to the QDD regime and reiterated the intent to replace the proposed regulatory framework described in Notice 2010-46 with the QDD regime.

On December 19, 2016, the Treasury Department and the IRS published Notice 2016-76, which provided for the phased-in application of certain provisions of the section 871(m) regulations to allow for the orderly implementation of those final regulations and announced that taxpayers may continue to rely on Notice 2010-46 until January 1, 2018.

On January 17, 2017, the Treasury Department and the IRS published Rev-

enue Procedure 2017-15, 2017-3 I.R.B. 437, which set forth the final QI Agreement (2017 QI Agreement), including the requirements and obligations applicable to QDDs, and provided that taxpayers may continue to rely on Notice 2010-46 during 2017. The 2017 QI Agreement expired on December 31, 2022.

On January 24, 2017, the **Federal Register** published final regulations and temporary regulations (TD 9815, 82 FR 8144) (2017 final regulations and 2017 temporary regulations, respectively, and together, the 2017 regulations). The 2017 final regulations finalized the 2015 notice of proposed rulemaking (80 FR 56415) that was issued in conjunction with the 2015 temporary regulations. On the same day, the **Federal Register** also published a notice of proposed rulemaking cross-referencing the 2017 temporary regulations (82 FR 8172), with correcting amendments published in the **Federal Register** on October 26, 2017 (82 FR 49508) (together, the 2017 proposed regulations).

The applicability dates in the 2017 regulations reflect the phased-in application described in Notice 2016-76. *See* Treas. Reg. §1.871-15(r). Also, consistent with Notice 2016-76 and other announcements, the “Effect on Other Documents” section of the preamble to the 2017 regulations obsoleted Notice 2010-46 as of January 1, 2018. In response to a comment requesting that the QSL regime remain, the preamble to the 2017 regulations noted that “[w]hile the Treasury Department and the IRS understand that the QSL regime was administratively more convenient for taxpayers than the QI regime, it created administrability problems, particularly with respect to verification, for the IRS. That regime is being replaced by incorporating the QDD rules into the existing QI framework, including the specific rules for pooled reporting on Form 1042-S, and the QI requirements for compliance review and certification.” 82 FR at 8153.

On August 21, 2017, the Treasury Department and the IRS published Notice 2017-42, 2017-34 I.R.B. 212, which extended certain transition relief.

¹ Unless otherwise provided, all references to years refer to calendar years.

² The terms used in this Notice have the meanings provided in the section 871(m) regulations.

On February 5, 2018, the Treasury Department and the IRS published Notice 2018-5, 2018-6 I.R.B. 341, which permitted withholding agents to apply the transition rules from Notice 2010-46 in 2018 and 2019.

On October 1, 2018, the Treasury Department and the IRS published Notice 2018-72, 2018-40 I.R.B. 522, which further extended certain transition relief and permitted withholding agents to apply the transition rules from Notice 2010-46 in 2020.

On December 17, 2019, the **Federal Register** published final regulations (TD 9887, 84 FR 68790), which finalized the 2017 proposed regulations.

On January 13, 2020, the Treasury Department and the IRS published Notice 2020-2, 2020-3 I.R.B. 327, which extended the phase-in period described in Notice 2018-72 through 2022.

On September 12, 2022, the Treasury Department and the IRS published Notice 2022-37, 2022-37 I.R.B. 234, which extended the phase-in period described in Notice 2020-2 through 2024.

On December 27, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-43, 2022-52 I.R.B. 570, which set forth the QI Agreement currently in effect (2023 QI Agreement), including the requirements and obligations applicable to QDDs and the relevant transition rules for the phase-in period in Notice 2022-37 applicable to QDDs and to QIs acting as QSLs in 2023 and 2024. The 2023 QI Agreement expires on December 31, 2028.

On June 17, 2024, the Treasury Department and the IRS published Notice 2024-44, which extended the phase-in period described in Notice 2022-37 through 2026.

This Notice further extends the phase-in period described in Notice 2024-44 through 2028.

The Treasury Department and the IRS continue to evaluate the section 871(m) regulations and will take into account comments already received, and welcome any additional comments regarding tax policy considerations, legal authority for, and the IRS administrative feasibility of any suggested modifications to the section 871(m) regulations. The Treasury Department and the IRS intend to provide suffi-

cient time for taxpayers and withholding agents to implement any changes to the section 871(m) regulations.

III. EXTENSION OF THE PHASE-IN YEAR FOR DELTA-ONE AND NON-DELTA-ONE TRANSACTIONS

This section describes the extension to the phased-in application of the section 871(m) regulations to delta-one and non-delta-one transactions. This Notice does not apply to any transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(1) (providing that before January 1, 2017, a notional principal contract (NPC) is a specified NPC if certain factors are present).

The Treasury Department and the IRS have determined that it is appropriate for taxpayers and withholding agents to delay the implementation of certain provisions in the section 871(m) regulations for non-delta-one transactions, including transactions that are combined transactions under §1.871-15(n). Therefore, the Treasury Department and the IRS intend to revise the applicability date for §1.871-15(d)(2) and (e) to provide that these rules will not apply to any payment made with respect to any non-delta-one transaction issued through 2028. As noted in Part I of this Notice, the anti-abuse rule continues to apply to the phased-in application of the section 871(m) regulations, including for the purpose of determining whether a transaction is a delta-one transaction.

Notice 2016-76 provided that the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations with respect to delta-one transactions in 2017 and non-delta-one transactions in 2018 when it enforces the section 871(m) regulations. As a result of extensions in Notice 2017-42, Notice 2018-72, Notice 2020-2, Notice 2022-37, and Notice 2024-44 (together, the Prior Notices), the good faith effort standard applies to (1) any delta-one transaction in 2017 through 2026, and (2) any non-delta-one transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(2) or (e) in 2027. This Notice further extends the periods during which the enforcement standards provided by Notice 2024-44 will apply. Consistent with this extension,

the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations in enforcing the section 871(m) regulations for (1) any delta-one transaction in 2017 through 2028, and (2) any non-delta-one transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(2) or (e) in 2029.

Similarly, for purposes of the IRS's enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of the 2023 QI Agreement, this Notice extends through 2028 the period during which the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the 2023 QI Agreement. In addition, the IRS will consider a QDD to satisfy the obligations that apply specifically to a QDD under its 2023 QI Agreement through 2028 provided that the QDD makes a good faith effort to comply with the relevant provisions of the 2023 QI Agreement, to the extent applicable to the QDD.

IV. EXTENSION OF THE SIMPLIFIED STANDARD FOR DETERMINING WHETHER TRANSACTIONS ARE COMBINED TRANSACTIONS

Notice 2016-76 and the Prior Notices provided a simplified standard for withholding agents to determine whether transactions are combined transactions entered into in 2017 through 2026. Specifically, a withholding agent is required to combine transactions entered into in those years for purposes of determining whether the transactions are section 871(m) transactions only when the transactions are over-the-counter transactions that are priced, marketed, or sold in connection with each other. Withholding agents are not required to combine any transactions that are listed securities entered into in those years.

This Notice further extends the period during which this simplified standard for combined transactions applies to include 2027 and 2028. Transactions that are entered into in 2017 through 2028 that are combined under this simplified standard will continue to be treated as combined transactions for future years and will not

cease to be combined transactions as a result of applying §1.871-15(n) or disposing of less than all of the potential section 871(m) transactions that are combined under this rule. Transactions that are entered into in 2017 through 2028 that are not combined under this simplified standard will not become combined transactions as a result of applying §1.871-15(n) to these transactions in future years, unless a reissuance or other event causes the transactions to be retested to determine whether they are section 871(m) transactions. *See* §1.871-15(g) (2) (providing that the delta of a potential section 871(m) transaction generally is determined on the earlier of when the transaction is (1) priced or (2) issued); *see also* §1.871-15(a)(6) (defining the term “issue” to include “an issuance as a result of a deemed exchange pursuant to section 1001”). This simplified standard applies only to withholding agents and does not apply to taxpayers that are long parties to potential section 871(m) transactions. As noted in Part I of this Notice, the anti-abuse rule continues to apply to the phased-in application of the section 871(m) regulations, including for the purpose of determining whether multiple transactions should be combined.

V. EXTENSION OF PHASE-IN RELIEF FOR QUALIFIED DERIVATIVES DEALERS

Section 1.871-15T(q)(1) of the 2015 temporary regulations provided that when a QDD received a dividend or dividend equivalent payment and the QDD was contractually obligated to make an offsetting dividend equivalent payment on the same underlying security in an amount that was less than the dividend and dividend equivalent amount received, the QDD would be liable for tax under section 871(a) or section 881 for the difference. The 2015 final regulations provided that a withholding agent who made a payment of a dividend to a qualified intermediary acting as a QDD was not required to withhold on that payment if the withholding agent reliably associated the payment with a valid qualified intermediary withholding form containing a certification described in §1.1441-1(e)(3)(ii)(E). *See* §1.1441-1(b)(4)(xxii) of the 2015 final regulations.

Comments requested that the Treasury Department and the IRS adopt a different method of determining a QDD’s tax liability. Those comments generally requested that this method be based on the QDD’s net delta exposure for each underlying security. The Treasury Department and the IRS agreed that the net delta exposure method was an administrable and accurate method for a QDD to determine its residual exposure to underlying securities, and the 2017 final regulations adopted the net delta exposure method.

In adopting the net delta exposure method, the Treasury Department and the IRS were concerned that the exemption from withholding on dividends paid to a QDD, when combined with the net delta exposure method, could result in U.S. source dividends escaping U.S. tax completely in certain circumstances. Therefore, the 2017 final regulations revised §§1.871-15(q)(1) and 1.1441-1(b)(4)(xxii) to provide that a QDD remains liable for tax under section 881(a)(1) and subject to withholding under chapters 3 and 4 on dividends. However, to allow taxpayers time to implement the net delta exposure method, the 2017 QI Agreement and the 2017 final regulations provided that dividends and dividend equivalents received by a QDD in its equity derivatives dealer capacity in 2017 would not be subject to tax under section 881(a)(1) or subject to withholding under chapters 3 and 4.

The Prior Notices announced that the Treasury Department and the IRS intend to amend §§1.871-15(q)(1) and (r)(3), and 1.1441-1(b)(4)(xxii)(C) to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2017 through 2026 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends). This Notice announces that the Treasury Department and the IRS intend to amend those provisions to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2027 and 2028 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends) as well, provided that the QDD identifies these dividends received in its equity derivative dealer capacity on its withholding statement in the same manner as

required in the 2023 QI Agreement for 2023 and 2024.

Section 4.01(1) of Rev. Proc. 2017-15 provided that a QDD would not be liable for tax under section 871(a) or 881 on dividend equivalents that it received in its equity derivatives dealer capacity in 2017, and therefore also provided that a QDD would be required to compute its section 871(m) amount using the net delta exposure method beginning in 2018. Similarly, the 2023 QI Agreement provided in section 3.09 that a QDD would not be liable for tax under section 871(a) or 881 on dividend equivalents that it received in its equity derivatives dealer capacity in 2023 and 2024. The Prior Notices provided that a QDD would be required to compute its section 871(m) amount using the net delta exposure method beginning in 2027. This Notice provides that a QDD will not be required to compute its section 871(m) amount using the net delta exposure method through 2028.

A QDD will remain liable for tax under section 881(a)(1) on dividends and dividend equivalents that it receives in any capacity other than as an equity derivatives dealer, and on any other U.S. source FDAP payments that it receives (whether or not in its equity derivatives dealer capacity). In addition, a QDD is responsible for withholding on dividend equivalents it pays to a foreign person on a section 871(m) transaction, whether acting in its capacity as an equity derivatives dealer or otherwise.

Finally, section 10.01(C) of the 2017 QI Agreement provided that: “For calendar year 2017, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide the factual information specified in Appendix I.” Section 10.01(C) of the 2023 QI Agreement provides that: “For calendar years 2023 and 2024, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide factual information in Appendix I with respect to its QDD activities.” A QDD is not required to perform a periodic review or provide factual information in Appendix I with respect to its QDD activities for 2017 through 2026. This Notice provides that a QDD is not

required to perform a periodic review or provide factual information in Appendix I with respect to its QDD activities for 2027 or 2028.

VI. EXTENSION OF TRANSITION RULES FROM NOTICE 2010-46

Notice 2018-5, Notice 2018-72, Notice 2020-2, Notice 2022-37, and Notice 2024-44 provided that notwithstanding the preamble to the 2017 regulations, withholding agents may apply the QSL transition rules described in Notice 2010-46, Part III, for payments made in 2018 through 2026. This Notice provides that withholding agents may also apply the QSL transition rules described in Notice 2010-46, Part III, Parts C, D, and E for payments made in 2027 and 2028.³

VII. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires a Federal agency to obtain approval from the Office of Management and Budget (OMB) before conducting or sponsoring a collection of information from the public, whether the collection is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section V of this notice references collection of information requirements for taxpayers that are currently approved by OMB under control number 1545-0096 and 1545-0097. This notice does not create a new collection of information or make a substantive or material modification to the collection already approved by OMB.

VIII. TAXPAYER RELIANCE

Before the promulgation of the amendments to the section 871(m) regulations or

the issuance of other guidance, taxpayers and withholding agents (including QIs for purposes of the 2023 QI Agreement) may rely on the provisions of this Notice regarding the proposed amendments described in sections III and V. Withholding agents may rely on the simplified standard for determining whether transactions are combined transactions as described in section IV and may apply the QSL transition rules described in section VI.

IX. DRAFTING INFORMATION

The principal authors of this Notice are Karen Walny and Peter Merkel of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Karen Walny or Peter Merkel at (202) 317-6938 (not a toll-free call).

Guidance and Other Actions Being Considered Regarding Certain Potentially Abusive Investment Fund Strategies Involving Financial Products

Notice 2026-62

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have identified novel investment fund strategies that purport to produce tax results that may be inconsistent with the purpose and proper application of the relevant federal tax rules. These transactions are not the result of conventional, long-established tax planning that is consistent with the intent of Congress. This notice requests comments

and information regarding the transactions described in this notice and similar transactions.

Concurrently with this notice, the Treasury Department and the IRS are issuing Rev. Rul. 2026-20, this Bulletin, on the federal tax characterization of a transaction described in section 2.02(2) of this notice. The Treasury Department and the IRS are also considering issuing additional guidance or taking other action to address the transactions described in this notice. Such guidance may include regulations, notices, revenue rulings, and other guidance published in the Internal Revenue Bulletin, including the potential identification of a transaction as a transaction of interest or a listed transaction.

Whether guidance will be issued and, if so, its timing, form, and content, will depend on the details of the relevant transaction, the tax rules applicable to the transaction, and the authority available to the Treasury Department and the IRS, including anti-abuse rules and judicial doctrines. Additional information provided by stakeholders about these transactions, and about other transactions that may appear similar but have different facts, different economics, or different tax policy implications, will be taken into account. Any such guidance could apply prospectively only or retroactively to transactions that already have taken place at the time the guidance is issued.¹ The Treasury Department and the IRS intend that any guidance to address the transactions described in this notice will target specific abusive transactions, will minimize compliance burdens, and will respect market expectations with respect to conventional, long-established tax planning that is consistent with the intent of Congress.

In addition to issuing guidance, the IRS may challenge an abusive investment fund strategy upon examination as inconsistent with existing law, including the Internal Revenue Code (Code), Income Tax Regulations, and applicable judicial doctrines.²

³ For earlier periods, see Internal Revenue Service, FATCA-FAQs General, General compliance, Q26 (Sept. 12, 2024) <https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>, (explaining that the references to the Notice 2010-46 transition rule in the Prior Notices include only the QSL transition rule, not the credit forward framework).

¹ See § 7805(b)(1) (generally prescribing the extent to which regulations may apply retroactively); see also § 7805(b)(3) (“The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.”).

² Unless otherwise provided, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

SECTION 2. IDENTIFIED STRATEGIES INVOLVING ATYPICAL USAGE OF § 852(b)(6)

The Treasury Department and the IRS are aware of several strategies that involve the purported application of § 852(b)(6) to produce results that are inconsistent with the purpose and proper application of that provision. In several of these strategies, the rules applicable to transactions undertaken by exchange traded funds (ETFs) are being used not simply to operate an ETF in the normal course of carrying out its investment strategy, but instead to avoid the inclusion by the ETF or its shareholders of income or gain contemplated by subchapter M of chapter 1 of the Code (subchapter M), or other provisions of the Code.

.01 Background.

(1) Recognition of realized gain.

Under § 1001(a), gain or loss from the sale or other disposition of property is determined by reference to the amount realized on the disposition and the adjusted basis of the property. Gain or loss generally is realized upon the sale or disposition of property in exchange for cash or other property differing materially either in kind or in extent. *See* § 1.1001-1(a). Under § 1001(c), realized gain or loss is recognized except as otherwise provided in subtitle A of the Code.

Section 311(a) contains a nonrecognition rule for certain distributions by corporations to shareholders. Specifically, § 311(a) provides that a corporation recognizes no gain or loss on a distribution (not in complete liquidation) with respect to its stock of (i) its stock (or rights to acquire its stock), or (ii) property. However, § 311(b) provides a broad exception to § 311(a) that requires a corporation to recognize gain on the distribution to a shareholder of appreciated property (other than an obligation of such corporation) as if that property were sold to the shareholder at its fair market value. Section 317(a) defines “property” to mean money, securities, and any other property other than stock (or rights to acquire stock) of the corporation making the distribution.

(2) Regulated investment companies.

A regulated investment company (RIC), as defined in § 851, is a domestic corporation for federal income tax purposes that meets requirements specified in § 851 (for example, the income and asset diversification requirements in § 851(b)). A RIC that meets the requirements of § 852 (including, for example, the distribution requirement in § 852(a)(1)) is taxed under part I of subchapter M, which includes §§ 851 through 855. Taxation of RICs and their shareholders under part I of subchapter M is generally more favorable than taxation of non-RIC corporations subject to subchapter C of chapter 1 of the Code (subchapter C).

In particular, a RIC generally is allowed a deduction under § 852(b)(2)(D) and (3) (A) for the dividends it pays. In addition, a RIC that earns certain types of income can pay corresponding types of dividends, which allows shareholders to be taxed on the dividends in a way that approximates how the shareholders would be taxed if they had earned the income directly. For example, a RIC that has a net capital gain can pay capital gain dividends, which generally are taxed like capital gains in the hands of shareholders. Pursuant to these rules, RICs often operate in such a way that income and capital gains derived by a RIC do not give rise to income tax liability for the RIC and instead give rise to taxable income for RIC shareholders. Accordingly, although the statutory rules that apply to RICs are unique to subchapter M,³ the application of those rules typically results in a single level of tax on the income of a RIC, which is similar to how pass-through entities, such as partnerships, are taxed.

Like other corporations subject to subchapter C, a RIC generally must recognize gain upon a distribution of appreciated property under § 311(b). However, § 852(b)(6) provides that § 311(b) “shall not apply” to certain RIC distributions. Specifically, § 311(b) does not apply to any distribution by a RIC to which part I of subchapter M applies, “if such distribution is in redemption of its stock upon the demand of the shareholder.”

Section 852(b)(6) does not affect the treatment of a redemption to the redeem-

ing shareholder, which typically requires the shareholder to recognize any gain on the exchange. *See* §§ 302(a) and 1001(a). If the RIC shares are newly acquired and are redeemed for an amount equal to or that approximates the purchase price of the shares, the shareholder may recognize no or minimal gain or loss on the redemption. The shareholder takes a cost basis (rather than a transferred basis) in the property received that is generally equal to the fair market value of the RIC shares surrendered. *See* § 1012(a). The RIC is not required to reduce its basis in any assets by the amount of the unrecognized gain. Thus, gain inherent in the assets distributed in a § 852(b)(6) redemption is not recognized by either party to the exchange, and is not applied as an adjustment to the basis of any other property. The unrecognized gain attributable to the continuing shareholders is not affected and may effectively be recognized by them upon sale or other disposition of their RIC shares.

While traditional mutual funds redeem their shares at the demand of the shareholder, they have traditionally not distributed property in kind and instead generally issue and redeem their shares in exchange for cash. Shares of these mutual funds do not trade in the secondary market or on an exchange.

By contrast, shares of stock in an ETF trade on a public exchange. In addition, one or more financial institutions, each designated as an “authorized participant” with respect to an ETF, transact directly with the ETF to acquire large blocks of ETF shares (creation units). While the trading price of the ETF shares on the exchange may be affected by multiple factors, the purchase price for creation units is based directly on the net asset value (NAV) of the ETF.

Authorized participants also transact directly with the ETF to redeem ETF shares. When an authorized participant presents shares for redemption, the ETF distributes assets with a fair market value equal to the ETF’s NAV allocable to the shares tendered by the authorized participant for redemption. The ETF determines the specific assets that it distributes in redemption. Often, the ETF distributes

³ Similar rules under part II of subchapter M apply to real estate investment trusts.

appreciated securities. Distributions of securities carried out in a manner that complies with § 852(b)(6) result in non-recognition of realized gain or loss for the ETF under §§ 852(b)(6) and 311(a).

The Treasury Department and the IRS are aware that ETFs regularly engage in such creation and redemption transactions and take the position that distributions of securities as described above result in nonrecognition of gain or loss. Except to the extent discussed below, this notice does not address such distributions and is not intended to express a view regarding such distributions.

.02 Transfers to controlled corporations in transactions intended to qualify under § 351.

(1) Background.

Section 351 allows for tax deferral of built-in gain on assets that are transferred to a corporation in exchange for that corporation's stock, provided that certain requirements are met. Specifically, § 351(a) provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in that corporation, and immediately after the exchange, such person or persons are in control (as defined in § 368(c)) of the corporation.

However, § 351(e) provides that the general rule for nonrecognition of gain or loss under § 351(a) does not apply to the "transfer of property to an investment company." Section 1.351-1(c)(1) provides that a transfer of property will be considered to be a transfer to an investment company if: (i) the transfer results, directly or indirectly, in diversification of the transferors' interests, and (ii) the transferee is (A) a RIC, (B) a real estate investment trust, or (C) a corporation more than 80 percent of the value of whose assets consist of "stock and securities" within the meaning of § 351(e)(1)(B).⁴

Section 1.351-1(c)(5) provides that a transfer ordinarily will result in diversification of the transferors' interests if two or more persons transfer nonidentical assets to a corporation in the exchange. However, if there is only one transferor (or two or more transferors of identical assets) to a newly organized corporation, the transfer

generally will not be treated as resulting in diversification. If a transfer is part of a plan to achieve diversification without recognition of gain, the original transfer will be treated as resulting in diversification.

Section 1.351-1(c)(6)(i) provides that a transfer of stocks and securities will not be treated as resulting in a diversification of the transferors' interests if each transferor transfers a diversified portfolio of stocks and securities. A portfolio of stock and securities is generally diversified if it meets the tests set forth in § 368(a)(2)(F) (ii)—that is (i) not more than 25 percent of the value of the total assets of the portfolio is invested in the stock and securities of any one issuer, and (ii) not more than 50 percent of the total value of the portfolio's assets is invested in the stock and securities of five or fewer issuers.

(2) Section 351 conversion transactions.

Some investment advisors are promoting a so-called "§ 351 conversion transaction" strategy to diversify investors' portfolios without the investors recognizing built-in gains in their securities. In a § 351 conversion transaction, as part of a plan, one or more investors transfer a portfolio of appreciated securities to a newly formed ETF. Each transferred portfolio satisfies the definition of a diversified portfolio for purposes of § 351(e). However, some or all of the securities in the transferred portfolio do not align with the ETF's contemplated securities portfolio or investment thesis following the completion of the planned transactions, or the transferred portfolio may have an overconcentration of one or more securities compared to the ETF's contemplated securities portfolio following the completion of the planned transactions.

Consequently, pursuant to the plan that includes the transfer of securities by the investor(s) to the ETF, the following two transactions take place. First, the ETF issues one or more creation units to an authorized participant in exchange for securities that are consistent with the ETF's investment thesis or cash that the ETF intends to use to acquire such securities. Second, the ETF redeems the cre-

ation unit(s), in a transaction intended to qualify under § 852(b)(6), in exchange for securities that the investor(s) transferred to the ETF. The securities contributed by the authorized participant are expected to result in the ETF owning a materially different portfolio of securities consistent with the ETF's investment thesis, or the cash contributed by the authorized participant would be used by the ETF to acquire securities that result in the ETF owning a materially different portfolio of securities consistent with the ETF's investment thesis. In many cases, these transactions may take place shortly after the contribution of the transferred portfolio to the ETF. As a result of the planned transactions, investors expect to avoid recognition of the built-in gains in their securities at the time of the purported § 351 transaction while effectively exchanging those securities for an interest in an ETF with a materially different portfolio of securities. In sum, transactions purporting to be governed by §§ 351 and 852(b)(6) are being combined as part of a plan to achieve a result that neither provision was designed to produce.

Concurrently with this notice, the Treasury Department and the IRS are issuing Rev. Rul. 2026-20, which provides that certain contributions of appreciated securities by investors to an ETF as part of a plan involving a distribution of some or all of those securities by the ETF pursuant to a redemption shortly thereafter are properly characterized as taxable exchanges under § 1001 by the contributing investors with the authorized participant rather than a contribution to the ETF that qualifies as a § 351 transaction. The Treasury Department and the IRS are considering additional guidance to address § 351 conversion transactions.

This notice does not address, and expresses no view regarding, transactions in which a § 351 transaction is used to seed a newly established ETF with assets that are consistent with the ETF's investment thesis and that are intended and expected to be retained by the ETF absent a substantial change in circumstances (including an unexpected change in market or business conditions).

⁴The regulations under § 351 have not been updated to reflect changes made by § 1002 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788, 909 (Aug. 5, 1997)).

.03 *Transfers to partnerships in connection with a § 351 conversion transaction.*

(1) *Background.*

Similar to § 351, § 721(a) generally allows for tax deferral of built-in gain in assets that are transferred to a partnership in exchange for interests in the partnership. Specifically, § 721(a) provides that no gain or loss will be recognized by a partnership or any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 721(b) provides that the general rule for nonrecognition of gain or loss under § 721(a) does not apply to gain realized on a transfer of property to a partnership that would be treated as an investment company (within the meaning of § 351(e)) if the partnership were incorporated. Therefore, the provisions of § 351(e) and the § 351(e) regulations apply in determining whether gain is recognized under § 721(b) on a contribution of built-in gain property to a partnership.

(2) *Partnership exchange funds.*

The § 351 conversion transaction described in section 2.02(2) of this notice depends upon the investors transferring to an ETF a portfolio that is diversified for purposes of § 351(e). The Treasury Department and the IRS are aware that certain investment advisors are promoting a related “partnership variation” strategy to investors whose portfolio of securities with built-in gains is not diversified for purposes of § 351(e). In the partnership variation, as part of a plan, investors contribute one or more securities with built-in gains to a partnership that invests at least 20 percent of the value of the partnership’s assets in property that is not stocks or securities (within the meaning of § 351(e)(1)(B)), with the intention that the partnership would not be treated as an investment company under § 351(e) if it were incorporated.⁵ As a result, the investors take the position that § 721(b) does not apply and, therefore, that the transfers to the partnership qualify for nonrecognition treatment under § 721(a).

Although the investors individually will not have contributed a diversified portfolio

of securities to the partnership, the advisor will ensure that the partnership owns a portfolio of securities that is diversified for purposes of § 351(e). As part of the same plan, the partnership subsequently engages in a § 351 conversion transaction as described in section 2.02(2) of this notice. The investors purportedly avoid recognition of the built-in gains in their securities while effectively exchanging those securities for an indirect interest in an ETF with a materially different portfolio of securities. In these transactions, §§ 351, 721 and 852(b)(6) are being applied to a series of planned transactions to achieve a result that these provisions were not intended to produce.

As described above, the Treasury Department and the IRS are issuing Rev. Rul. 2026-20 concurrently with this notice to address § 351 conversion transactions. The Treasury Department and the IRS continue to consider other guidance that would provide that the contributions to partnerships described above do not qualify for nonrecognition of gain or loss or otherwise may be recharacterized in a manner that reflects the proper substance of the underlying transactions for federal income tax purposes. This notice does not address other transactions involving exchange funds, and this notice is not intended to express a view regarding such transactions.

.04 *Box spread funds.*

Some ETFs are taking the position that § 852(b)(6) applies to redemption transactions that occur as part of a strategy to provide the type of stable time-value-of-money return ordinarily associated with investment in government obligations without current income recognition. Such ETFs generate their returns using a “box spread,” that is, a combination of four options on the same underlying property that, in the aggregate, produce a return similar to a short-term interest rate.

The ETF enters into the box spread with options that are not § 1256 contracts.⁶ Before the options in the box spread that have unrealized gain for federal income tax purposes expire, the ETF separates the components of the box spread using a distribution intended to qualify for non-

recognition under § 852(b)(6). More specifically, (i) the ETF issues a creation unit to an authorized participant in exchange for cash or property, and (ii) the ETF distributes the options that have unrealized gain in redemption of the creation unit in a transaction intended to qualify under § 852(b)(6). As a result, the ETF purportedly avoids recognition of any income or gain from the box spread, and investors purportedly recognize no current income although they economically benefit from a return consistent with a short-term interest rate. The ETF generally reports to its shareholders no dividends (including capital gain dividends) or undistributed capital gains to be included by shareholders. As a consequence, shareholders generally include no income currently. Because the box spreads increase the value of the ETF’s portfolio, and the value of its shares, shareholders generally recognize capital gain (short-term or long-term capital gain, depending upon their respective holding periods) upon a sale or disposition of their shares in an amount that corresponds to the ETF’s income from the box spreads.

A similar transaction involves an ETF that engages in both a box spread transaction and a separate transaction comprised of offsetting positions that constitute a straddle within the meaning of § 1092(c)(1) and distributes the positions in the straddle that have unrealized gain for federal income tax purposes. The ETF takes the position that it can deduct the loss on the remaining straddle positions notwithstanding that the offsetting gain is never recognized, and that such loss is available to offset income from the box spread (or any other income recognized by the ETF).

This notice does not address other transactions involving box spreads, and this notice is not intended to express a view regarding such transactions.

.05 *Record date strategies.*

Some equity ETFs are investing in other equity ETFs (acquired ETFs) and taking the position under § 852(b)(6) that recognition of dividend income can be avoided by making a redemption distribution of the stock of the acquired ETF prior to the record date. For example, an ETF (parent

⁵ Such a partnership may be referred to as an “exchange fund.”

⁶ Non-§ 1256 contracts are used because the distribution of options that are § 1256 contracts would be a termination or transfer giving rise to recognized gain or loss under § 1256(c)(1).

ETF) may seek a return that tracks an index by investing in one or more acquired ETFs that track the same index. The acquired ETFs pay dividends at times that vary with their taxable years or other factors. The trading price of the acquired ETF generally reflects the value of its expected dividend payments (reflecting the dividends paid by the issuers of the securities held by the acquired ETF). Shortly before the record date for payment of a dividend by an acquired ETF, (i) the parent ETF issues a creation unit to an authorized participant in exchange for property such as cash or shares of a different ETF that tracks the same index, and (ii) the parent ETF subsequently distributes to the authorized participant the shares of the acquired ETF in redemption of the parent ETF shares. If the property contributed by the authorized participant is cash, the parent ETF invests in shares of a different ETF that tracks the same index. The parent ETF takes the position that it avoids recognition of dividend income, and parent ETF shareholders take the position that they recognize no income or capital gain until they dispose of their parent ETF shares, at which time they recognize capital gain or loss based on the difference between their basis in the parent ETF shares and the amount realized on disposition. Throughout the transactions, the parent ETF generally maintains its exposure to the same underlying index of stock or securities. The purpose of the disposition of one acquired ETF and the acquisition of a replacement acquired ETF is to eliminate taxable dividend income without any material change to the economic characteristics of the assets of the parent ETF. Similar transactions may take place with ETFs that invest in bonds.

This notice does not address transactions involving ETFs that invest in other ETFs that track different indices, and this notice is not intended to express a view regarding such transactions.

.06 RIC income test avoidance.

Section 851(b)(2) provides an income test for qualification as a RIC (RIC income test). To be treated as a RIC for a taxable year, at least 90 percent of a corporation's gross income must be: (i) dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in § 2(a)(36) of

the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies; and (ii) net income derived from an interest in a qualified publicly traded partnership (as defined in § 852(h)).

Some ETFs are taking the position that § 852(b)(6) permits them to circumvent the income test in § 851(b)(2) by avoiding the recognition of gains with respect to distributed assets that would not be qualifying income. The ETFs invest directly in assets that, upon a sale or exchange, would produce gains not described in § 851(b)(2). For example, the ETF might hold positions in commodities or digital assets, either by holding those assets directly or by investing in a grantor trust that holds these assets. These ETFs avoid recognizing gain that would be non-qualifying income by distributing the assets that would produce the gain in redemption of creation units. Specifically, (i) the ETF issues a creation unit to an authorized participant in exchange for cash or other property specified by the ETF, and (ii) the ETF distributes to the authorized participant the relevant asset in redemption of the creation unit in a transaction intended to qualify under § 852(b)(6). The ETF takes the position that any gain that is realized but not recognized as a result of § 852(b)(6) is not taken into account for purposes of the RIC income test. The strategy purportedly would allow the ETF to limit its gross income that is subject to the requirements of § 851(b)(2) without regard to the ETF's economic income.

This notice does not address other forms of investment in assets that would give rise to non-qualifying income, such as investments in such assets through a controlled foreign corporation within the meaning of section 957(a), and this notice is not intended to express a view regarding such investments.

SECTION 3. STRATEGIES USED BY TAX-AWARE FUNDS

.01 Background.

The Treasury Department and the IRS are aware of several multi-position strategies that so-called “tax-aware” funds

appear to use based on technical differences among economically similar financial products or payments, or timing and identification rules, to create a pattern of generating capital gain and ordinary loss. In many of these strategies, the character of resulting federal income tax items is manipulated depending on which position or “leg” of the multi-position strategy is terminated, which election or identification is made, or which federal income tax rule applies. The purported result can be ordinary losses that offset unrelated ordinary income, paired with capital gains that are taxed at lower rates, deferred, or otherwise absorbed. These tax-aware fund strategies tend to be in the form of an investment partnership or a separately managed account overseen by an investment manager, and references to “tax-aware funds” in this section 3 refer to both of those alternatives. Certain of these tax-aware funds appear to be primarily tax-motivated rather than being directed toward generating an economic return from genuine investment activity. Others may carry out bona fide and profitable investment activity but also engage in the transactions described in this section 3.

The Treasury Department and the IRS acknowledge that certain long-standing, well-established techniques may be used to reduce federal income taxes in a manner consistent with the intent of Congress. For example, a taxpayer desiring exposure to a particular financial index comprised of equity securities may invest directly in the underlying securities and may choose to sell the securities that have unrealized losses at year-end and retain securities that have unrealized gain at year-end. The labelling of a strategy as “tax-aware” or “tax-advantaged” does not in and of itself represent cause for concern. This section 3 describes strategies of particular interest to the Treasury Department and the IRS, including strategies that seek to create a pattern of generating capital gain and ordinary loss in similar amounts from economically offsetting transactions or that seek to achieve effective character electivity by using certain elections in ways that are inconsistent with their purpose.

.02 Section 1092(a)(2) identified straddles with mixed character.

(1) Background.

Section 988(a)(1)(A) provides that certain transactions involving foreign currency give rise to gain or loss that is ordinary in character. This rule generally applies to foreign currency derivatives, such as forward contracts. However, regulated futures contracts that would be marked to market under § 1256 if held on the last day of the taxable year are not subject to this rule. *See* § 988(c)(1)(B)(iii) and (D)(i). Under § 1256(a)(3), such contracts give rise to capital gain or loss (60 percent long-term/40 percent short-term).

Section 1092 provides rules primarily intended to defer the recognition of losses from financial instruments or positions if a taxpayer holds an offsetting position, or successor position, with unrecognized gain. Generally, under § 1092(a)(1), a realized loss on a straddle position may not be taken into account to the extent of the unrecognized gain at the close of the taxable year with respect to any position that was an offsetting position, regardless of whether the position that gave rise to the unrealized gain is held by the taxpayer at the close of the taxable year. A related provision of the Code is intended to prevent taxpayers from using straddles to generate offsetting ordinary expenses and capital gain. *See* § 263(g).

Section 1092(a)(2) permits a taxpayer to make an identification of a straddle (identified straddle), and in the case of any straddle that is an identified straddle, loss from a position in the straddle is taken into account solely by increasing the basis of offsetting positions in the straddle. The identified straddle rules were enacted to provide certainty to taxpayers as to which positions are treated as part of a straddle by permitting taxpayers to identify offsetting positions of a straddle, subject to certain conditions. Like the general straddle rules, the identified straddle rules were intended as timing rules addressing selective loss recognition transactions.

(2) Identified straddles used to convert character.

The Treasury Department and the IRS are aware of a strategy involving identified straddles that include both a position that gives rise to capital gain or loss and an

offsetting position that gives rise to ordinary income or loss. This strategy is being used to generate gross capital gain and ordinary loss from offsetting positions, in a manner inconsistent with congressional intent.⁷

One example of this strategy involves an investment fund entering into pairs of foreign currency contracts that are long and short the same foreign currency, consisting of (i) a forward contract giving rise to ordinary income or loss under § 988(a)(1), and (ii) a futures contract giving rise to 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss under § 1256(a)(3). These contracts constitute a straddle under § 1092(c)(1).⁸ The investment fund identifies the contracts as an identified straddle pursuant to § 1092(a)(2).

Regardless of the performance of the contracts, the investment fund terminates the futures contract first. The investment fund may take steps intended to ensure that the futures contract is treated as terminated first for federal income tax purposes even if it economically terminates its risk position in the forward contract earlier. If the futures contract is in a gain position, the investment fund recognizes capital gain on the futures contract and then a corresponding ordinary loss upon the settlement of the forward contract. If the futures contract is in a loss position, the investment fund takes the position that the loss from the termination of the futures contract is capitalized into the basis of the forward contract under § 1092(a)(2)(A), reducing the ordinary income (or producing an ordinary loss) on the forward contract at settlement. As a result, the investment fund takes the position that, in the former case, it recognizes gross capital gain (60 percent long-term and 40 percent short-term) and gross ordinary loss from the offsetting positions, and in the latter case it recognizes a small amount of net ordinary income or loss.

The Treasury Department and the IRS are also aware of a similar strategy involving § 1092(a)(2) identified straddles for which the positions in the identified straddle consist of a notional principal contract

(NPC) that is an equity index swap and a futures contract on the same equity index.

This notice does not address the use of identified straddles in transactions that give rise to consistent character and holding period results regardless of whether a position in the straddle has gain or loss, and this notice is not intended to express a view regarding such investments.

.03 Same-day acquisitions and dispositions of foreign currency forward contracts.

(1) Background.

Section 988(a)(1)(B) provides an election to treat any foreign currency gain or loss as capital gain or loss to the extent it is attributable to a forward contract (or other specified contract) that is a capital asset in the taxpayer's hands and not part of a straddle. The election is available only if the taxpayer identifies the transaction by a specified time, which under current law is the close of the day on which the transaction is entered into. This election was intended to allow taxpayers that trade foreign currency through both regulated futures contracts (which generally give rise to capital gain or loss) and forward contracts (which generally give rise to ordinary gain or loss) to obtain consistent capital treatment for gains and losses from those contracts.

(2) Section 988(a)(1)(B) elections used to obtain inconsistent character.

The Treasury Department and the IRS are aware of a strategy involving an investment fund that enters into foreign currency forward contracts that expire or are disposed of or terminated for federal income tax purposes on the same day they are entered into. As described in section 3.03(1) of this notice, by default, these foreign currency forward contracts give rise to ordinary income or loss under § 988(a)(1)(A). However, after the investment fund has completed its trading for the day, the investment fund elects the application of § 988(a)(1)(B) for forward contracts that expire or are disposed of or terminated at a gain on that day in order for the gain to be capital. No election is made with respect to forward contracts that expire or are disposed of or terminated at a loss. The

⁷ Conference Report for the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), H.R. Rep. No. 100-1104, vol. II, at 193-94 (1988).

⁸ Section 1092 does not apply if all of the offsetting positions in a straddle consist of § 1256 contracts, but this rule does not apply to positions in an identified straddle.

investment fund decides whether to elect the application of § 988(a)(1)(B) at a time when the investment fund knows whether the election is advantageous. In other words, the investment fund has the benefit of hindsight at the time that it makes the election. Contrary to the intent underlying the § 988(a)(1)(B) election, the tax-motivated strategy purports to produce beneficial amounts of capital gain and ordinary loss to investors by electing different character for federal income tax items resulting from identical financial instruments. These ordinary losses may then be available to offset unrelated ordinary income.

.04 Selective NPC terminations used to obtain inconsistent character.

(1) Background.

Section 1.446-3 provides federal income tax accounting rules for taking into account payments on NPCs, often referred to as swaps. Those rules characterize NPC payments as periodic payments, nonperiodic payments, and termination payments in § 1.446-3(e), (f), and (h), respectively. Periodic and nonperiodic payments are payments made pursuant to the terms of the NPC and are required to be accrued on a daily ratable basis pursuant to § 1.446-3(e)(2) and (f)(2), respectively. A termination payment, defined in § 1.446-3(h)(1) as a payment made or received to extinguish or assign all or a proportionate part of the remaining rights and obligations of any party under an NPC, is required to be taken into account in the year the NPC is extinguished, assigned or exchanged rather than being subject to accrual on a daily ratable basis. These rules govern the timing of income and expense from NPCs in a manner that is intended to clearly reflect income.

Section 1234A(a) generally provides that gain or loss attributable to the cancellation, lapse, expiration, or other termination of a right or obligation with respect to property that is (or, on acquisition, would be) a capital asset in the hands of the taxpayer is capital gain or loss. Section 1234A was enacted to prevent taxpayers from extinguishing a financial contract in a loss position in order to claim an ordinary loss, due to the absence of a sale or

exchange, but selling a financial contract in a gain position to claim a capital gain.⁹ In other words, § 1234A was intended to ensure that gains and losses from transactions economically equivalent to the sale or exchange of a capital asset obtain similar treatment.

Under proposed regulations issued in 2004,¹⁰ gain or loss arising from a termination payment, as defined in § 1.446-3(h)(1), would be treated as gain or loss from a termination of the NPC, generally resulting in treatment of such gain or loss as capital under § 1234A. These proposed regulations also set forth a methodology for accruing nonperiodic payments that are contingent in amount, such as a final nonperiodic payment under an NPC that is an “equity swap” for which the final nonperiodic payment is determined by reference to the value of stock.

The NPC rules and proposed regulations were devised with the intent that periodic and nonperiodic payments on an NPC would be accrued and give rise to ordinary income and expense, like other typical periodic payments such as interest or rent, while payments made or received in consideration of the disposition of an NPC would give rise to capital gain or loss, like other payments made in exchange for a capital asset.

(2) Selective NPC termination strategy.

The Treasury Department and the IRS are aware of a strategy involving an investment fund that is a trader for federal income tax purposes (but does not make a § 475(f) trader election) that enters into multiple NPCs as part of its trading strategy. The NPCs may be long or short positions with respect to different underlying assets or indices. The NPCs are typically short-term, in some cases very short-term (for example, one week). Each NPC calls for one or more periodic or nonperiodic payments, and one or more of these payments is contingent on the performance of an underlying asset such as stock. In some fact patterns a contingent payment is due at maturity and reflects the change in value of underlying stock, and in others contingent payments reflecting changes in the value of the underlying stock are

paid periodically. In certain cases, one or more periodic payments are added solely to qualify the derivative contract as an NPC in order to claim the benefit of the strategy described in this section 3.04(2). None of the NPCs at issue constitutes a component of a straddle under § 1092(c)(1). The investment fund does not take into account any amount with respect to the contingent payment(s) until payment, disposition or maturity but instead takes the position that the contingent payment(s) result in the recognition of ordinary income or expense when received or paid.

If a particular NPC has appreciated in value, the investment fund terminates or otherwise disposes of the NPC shortly before a scheduled payment date and receives a payment, which in the event of a termination is from the same party obligated to make the scheduled payment. The payment may be economically attributable primarily to the value of the underlying equity, which would ordinarily also be the primary economic factor determining the amount of the scheduled payment. The investment fund takes the position that a payment received upon termination is attributable to the termination or extinguishment of the NPC for purposes of § 1.446-3(h) and § 1234A, and that the resulting income is capital in character. That is, the investment fund takes the position that none of the payment substitutes for (and has the same character as) the scheduled payment expected to be received and instead all of the payment is a termination payment under § 1.446-3(h). With regard to the NPCs in a loss position, the investment fund holds the NPC until the scheduled payment or expiration date and takes the position that the investment fund recognizes ordinary expense from the payment.

An investment fund pursuing this strategy purports to generate gross capital gain and gross ordinary losses, which provides valuable federal income tax benefits to investors, using selectivity to achieve different character for similar payments on identical financial instruments, contrary to the purposes of the timing and character

⁹Senate Finance Committee Report on the Economic Recovery Tax Act of 1981, S. Rep. No. 97-144, at 170-71 (1981).

¹⁰Notice of proposed rulemaking and notice of public hearing (REG-166012-02) titled *Notional Principal Contracts; Contingent Nonperiodic Payments*, published in the *Federal Register* (69 F.R. 8886; Feb. 26, 2004).

rules described in section 3.04(1) of this notice.

SECTION 4. REQUEST FOR COMMENTS

.01 *Request for comments.*

The Treasury Department and the IRS request additional details regarding the transactions described in this notice giving rise to unintended tax benefits (subject transactions), as well as similar transactions, and comments on their appropriate federal income tax treatment. In particular, the Treasury Department and the IRS request comments that address the following questions:

(1) Is the description of the subject transactions accurate? Are there additional facts or considerations of which the Treasury Department and the IRS should be aware in determining the appropriate federal income tax treatment of the subject transactions?

(2) Are there transactions that appear to be similar to the subject transactions but have different facts or different economics that warrant different federal income tax treatment than the subject transactions? If so, what are the crucial differences between those transactions and the subject transactions?

(3) What future guidance would commenters suggest to address the concerns discussed in this notice and not addressed by Rev. Rul. 2026-20? What is the appropriate scope of such guidance so that it does not adversely affect well-established market practice that is consistent with the intent of Congress?

(4) Are there other investment fund strategies that market participants are pursuing that may be viewed as producing unintended federal income tax results?

.02 *Procedures for submitting comments.*

(1) *Deadline.*

Written comments should be submitted by October 28, 2026. Consideration also will be given to any written comment submitted after October 28, 2026, though such comments may not be considered in the development of any forthcoming guidance if such consideration would delay the issuance of the forthcoming guidance.

(2) *Form and manner.*

The subject line for the comments should include a reference to Notice 2026-62. All commenters are strongly encouraged to submit comments electronically. Comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2026-1255 in the search field on the www.regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2026-62), Room 5503, 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 all comments submitted electronically or on paper to its public docket on www.regulations.gov.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Justin R. Karlin of the Office of the Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the Treasury Department and the IRS participated in its development. For further information on the transactions described in this notice, contact Mr. Karlin at (202) 317-6842 (not a toll-free number).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part I, §§ 671, 677; 301.7701-2, 301.7701-4)

Rev. Proc. 2026-20

SECTION 1. PURPOSE

This revenue procedure describes a safe harbor for trusts that otherwise qualify as investment trusts under § 301.7701-4(c) and as grantor trusts to stake their

digital assets without jeopardizing their tax status as investment trusts and grantor trusts for Federal income tax purposes. This revenue procedure also provides a limited time period for an existing trust to implement the requirements of the safe harbor, including amending its governing instrument (trust agreement) to authorize staking, revising its processes and procedures, or a combination of both. This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2025-31, 2025-48 I.R.B. 743, to address requests received by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) for additional guidance on certain aspects of Rev. Proc. 2025-31.

SECTION 2. BACKGROUND – DIGITAL ASSETS AND STAKING

.01 Digital assets are digital representations of value recorded on a cryptographically secured distributed ledger or similar technology within the meaning of section 6045(g)(3)(D) of the Internal Revenue Code (Code) (digital assets).¹ Digital assets generally are treated as property for Federal income tax purposes and Federal income tax principles apply to digital asset transactions.² This revenue procedure addresses only digital assets for which transactions are carried out on a permissionless network that uses a proof-of-stake consensus mechanism to validate those transactions.

.02 The operation of each digital asset blockchain network is governed by software that programmatically enforces certain network rules and technical requirements, as well as distributions of rewards (protocol). For a digital asset transaction to be recognized by the blockchain network, the transaction must be added to the network's decentralized digital ledger (blockchain).

.03 Digital assets rely on cryptography and on economic mechanisms designed to reduce reliance on designated trusted intermediaries to verify transactions and provide settlement assurances to users. Each protocol has a consensus mechanism that enables a distributed set of

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code, the Income Tax Regulations (26 CFR Part 1), or the Procedure and Administration Regulations (26 CFR Part 301).

² See Notice 2014-21, 2014-16 I.R.B. 938.

unrelated computers (commonly referred to as “nodes”) to agree on the authoritative record of digital asset address ownership balances, transactions, and other data relating to a digital asset’s blockchain at any given time (state). The consensus mechanism is intended to maintain the integrity of the blockchain by validating transactions and ensuring transactions added to the blockchain are valid. This can be done, for example, by rejecting transactions that attempt to move the same units to two different wallet addresses at the same time (so-called “double spending”). Preventing such transactions from being recorded on a blockchain is essential to the security and integrity of a digital asset’s blockchain. Absent such assurance, users could lose confidence in the digital asset network and the corresponding digital assets could lose value.

.04 Proof-of-stake is a type of consensus mechanism. In a proof-of-stake consensus mechanism, the protocol generally uses staked digital assets to determine eligibility to participate in validating new blocks of data on the blockchain and the extent of that participation. Staking is the exercise of the validation capabilities associated with digital assets under a relevant protocol’s rules by committing those digital assets to support the protocol’s validation process, thereby making a validator node eligible to be selected by the protocol to participate in that process. Generally, digital asset owners can stake directly or can delegate their staking power to a validator node without transferring ownership of the digital assets. A validator node is a type of node that participates in the consensus mechanism, in addition to performing ordinary node functions, such as maintaining and verifying blockchain data. A validator node operator is the person or entity that operates, controls, or maintains a validator node. The amount staked generally affects a validator node operator’s eligibility to participate in block validation, the validator node operator’s participation in the consensus process, and the extent of that participation. Depending on the protocol, staked digital assets may be subject to protocol-defined transfer restrictions, such as a lockup or cooldown period.

.05 For the validation process to support the security and integrity of a digital

asset’s blockchain, voting power must be sufficiently distributed such that no single validator node operator, or coordinated group of validator node operators, controls, is delegated, or is otherwise attributed a sufficient portion of the total staked digital assets to compromise the protocol’s consensus process under its governing rules. If a validator node operator or group of validator node operators were to control such an amount of voting power, it could influence the validation of transactions and undermine the reliability of the blockchain. Accordingly, an increase in the amount of digital assets staked and a broader distribution of staked digital assets across independently operated validator nodes can enhance the security of blockchains that use proof-of-stake consensus mechanisms. To incentivize participation in the consensus process, a proof-of-stake protocol may distribute rewards. These rewards may consist of newly minted digital assets specified by the protocol, transaction fees paid by parties seeking to add transactions to the blockchain (collectively, “rewards” or “staking rewards”), or both. Depending on the protocol and the arrangement, rewards may be distributed to validator node operators, to digital asset owners whose staked assets are attributed to those validator node operators, or to both. Rewards generally are received in the form of a blockchain’s native digital asset. Conversely, if a validator node operator fails to act in accordance with a blockchain network’s consensus mechanism, some staked units may be forfeited as a penalty (slashing).

.06 Digital asset owners can participate in staking in various forms. One such form is custodial staking, in which a third party (custodian) takes custody of the owner’s digital assets and facilitates the staking of such digital assets on behalf of the owner. Generally, a custodian focuses on securely holding, storing, and safeguarding digital assets on behalf of digital asset owners. The custodian, acting on behalf of the owner, selects and enters into contractual arrangements with one or more validator node operators who engage in proof-of-stake activities for digital asset blockchains (staking provider). In some cases, the legal entity that is the custodian or a related party to the custodian also may act as the staking provider. The arrange-

ment between the custodian and the staking provider generally provides that an agreed-on portion of the staking rewards are allocated to the owner of the digital assets.

.07 Some legal entities formed as trusts under applicable State law that hold digital assets intend to be treated for Federal income tax purposes as investment trusts under § 301.7701-4(c) and as grantor trusts. Certain actions of the trust may be directed by the trust’s sponsor.

.08 In 2025, the Treasury Department and the IRS received requests for guidance on: (1) whether staking digital assets prevents a legal entity formed as a trust under applicable State law from qualifying for Federal income tax purposes as a trust classified as an investment trust under § 301.7701-4(c) and as a grantor trust; and (2) if not, whether an existing trust agreement may be amended to authorize the staking of some or all of its digital assets without impairing qualification of the trust as an investment trust under § 301.7701-4(c) and as a grantor trust. In response to those requests, on November 10, 2025, the Treasury Department and the IRS issued Rev. Proc. 2025-31, which provided a safe harbor for trusts that otherwise qualify as investment trusts under § 301.7701-4(c) and as grantor trusts to stake their digital assets without jeopardizing their tax status as investment trusts and grantor trusts for Federal income tax purposes and also provided a limited time period for an existing trust to amend its governing instrument to adopt the requirements of the safe harbor.

.09 Following the issuance of Rev. Proc. 2025-31, the Treasury Department and the IRS received requests for additional clarity on certain aspects of the revenue procedure, including: (1) the proof-of-stake protocols covered; (2) the requirement that the SEC approve trust disclosures; (3) the use of multiple custodians in the staking process; (4) the extent of slashing protection required; (5) the unstaking and sale of digital assets in anticipation of distributions; (6) the consistent treatment of staking rewards; (7) whether transactions treated by the trust as borrowing digital assets qualify as contingent liquidity arrangements; and (8) the scope of the safe harbor and the application of the 9-month grace period for implementing the safe harbor’s require-

ments for trusts that already authorized staking. In response to those requests, the Treasury Department and the IRS are clarifying, modifying, and superseding Rev. Proc. 2025-31 as provided in this revenue procedure.

SECTION 3. BACKGROUND - TRUSTS

.01 Section 301.7701-2(a) defines a “business entity” as an entity recognized for Federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

.02 Section 301.7701-4(a) provides generally that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees the responsibility to protect or conserve property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

.03 Section 301.7701-4(b) provides that there are other arrangements known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but that are not classified as trusts for Federal tax purposes because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business that normally would have been carried on through a business organization classified as a corporation or partnership.

.04 Section 301.7701-4(c) provides that an “investment” trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, is classified as a trust if there is no power under the trust agreement to vary the investments of the certificate holders.

.05 A power to vary the investment of the certificate holders exists where there is

a managerial power under the trust instrument that enables a trust to take advantage of variations in the market to improve the investments of the certificate holders. *See Comm’r v. North American Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942).

.06 Rev. Rul. 75-192, 1975-1 C.B. 384, discusses the situation where a provision in the trust agreement requires the trustee to invest cash on hand between quarterly distribution dates. The trustee is required to invest the money in short-term obligations of (or guaranteed by) the United States, or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a minimum stated surplus and capital. The trustee is permitted to invest only in obligations maturing before the next distribution date and is required to hold such obligations until maturity. Rev. Rul. 75-192 concludes that, because the restrictions on the types of permitted investments limit the trustee to a fixed return like that earned on a bank account and eliminate any opportunity to profit from market fluctuations, the power to invest in the specified kinds of short-term investments is not a power to vary the trust’s investment.

.07 Rev. Rul. 78-371, 1978-2 C.B. 344, concludes that a trust established by the heirs of a number of contiguous parcels of real estate is an association taxable as a corporation for Federal income tax purposes where the trustees have the power to purchase and sell contiguous or adjacent real estate, accept or retain contributions of contiguous or adjacent real estate, raze or erect any building or structure, make any improvements to the land originally contributed, borrow money, and mortgage or lease the property.

.08 Rev. Rul. 79-77, 1979-1 C.B. 448, concludes that a trust formed by three parties to hold a single parcel of real estate is classified as a trust for Federal income tax purposes when the trustee was authorized to sign a long-term net lease for the property, with options to renew the lease with recomputed rent; to hold title to the land and building and to proceeds and income of the property; to distribute all trust income and otherwise to protect or conserve the property. *See Wyman Building Trust v. Commissioner*, 45 B.T.A. 155 (1941), *acq.*, 1941-2 C.B. 14 (trust

not treated as an association taxable as a corporation where trust held a single property, the trustee executed and extended net leases to the same tenant at the same rental, and collected and distributed the rents).

.09 Rev. Rul. 81-238, 1981-2 C.B. 248, establishes that an automatic reinvestment plan in which trust interest holders elect to use distributions to purchase interests in new fixed investment trusts does not constitute a power to vary. The plan does not involve reinvestment in the original trust and there is no change in, or addition to, the assets of the original trust.

.10 Rev. Rul. 90-63, 1990-2 C.B. 270, holds that the power to consent to changes in the credit support for debt obligations held in an investment trust is not a “power to vary the investment” within the meaning of § 301.7701-4(c) if that power is exercisable only to the extent that the trustee reasonably believes the change is advisable to maintain the value of trust property by preserving the credit rating of the bonds.

.11 Rev. Rul. 2004-86, 2004-2 C.B. 191, concludes that a Delaware statutory trust is classified as an investment trust where the trust holds a single property subject to a mortgage and net lease, the trustee is permitted to renegotiate the lease or enter into leases with other tenants in the event of the tenant’s bankruptcy or insolvency, and otherwise has very limited powers.

.12 Section 671 provides that, where the grantor or another person is treated as the owner of any portion of a trust (commonly referred to as a “grantor trust”), there shall be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that the items would be taken into account under chapter 1 of the Code in computing taxable income or credits against the tax of an individual.

.13 Section 677(a) provides that the grantor is treated as the owner of any portion of a trust whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed, or held or accumulated for future

distribution, to the grantor or the grantor's spouse.

.14 A person that is treated as the owner of an undivided fractional interest in a trust under subpart E of part I, subchapter J of chapter 1 of the Code (sections 671 and following), is considered to own the trust assets attributable to that undivided fractional interest of the trust for Federal income tax purposes. *See* Rev. Rul. 88-103, 1988-2 C.B. 304; and Rev. Rul. 85-13, 1985-1 C.B. 184; *see also* § 1.1001-2(c), Example 5.

SECTION 4. BACKGROUND – APPLICABLE REGULATORY RULES

.01 SEC Rules. The offer and sale of interests in a trust holding digital assets to investors in a public offering is subject to registration with the U.S. Securities and Exchange Commission (SEC). The regulations and rules of the SEC address, among other matters, the public disclosure by the trust of its activities, including with respect to staking. Accordingly, before trust interests are offered to investors, the trust's public disclosure is filed with the SEC, and interests are not sold until the registration statement is effective. The trust's disclosure is subject to the SEC's continued oversight and jurisdiction. SEC rules may require an issuer to provide additional disclosure to investors when material facts relating to its offering change.

.02 SEC Statement and Orders Relating to Staking. On May 29, 2025, the SEC Division of Corporation Finance issued a Statement on Certain Protocol Staking Activities.³ The Statement addresses certain activities known as "staking" on digital asset networks that use proof-of-stake as a consensus mechanism. On July 29, 2025, the SEC approved In-Kind Creations and Redemptions for Crypto ETPs.⁴ On September 17, 2025, the SEC approved rule changes proposed by three national securities exchanges to adopt generic listing standards for exchange-traded products that hold commodities,

which as defined in the SEC order include certain digital assets.⁵

.03 Exchange Rules. Interests in trusts holding digital assets may be listed and traded on a national securities exchange that is a self-regulatory organization. The rules of the national securities exchange, approved by the SEC, prescribe conditions that must be satisfied in order for shares (including trust interests) to be listed. Under those rules, certain trust interest holders are issued interests in the trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying digital asset and/or cash; and when aggregated in the same specified minimum number, the trust interests may be redeemed at such holder's request by the trust, which will deliver to the redeeming holder the quantity of the underlying digital asset and/or cash.

.04 Liquidity Policies and Procedures. The generic listing standards of the national securities exchange where interests in a trust are listed and traded require that the trust have in place liquidity risk policies and procedures to ensure that the trust can redeem trust interests at a trust interest holder's request.⁶ Pursuant to these generic listing standards, if a trust has on a daily basis less than 85 percent of its assets readily available to meet redemption requests, the trust must have and disclose written liquidity risk policies and procedures reasonably designed to address the risk that it could not meet requests to redeem interests issued by the trust without significant dilution of the remaining holders' interests in the trust. For this purpose, an asset is deemed not readily available to meet redemption requests if it is segregated, pledged, hypothecated, encumbered, or otherwise restricted or prevented from being liquidated, sold, transferred, or assigned within one business day. These policies and procedures must be periodically reviewed, no less frequently than annually. The exchange's disclosure requirements regarding liquidity risk are intended to cover situations such as staking by the

trust of its digital assets, particularly if the staked amount exceeds 15 percent of the trust's assets on any given day and such staked assets are not readily available for redemption requests within one business day. The generic listing standards require that the trust's liquidity risk policies and procedures be prominently displayed on the trust's website.

SECTION 5. SCOPE

An arrangement formed as a trust under applicable State law that qualifies as an investment trust under § 301.7701-4(c), and as a grantor trust for Federal income tax purposes, as determined immediately before satisfying all the requirements in section 6.02 of this revenue procedure, may apply the safe harbor described in section 6 of this revenue procedure.

SECTION 6. SAFE HARBOR

.01 Safe Harbor. Provided all the requirements in section 6.02 of this revenue procedure are satisfied, with respect to a trust described in Section 5 of this revenue procedure, the trustee's authorization, pursuant to its trust agreement, to stake the trust's digital assets and the resulting staking of the trust's digital assets do not prevent the trust from qualifying for Federal income tax purposes as a trust classified as an investment trust under § 301.7701-4(c) and as a grantor trust. References in section 6 of this revenue procedure to actions taken by the trust or the trustee also include actions directed by the sponsor of the trust pursuant to the trust agreement. The provisions of section 6.02 of this revenue procedure apply equally to all staking rewards, whether consisting of additional units of newly minted digital assets or transaction fees paid by parties seeking to add transactions to the blockchain, and regardless of whether such rewards are staked or unstaked.

.02 Requirements.

(1) Interests in the trust are traded on a national securities exchange. The trust's

³ SEC, *Statement on Certain Protocol Staking Activities* (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

⁴ SEC Release No. 34-103571, 90 FR 36248 (Aug. 1, 2025); SEC, *SEC Permits In-Kind Creations and Redemptions for Crypto ETPs* (July 29, 2025), <https://www.sec.gov/newsroom/press-releases/2025-101-sec-permits-kind-creations-redemptions-crypto-etps>. An ETP is an exchange-traded product.

⁵ SEC Release No. 34-103995, 90 FR 45414 (Sept. 22, 2025).

⁶ *See* SEC Release No. 34-103972, 90 FR 45075 (Sept. 18, 2025); SEC Release No. 34-103974, 90 FR 45082 (Sept. 18, 2025); SEC Release No. 34-103973, 90 FR 45089 (Sept. 18, 2025).

activities comply with the rules of the national securities exchange on which the trust interests are listed and traded. The trust's disclosure regarding the staking of its digital assets has been filed with the SEC in an effective registration statement and is subject to the SEC's continued oversight and jurisdiction. The trust's assets and activities are described in the May 29, 2025, Statement on Certain Protocol Staking Activities of the SEC's Division of Corporation Finance. The trust has written liquidity risk policies and procedures that comply with the rules of the national securities exchange on which the trust interests are listed and traded.

(2) The trust owns only cash and units of a single type of digital asset (as defined by section 6045(g)(3)(D)), transactions for which are carried out on a permissionless network that uses a proof-of-stake consensus mechanism to validate those transactions.

(3) The trust's digital assets are held by one or more custodians, acting on behalf of the trust, at digital asset addresses controlled by the custodian(s). Only the custodian can access the private keys associated with the digital asset addresses for the digital assets that custodian holds. Accordingly, only the custodian can effect a sale, transfer, or exercise the rights of ownership over the trust's digital assets held by that custodian, including while those assets are staked. For Federal income tax purposes, the trust retains ownership of the digital assets at all times, including while they are staked.

(4) The trust's staking of its digital assets protects and conserves trust property by mitigating the risk that another party or group could control a majority of the total staked digital assets of that type and engage in transactions that could reduce the value of the trust's digital assets.

(5) The trustee's activities relating to digital assets are limited to: (i) accepting deposits of the digital asset or cash in exchange for newly issued interests in the trust; (ii) holding the digital assets and cash; (iii) paying trust expenses and selling digital assets for cash to pay trust expenses, make cash distributions, or make cash redemptions of trust interests; (iv) purchasing additional digital assets with cash contributed to the trust; (v)

distributing digital assets or cash to trust interest holders, whether or not in redemption of their interests in the trust; (vi) selling digital assets for cash in connection with the trust's liquidation; and (vii) directing the staking of its digital assets in a manner consistent with the applicable requirements of both the national securities exchange on which the trust interests are listed and traded and section 6.02 of this revenue procedure, including providing for a liquidity reserve to the extent provided in section 6.02(9) of this revenue procedure and entering into a contingent liquidity arrangement to the extent provided in section 6.02(12) of this revenue procedure. Pursuant to the trust agreement, the trustee is prohibited from seeking to take advantage of variations in the market to improve the investments of trust interest holders, including variations based on the value of the digital assets or the amount of staking rewards.

(6) The trustee directs the staking of its digital assets through one or more custodians who facilitate the staking of the digital assets on the trust's behalf with one or more staking providers. The trust and the sponsor are unrelated to the staking provider. The trustee, sponsor, or custodian holding the digital assets performs all appropriate due diligence as to the selection of each staking provider with regard to those digital assets and negotiates, on behalf of the trust, the provisions of the contract with the staking provider. The staking provider regularly enters into arrangements with unrelated persons involving similar activities, and such other persons are also unrelated to the trust, the custodian holding the digital assets, and the sponsor. The staking provider bears its own expenses. The allocation of staking rewards between the staking provider and the custodian on behalf of the trust is an arm's length allocation that is independent of the expenses of the staking provider or custodian, and may be stated as a percentage of the staking rewards derived from staking the trust's digital assets. The other terms and conditions of each custodian's arrangements with the staking provider reflect arm's length terms.

(7) The trust, a custodian in its capacity as such, and the sponsor have no legal right or arrangement to participate in or direct or control the activities of the

staking provider in any way, and do not do so, except to direct the staking and unstaking of the trust's digital assets as provided in section 6.02 of this revenue procedure.

(8) All of the digital assets of the trust are made available to one or more staking providers to be staked at all times, except as provided in sections 6.02(9), (10), (11), and (12) of this revenue procedure.

(9) When appropriate in the trustee's or sponsor's reasonable judgment to comply with the trust's liquidity risk policies and procedures required by the national securities exchange on which the interests in the trust are listed and traded, a trust may stake less than all its digital assets to create and maintain a liquidity reserve. The trust's liquidity risk policies and procedures must be based solely on factors relating to the requirement of the national securities exchange that assets be readily available to meet redemption requests within the required period. The trustee may increase or decrease the trust's liquidity reserve in compliance with the trust's liquidity risk policies and procedures, provided that, to the extent the liquidity reserve is reduced, the trustee shall resume making the digital assets not subject to the liquidity reserve available for staking as soon as and to the extent reasonably possible. On the occurrence of one or more of the events described in section 6.02(10) and (11) of this revenue procedure, the trustee shall direct the staking or unstaking of a necessary number of its digital assets to satisfy the trust's liquidity reserve as soon as and to the extent reasonably possible.

(10) In addition to holding in a liquidity reserve (as described in section 6.02(9) of this revenue procedure), if any, digital assets that are not staked, the trust also may, on a short-term temporary basis and in connection with one or more of the following events, hold additional digital assets that are not staked, provided that the trustee shall make such digital assets available for staking (subject to section 6.02(9) of this revenue procedure, if applicable) as soon as and to the extent reasonably possible:

(i) the sale of digital assets for cash as provided in section 6.02(5)(iii) of this revenue procedure;

(ii) the contribution of digital assets in connection with the creation of interests in

the trust or distributions of digital assets to trust interest holders;

(iii) the purchase of digital assets in connection with the creation of trust interests for cash; or

(iv) the ownership of additional digital assets received as, or available for receipt, as staking rewards.

(11) In addition to holding in a liquidity reserve (as described in section 6.02(9) of this revenue procedure), if any, digital assets that are not staked, the trust also may, in connection with one or more of the following events, hold additional digital assets that are not staked, provided that the trust shall make such digital assets available for staking (subject to section 6.02(9) of this revenue procedure, if applicable) as soon as and to the extent reasonably possible:

(i) obtaining or disposing of digital assets through the contingent liquidity arrangement described in section 6.02(12) of this revenue procedure pursuant to applicable law or regulatory rules;

(ii) the sale of digital assets for cash in connection with the trust's liquidation;

(iii) the need to take protective measures against potential systemic vulnerabilities in the network's protocol, the staking smart contracts, or the validator node operator client software;

(iv) the cessation of the arrangement between the trust and a custodian, but only with respect to the digital assets affected by the cessation;

(v) the cessation of the arrangement between a custodian and a staking provider, but only with respect to the staked digital assets affected by the cessation; or

(vi) a change in applicable law or regulation.

(12) When appropriate in the trustee's or sponsor's reasonable judgment to comply with the trust's liquidity risk policies and procedures required by the national securities exchange on which the interests in the trust are listed and traded, the trust may enter into a contingent liquidity arrangement intended to mitigate an adverse liquidity event that otherwise would prevent the trust from distributing digital assets or cash to trust interest holders in redemption of their interests in the trust, provided that the digital assets or cash obtained through the contingent

liquidity arrangement are expected to be distributed, or included in a pool of assets expected to be distributed, in the near future. For purposes of the foregoing sentence, a contingent liquidity arrangement is (a) a lending facility or other arrangement permitting the trust to borrow cash or (b) an arrangement to sell or purchase digital assets for cash or digital assets on a current or deferred basis. A contingent liquidity arrangement does not include an arrangement pursuant to which a trust obtains digital assets in a transaction that the trust treats as a borrowing of those digital assets for Federal income tax purposes.

(13) To protect or conserve the trust's property, the trust is indemnified, in a manner consistent with the proper discharge of the trustee's fiduciary obligations, against slashing due to activities or events reasonably within the staking provider's control or ability to protect against.

(14) The only new assets received by the trust as a result of staking its digital assets are additional units, in the same form, of the single type of digital asset held by the trust. Units of digital assets equal in number to the trust's staking rewards, net of trust expenses, are, in proportion to the trust interest holders' relative interests in the trust, distributed in kind to trust interest holders, sold for cash and the proceeds distributed to trust interest holders, or a combination of both. The distributions are made no more than 60 days after the end of the calendar quarter in which the trust gains dominion and control over the relevant staking rewards. The cash amount of a distribution to be made with respect to staking rewards is determined at the time that units equal in number to the staking rewards are sold for distribution purposes.

.03 Amendment and Reliance. If a trust described in section 5 of this revenue procedure acts at any time within six months after October 6, 2026, to implement the requirements set forth in section 6.02 of this revenue procedure, including amending its trust agreement to authorize staking, revising its processes and procedures, or a combination of both, those actions will not prevent the trust from being treated as a trust that qualifies as an investment trust under § 301.7701-4(c) or as a grantor

trust. A trust that has complied with, and remains compliant with, the requirements of the safe harbor in Rev. Proc. 2025-31, or with those requirements as clarified and modified by this revenue procedure, may continue to rely on that safe harbor for up to six months after October 6, 2026. Following the six-month period after October 6, 2026, no trust may rely on the safe harbor in Rev. Proc. 2025-31.

SECTION 7. NO INFERENCES ON LAW

.01 No inferences should be drawn about whether similar consequences would result if actions taken by or on behalf of a trust fall outside the limited scope of this revenue procedure.

.02 No inferences should be drawn as to any Federal income tax consequences not expressly addressed in this revenue procedure, including with respect to whether income attributable to staking would be treated as income effectively connected with the conduct of a trade or business within the United States or as unrelated business taxable income. No inferences should be drawn regarding the Federal income tax treatment of other transactions involving digital assets not expressly addressed in this revenue procedure, including with respect to forks and airdrops.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for tax years ending on or after October 6, 2026.

SECTION 9. EFFECT ON OTHER DOCUMENTS

This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2025-31.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Andrew B. Christopherson of the Office of Associate Chief Counsel (Passthroughs, Trusts, and Estates). For further information, contact Andrew B. Christopherson at (202) 317-6575 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Information Reporting Regarding Qualified Opportunity Zones and Updated Qualified Opportunity Fund Certification and Decertification Procedures

REG-116506-25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would implement new statutory requirements for qualified opportunity funds to file information returns with the IRS and furnish statements to investors who dispose of investments in those entities and for qualified opportunity zone businesses to furnish statements to qualified opportunity funds that hold interests in them. These proposed regulations would also clarify the applicability of penalties for the failure to file or furnish these information returns and statements. Finally, these proposed regulations would clarify the qualified opportunity fund self-certification rules and provide procedures for qualified opportunity funds to revoke inadvertent certifications or voluntarily decertify.

DATES: Written or electronic comments must be received by October 26, 2026. A telephonic public hearing on this proposed regulation has been scheduled for November 5, 2026, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by October 13, 2026. If no outlines are received by October 13, 2026, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on November 3, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-116506-25) by following the online instructions for submitting comments. The public hearing will be conducted by telephone only. Requests to participate in the public hearing must be submitted as prescribed in the “Comments and Public Hearing” section of this preamble. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. *Send paper submissions to:* CC:PA:01:PR (REG-116506-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations under section 1400Z-2, Dominic DiMattia of the Office of the Associate Chief Counsel (Income Tax and Accounting) at (202) 317-7009 (not a toll-free number); concerning the remainder of the proposed regulations under sections 6011, 6037, 6039K, 6039L, 6045, 6722, 6724, and 6726, Roseann Cutrone of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-6844 (not a toll-free number); and concerning submissions of comments or the public hearing, the Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by sending an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that would revise existing regulations under sections 1400Z-2 and 6045 of the Internal Revenue Code (Code) and add new regulations under sections 6039K

and 6039L of the Code, as enacted by section 70421(d)(1) of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act, (OBBBA). This notice of proposed rulemaking also contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) that would revise existing regulations under sections 6011, 6037, 6722, and 6724 of the Code and add new regulations under section 6726 of the Code as enacted by section 70421(d)(2) of the OBBBA.

Section 1400Z-2(e)(4) expressly delegates authority to the Secretary of the Treasury or the Secretary’s delegate (Secretary) to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 1400Z-2, including rules for the certification of qualified opportunity funds (QOFs) and rules to prevent abuse.

Section 6039K(a), which requires every QOF to file an annual return, expressly delegates authority to the Secretary to prescribe the time and manner for the filing of the annual return and, as provided in section 6039K(b)(9), to require the inclusion in such annual return of “such other information as the Secretary may require.” Section 6039K(c), which requires every QOF to furnish statements (investor statements) to every person holding a qualifying or non-qualifying investment in the QOF (investor) who disposed of some or all of that investment in the QOF during the year, expressly delegates authority to the Secretary to prescribe the time and manner for the furnishing of such investor statements.

Section 6039L(a), which requires every applicable qualified opportunity zone business (QOZB) to furnish statements (QOZB statements) to certain QOFs, expressly delegates authority to the Secretary to prescribe not only the time and manner for the furnishing of such QOZB statements, but the information such QOZB statements must set forth as the Secretary prescribes by regulations for purposes of enabling QOFs to meet the information reporting requirements of section 6039K(b)(5).

Section 6045(a) expressly delegates authority to the Secretary to require every person doing business as a broker to file an information return in accordance with such regulations as the Secretary may prescribe. Section 6045(a) further provides that such information return must show the name and address of each customer, and details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.

Lastly, these proposed regulations are also issued under the express delegation of authority under section 7805 of the Code, which directs the Secretary to prescribe all needful rules and regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. Accordingly, given the changes in law made by the OBBBA, the proposed regulations are also issued pursuant to the authority under section 7805 in conjunction with sections 1400Z-2, 6011, 6039K, 6039L, 6724 and 6726.

Background

I. Sections 1400Z-1 and 1400Z-2

Section 13823 of Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added sections 1400Z-1 and 1400Z-2 as part of a new subchapter Z of chapter 1 of the Code (subchapter Z).

A. Qualified opportunity zones

Section 1400Z-1(a) defines the term “qualified opportunity zone” (QOZ) for purposes of subchapter Z, and section 1400Z-1(b) and (d) address the process by which certain population census tracts located in the 50 states, U.S. territories, and the District of Columbia may be nominated, certified, and designated as QOZs. The list of population census tracts designated as QOZs pursuant to section 1400Z-1(b) prior to amendment by the OBBBA are set forth in Notice 2018-48, 2018-28 I.R.B. 9, as amplified by Notice 2019-42, 2019-29 I.R.B. 352. Section 70421 of the OBBBA amended section 1400Z-1 to provide for recurring nomination, certifi-

cation, and designation cycles for QOZs every 10 years beginning July 1, 2026. *See* Rev. Proc. 2026-14, 2026-02 I.R.B. 910 for more information.

B. Section 1400Z-2 and regulations under the TCJA

1. Overview

Section 1400Z-2 provides rules regarding the two main Federal income tax benefits to eligible taxpayers who make certain investments in QOFs, rules authorizing the certification of eligible entities as QOFs, and the requirements such entities must satisfy to be certified as QOFs.

As enacted under the TCJA, the first specified opportunity zone tax benefit provided by section 1400Z-2(a) and (b) was the deferral of certain gains from gross income until as late as December 31, 2026, if a taxpayer invests a corresponding amount of such gain in a qualifying investment in a QOF within 180 days of the date of the sale or exchange giving rise to the gain. Additionally, section 1400Z-2(b) provided an upward basis adjustment of 10 percent of the amount of deferred gain if the taxpayer held the qualifying investment in the QOF for at least 5 years and an upward basis adjustment of an additional 5 percent of the amount of deferred gain if the taxpayer held the qualifying investment for at least 7 years.

The second specified opportunity zone tax benefit was provided by section 1400Z-2(c), under which an eligible taxpayer, upon the making of a second valid election, may also exclude any appreciation on the qualifying investment if the eligible taxpayer held the qualifying investment for at least 10 years.

On October 29, 2018, the Treasury Department and the IRS published in the *Federal Register* (83 FR 54279) a notice of proposed rulemaking (REG-115420-18) providing guidance under section 1400Z-2 for investing in QOFs (October 2018 proposed regulations). A second notice of proposed rulemaking (REG-120186-18) was published in the *Federal Register* (84 FR 18652) on May 1, 2019, containing additional proposed regulations under section 1400Z-2 (May 2019 proposed regulations). The May

2019 proposed regulations also updated portions of the October 2018 proposed regulations.

On January 13, 2020, final regulations (TD 9889) under section 1400Z-2 were published in the *Federal Register* (85 FR 1866, as corrected on April 6, 2020, at 85 FR 19082), effective for taxable years beginning after March 13, 2020 (section 1400Z-2 regulations). Under § 1.1400Z2(a)-1(c)(5), a taxpayer’s gain qualifies for deferral under section 1400Z-2(a) to the extent the taxpayer makes or acquires a qualifying investment in a QOF. Section 1.1400Z2(a)-1(b)(34) defines a “qualifying investment” as an eligible interest, or portion thereof, in a QOF to the extent that a deferral election is made and applies with respect to such eligible interest and that the IRS has been timely notified of the deferral election. Section 1.1400Z2(a)-1(b)(12) defines an “eligible interest” in a QOF as an equity interest issued by a QOF, which includes stock or a partnership interest but excludes any debt instrument. Pursuant to § 1.1400Z2(a)-1(b)(34), an eligible interest ceases to be a qualifying interest upon, and to the extent of, the occurrence of an inclusion event regarding that eligible interest, or portion thereof. Under § 1.1400Z2(b)-1(c)(15), the decertification of a QOF is an inclusion event.

2. Qualified opportunity funds

a. In general

Section 1400Z-2(d)(1) provides that a QOF is a partnership or corporation that (i) is organized for the purpose of investing in qualified opportunity zone property (QOZ property) (other than another QOF), and (ii) must hold at least 90 percent of its assets in QOZ property, determined by the average of the percentage of QOZ property held by the entity as measured on two semiannual testing dates (90-percent investment standard).

Section 1.1400Z2(d)-1(a)(1)(i) and (ii) require that a QOF be an entity that is classified as a corporation or partnership for Federal income tax purposes and be formed under the laws of the United States, one of the 50 states, the District of Columbia, a Federally recognized Tribal government, or a U.S. territory.

Section 1400Z-2(d)(1)(A) and (B) provide that the 90-percent investment standard is measured by determining the average of the percentage of QOZ property held on the last day of the 6-month mark of the QOF's taxable year and on the last day of the QOF's taxable year. Section 1.1400Z2(d)-1(b)(1) requires the QOF to include all assets owned or leased by the QOF in determining the 90-percent investment standard. Section 1.1400Z2(d)-1(b)(2) requires that the QOF value its assets using an applicable financial statement valuation method or an alternative valuation method promulgated under the regulations.

b. Certification and decertification of QOFs

The section 1400Z-2 regulations provide the requirements for an eligible entity to self-certify as a QOF. To be eligible to be a QOF, § 1.1400Z2(d)-1(a)(1) provides that an entity must be classified as either a corporation or partnership for Federal income tax purposes. Under § 1.1400Z2(d)-1(a) through (c), the eligible entity must self-certify that it satisfies the 90-percent investment standard. The self-certification must be made in the form and manner as prescribed by the Commissioner of Internal Revenue (Commissioner) in the forms and instructions, or in publications or guidance published in the Internal Revenue Bulletin (IRB) and must identify the taxable year for which the self-certification takes effect. *See* § 1.1400Z2(d)-1(a)(2).

Section 1.1400Z2(d)-1(a)(3) provides that a QOF may voluntarily decertify in the form and manner as may be prescribed in forms and instructions, or in publications or guidance published in the IRB. In August 2021, § 1.1400Z2(d)-1(a)(3) and the preamble to TD 9889 were corrected (86 FR 42716) to remove a reference to a timing requirement for voluntary decertification.

3. QOZ property

Both section 1400Z-2(d)(2)(A) and § 1.1400Z2(d)-1(c)(1) define QOZ property as: (i) QOZ stock, (ii) QOZ partnership interest, or (iii) QOZ business property. Section 1.1400Z2(d)-1(c)(1) provides fur-

ther guidance on whether these assets will qualify for inclusion in the determination of the 90-percent investment standard (or the 70-percent tangible property standard in the case of QOZBs and QOZ business property).

a. QOZ stock

Pursuant to § 1.1400Z2(d)-1(c)(2)(i), QOZ stock is stock in an eligible corporation where: (i) the stock was acquired by a QOF at its original issue from the corporation solely in exchange for cash after December 31, 2017; (ii) the corporation was a QOZB (or newly organized for such purpose) at the time the stock was issued; and (iii) for 90 percent of the QOF's holding period of such stock, the corporation qualified as a QOZB.

b. QOZ partnership interest

Under § 1.1400Z2(d)-1(c)(3)(i), qualified opportunity zone partnership interest is any capital or profits interest in an eligible partnership where: (i) the capital or profits interest was acquired by a QOF from the partnership solely in exchange for cash after December 31, 2017; (ii) the partnership was a QOZB (or newly formed for such purpose) at the time the capital or profits interest was issued; and (iii) for 90 percent of the QOF's holding period of such interest, the partnership qualified as a QOZB.

c. QOZ business property

Section 1400Z-2(d)(2)(D) defines "QOZ business property" as property: (i) acquired by purchase after December 31, 2017; (ii) the original use of which commences in the QOZ with the QOF or the QOZB (or that the QOF or QOZB substantially improves the property); and (iii) substantially all of the use was in a QOZ during substantially all of the QOF's or QOZB's holding period of such property. *See also* § 1.1400Z2(d)-2(a)(2). Section 1.1400Z2(d)-2(c) permits a QOF or QOZB to treat leased property as QOZ business property subject to certain requirements. Section 1400Z-2(d)(2)(D) (ii) also provides that a QOF or QOZB must substantially improve the property within a 30-month period if the property

will not meet the original use requirement. Section 1.1400Z2(d)-2(b)(4) clarifies these rules by providing additional guidance on the 30-month substantial improvement period.

4. QOZBs

Section 1400Z-2(d)(3)(A) defines a QOZB as a trade or business (other than one specified in the statutory list of businesses in section 144(c)(6)(B)) that meets each of the following two requirements. First, substantially all of the tangible property owned or leased in connection with the trade or business must be QOZ business property. *See* section 1400Z-2(d)(3)(A)(i). Second, the trade or business must satisfy the following requirements provided in section 1397C(b)(2), (4), and (8): (i) at least 50 percent of the gross income of such business is derived from an active trade or business in the QOZ; (ii) a substantial portion of the intangible property of such entity is used in the active conduct of a trade or business in the QOZ; and (iii) less than five percent of the average of the aggregate adjusted bases of the entity's property must be attributable to non-qualified financial property. *See* section 1400Z-2(d)(3)(A)(ii); § 1.1400Z2(d)-1(d)(3).

Under § 1.1400Z2(d)-1(d)(1)(i), which clarifies the "substantially all" requirement provided in section 1400Z-2(d)(3)(A)(i), an entity must satisfy the 70-percent tangible property standard with respect to its tangible property, meaning that at least 70 percent of the tangible property owned or leased by the entity is QOZ business property. To determine satisfaction of the 70-percent tangible property standard, under § 1.1400Z2(d)-1(d)(2)(ii)(A), the entity uses a fraction, the numerator of which is the total value of all QOZ business property owned or leased by the entity and the denominator of which is the total value of all tangible property owned or leased by the entity, whether located inside or outside a QOZ. Pursuant to § 1.1400Z2(d)-1(d)(2)(ii)(B), an entity must value its assets using either the applicable financial statement valuation method (if it has an applicable financial statement) or the alternative valuation method.

The section 1400Z-2 regulations provide further guidance on the other statu-

tory requirements of section 1400Z-2(d)(3). To meet the gross income requirement of section 1400Z-2(d)(3)(A)(ii), § 1.1400Z2(d)-1(d)(3)(i) provides three separate safe harbors that a business can rely upon and, if none of those apply, a general facts and circumstances test. These safe harbors look to where the tangible property, business activities or the business's employees are located. To meet the intangible property requirement of section 1400Z-2(d)(3), § 1.1400Z2(d)-1(d)(3)(ii) provides that at least 40 percent of the business's intangible property must be used in the active conduct of a trade or business in a QOZ. Finally, § 1.1400Z2(d)-1(d)(3)(v) provides a safe harbor for QOZBs to treat the amount of working capital assets held by the business as reasonable if certain requirements are met. Under § 1.1400Z2(d)-1(d)(3)(vi), the use of the working capital safe harbor permits the QOZB to utilize other safe harbors to meet the requirements of section 1397C(b).

Notably, for purposes of these proposed regulations, the statutory and regulatory requirements to treat a business as a QOZB are met on two different testing dates. To satisfy the 70-percent tangible property standard, a QOZB must measure compliance between two semiannual testing dates. To satisfy the other section 1397C(b) requirements, the QOZB measures compliance on the last day of its taxable year.

As previously noted, a QOF must test compliance with the 90-percent investment standard on its two testing dates (the last day of the first 6-month period of its taxable year and the last day of its taxable year, respectively). The section 1400Z-2 regulations recognize that a QOF's taxable year and testing dates may not match up with a QOZB's taxable year and testing dates, making it difficult to determine whether the entity qualifies as a QOZB of the QOF on a semiannual basis based on the QOF's taxable year. Accordingly, § 1.1400Z2(d)-1(b)(2)(i)(C) provides a safe harbor for determining on the two semiannual testing dates of a QOF whether an entity is a QOZB and whether

the QOF may treat the equity in that entity as QOZ property. Under the safe harbor, the QOF may limit the period tested to the period that starts with the beginning of the QOF's status as a QOF and lasts until the last day of the entity's latest taxable year that ends on or before the relevant testing date. If an entity satisfies all of the requirements of a QOZB determined as of the end of the entity's taxable year, the entity qualifies as a QOZB for the entire taxable year of the entity.

Section 1.1400Z2(d)-1(b)(2)(i)(C)(2) also provides that if an entity would not be treated as a QOZB as of the last day of its taxable year ending on or before a semiannual testing date of the QOF it may be treated as a QOZB with respect to that QOF for that taxable year of the entity if a cure is achieved for the entity under § 1.1400Z2(d)-1(d)(6) and the QOF timely files its Federal tax return¹ for the taxable year of the QOF containing the testing date on a date that is timely and that is not earlier than when that cure is achieved. Pursuant to § 1.1400Z2(d)-1(d)(6)(iii), each QOF is permitted only one correction for a trade or business.

C. Section 1400Z-2 as amended by the OBBBA

The OBBBA amended subchapter Z, in part, to make section 1400Z-2 permanent with the modifications described in this part I.C.

1. QOZ property

Section 70421(c)(4) of the OBBBA modifies the statutory definitions of QOZ business property, QOZ stock, and QOZ partnership interests applicable to property acquired after December 31, 2026, to conform to the recurring decennial designation of QOZs introduced by the OBBBA. Section 70421(c)(4)(A) of the OBBBA modifies the acquisition date for QOZ business property in section 1400Z-2(d)(2)(D)(i)(I) from "after December 31, 2017" to "after the applicable start date (as defined in section 1400Z-1(e)(2)) with respect to the [QOZ] described in [sec-

tion 1400Z-2(d)(2)(D)(i)(III)]." Section 70421(c)(4)(B) of the OBBBA modifies section 1400Z-2(d)(2)(B)(i)(I) and (d)(2)(C)(i) by replacing "December 31, 2017," with "the applicable date", which section 1400Z-2(d)(2)(E) defines, with respect to any corporation or partnership that is a QOZB, as the earliest date described in section 1400Z-2(d)(2)(D)(i)(I) with respect to the QOZ business property held by such QOZB.

2. Specified opportunity zone tax benefits

Section 70421(c)(2) of the OBBBA replaced the fixed deferred gain recognition date of the earlier of either the date of sale or exchange of the qualifying investment or December 31, 2026, with a rolling deferred gain recognition date occurring on the earlier of either the date of sale or exchange of the qualifying investment or five years from the date the taxpayer makes the qualifying investment.

The OBBBA also modified the specified opportunity zone tax benefits available to an eligible taxpayer. Although section 70421(c)(2) of the OBBBA retained the basis adjustments of 10 percent of the amount of deferred gain with respect to qualifying investments held for at least 5 years, the additional basis adjustment of 5 percent for qualifying investments held for at least 7 years was not retained. In addition, section 70421(c)(3) of the OBBBA modified the basis adjustments for investments held for at least 10 years by capping the fair market value basis adjustment to the fair market value on the date that is 30 years after the date of investment.

3. Enhanced incentives for investing in rural areas

The OBBBA created enhanced incentives for investment in rural areas, including incentives for certain types of QOFs that invest in QOZs comprised entirely of a rural area. Generally, pursuant to section 70421(c)(2) of the OBBBA, a qualified rural opportunity fund is a QOF for which substantially all the use of its QOZ business property during substantially all of

¹References in this preamble and these proposed regulations to a Federal tax return are to the individual income tax return (Form 1040) for a person that is an individual, to the applicable Federal income tax return (Form 1120 series) for a person that is a corporation, to the Federal return of partnership income (Form 1065) for a person that is a partnership, and to the income tax return for estates and trusts (Form 1041) for a person that is an estate or trust.

the holding period of such property was in a QOZ comprised entirely of a rural area (rural QOZ).

The OBBBA codified a definition of “rural area” applicable to amounts invested in QOFs after December 31, 2026. Under such definition, a rural area is defined as any area other than a city or town that has a population of greater than 50,000 inhabitants, and any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. Section 70421(c)(4) (C) of the OBBBA also amended the general substantial improvement threshold for improvements to property located in a rural QOZ and reduced the substantial improvement threshold for required additions to the basis for such property from 100 percent to 50 percent. Pursuant to section 70421(c)(5)(C) of the OBBBA, the amendment to the substantial improvement threshold took effect on July 4, 2025.

On September 30, 2025, the Treasury Department and the IRS issued Notice 2025-50, 2025-43 I.R.B. 542, which provides guidance with respect to the definition of a “rural area” for purposes of applying the substantial improvement provision under section 1400Z-2(d)(2) (D)(ii) and provides a list of census tracts designated prior to the enactment of the OBBBA as QOZs that will be considered rural QOZs.

II. Information reporting rules

The OBBBA enacted information reporting requirements under new sections 6039K and 6039L for QOFs and QOZBs, as well as a new penalty provision under section 6726.

A. Information reporting requirements before the OBBBA

Prior to the enactment of the OBBBA, the Code did not mandate information reporting from QOFs or QOZBs. Section 1400Z-2(e)(4), however, authorized the Secretary to prescribe such regulations as necessary to carry out the purposes of section 1400Z-2, including (i) rules

for the certification of QOFs; (ii) rules to ensure a QOF has a reasonable period of time to reinvest the return of capital from investments in QOZ stock and QOZ partnership interests, and to reinvest proceeds received from the sale or disposition of QOZ property; and (iii) rules to prevent abuse.

Pursuant to this authority, § 1.1400Z2(d)-1(a)(2) requires entities to self-certify as QOFs pursuant to forms and instructions, or in publications or guidance published in the IRB. An entity self-certifying as a QOF does so through the filing of Form 8996, *Qualified Opportunity Fund*,² on which the entity attests that it is organized to invest in QOZ property. Form 8996 also requires the QOF to report that it meets the required investment standards of section 1400Z-2(d), or if it does not, to calculate and report the penalty imposed by section 1400Z-2(f). In addition, Form 8996 requires a QOF to report certain information about the QOF’s investments and operations as well as the investments and operations of any QOZBs in which the QOF has an interest. Finally, for any investor in the QOF that disposed of the investor’s equity interest in the QOF, Form 8996 requires the QOF to attach a statement with each investor’s name, date of disposition, and the interest disposed of during the QOF’s taxable year. Form 8996 is required to be attached to the QOF’s annual tax return by the due date (including extensions) for the QOF’s annual tax return.

A penalty applies to QOFs that do not meet certain investment standards, but under the section 1400Z-2 regulations, no information reporting penalty applies to QOFs that do not file Form 8996.

In order for a QOF to report the information required by Form 8996 regarding the QOZ business property and operations of any QOZBs in which the QOF has an interest, the QOF must obtain information from every QOZB in which it holds a stock or partnership interest. The section 1400Z-2 regulations, however, do not include a penalty for QOZBs that fail to provide this necessary information to their QOF investors.

In addition to the reporting of dispositions by QOF investors on Form 8996, the IRS also requires each QOF to file Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, (or Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, if the QOF interest is a dual classification asset under § 1.6045-1(c)(8)) on dispositions made by each QOF investor in the QOF during the calendar year. Each QOF is also required to furnish statements to each of these investors, including the information required to be reported to the IRS on Form 1099-B (or Form 1099-DA). No information reporting or information furnishing penalty applies, however, to a QOF that does not file these Forms 1099-B (or Forms 1099-DA) with the IRS or furnish these associated statements to disposing investors.

B. Information reporting requirements under the OBBBA

Section 70421(d)(1) of the OBBBA added section 6039K to the Code to require every QOF to file an annual return (at such time and in such manner as the Secretary may prescribe) containing certain information described in section 6039K(b)(1) through (8). The information described in section 6039K(b)(1) through (8) generally includes most of the information that is currently required to be reported on Form 8996 as well as certain new items of information.³ In addition, section 6039K(b)(9) provides authority for the Secretary to require reporting of additional information not listed in section 6039K(b)(1) through (8). Section 6039K(c) also requires QOFs to furnish investor statements to investors who dispose of their interests in the QOF. The investor statement must generally include the investor’s name, address, and taxpayer identification number (TIN), the date or dates on which the disposed-of investment was acquired, the date or dates on which any such investment was disposed of, and the amount of the investment.

Section 70421(d)(1) of the OBBBA also added new section 6039L to the Code. Under section 6039L, every appli-

²References to Form 8996 in these proposed regulations are to the current iteration of the form, which was last revised in December 2021.

³The Treasury Department and the IRS anticipate updating Form 8996 to reflect the necessary changes to such reporting under section 6039K and these regulations once published as final regulations in the Federal Register.

cable QOZB must furnish a written statement to each QOF that holds an interest in the applicable QOZB at such time, in such manner, and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such QOFs to meet the reporting requirements of section 6039K. Section 6039L(b) defines “applicable QOZB” for this purpose as any QOZB: (1) which is a trade or business of a QOF, (2) in which a QOF holds QOZ stock, or (3) in which a QOF holds a QOZ partnership interest.

Section 70421(d)(2)(A) of the OBBBA added a new information reporting penalty under section 6726 of the Code applicable to QOFs that fail to meet their information reporting requirements under section 6039K. Section 6726(a) provides that if any QOF required to file an information return under section 6039K fails to file a complete and correct return under such section in the time and in the manner prescribed therefor, then the QOF must pay a penalty of \$500 for each day during which such failure continues. Under section 6726(b), this penalty is generally subject to an annual cap of \$10,000 per return, but for large QOFs with gross assets exceeding \$10 million at the close of the QOF’s taxable year, the cap for the failure rises from \$10,000 to \$50,000. Additionally, under section 6726(c), in the case of a failure that is due to intentional disregard, the daily penalty is increased from \$500 to \$2,500 and the annual cap is increased to \$50,000, or \$250,000 for a large QOF, per return. Finally, under section 6726(d), the penalty amounts are all subject to a cost-of-living inflation adjustment.

Prior to the enactment of the OBBBA, section 6724, which provides that “[n]o penalty shall be imposed under this part [II] with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect,” applied to penalties under section 6721 (failure to file correct information returns), section 6722 (failure to furnish correct payee statements), and section 6723 (failure to comply with other information reporting requirements). All of these penalties are contained in part II (Failure to Comply with Certain Information Reporting Requirements) of subchapter B (Assessable Penalties) of chapter 68 of the Code. Because the OBBBA added the informa-

tion reporting penalty under section 6726 to part II of subchapter B of chapter 68 of the Code, the reasonable cause waiver provisions under section 6724 also apply to penalties imposed under section 6726.

The OBBBA also provides for the imposition of penalties for QOFs that fail to furnish the investor statements required by section 6039K(c) and for QOZBs that fail to provide QOFs the QOZB statement required by section 6039L. Section 70421(d)(2)(B)(iii) of the OBBBA added investor statements and QOZB statements to the definition of “payee statements” under section 6724(d)(2), which are subject to the failure to furnish penalty under section 6722. Section 6722 generally provides that for each failure to furnish a complete and correct payee statement on or before the date prescribed, the person required to furnish the statement must pay a penalty equal to \$250 (adjusted for inflation) for each statement with respect to which the failure occurs. The penalty is limited by an annual cap that is generally equal to \$3 million (adjusted for inflation). Reduced penalties apply in certain circumstances if the statement is furnished late (section 6722(b)) and for filers with gross receipts below a specified threshold (section 6722(d)). However, the penalty does not apply to de minimis failures (section 6722(c)) and for any failure that is an intentional disregard of the furnishing requirement, the per-return penalty is increased to \$500 (adjusted for inflation) and the \$3 million annual cap is removed (section 6722(e)). Finally, the reasonable cause waiver under section 6724 applies to penalties otherwise applicable under section 6722.

C. Public reporting requirements

Section 70421(e)(1) of the OBBBA appropriates funds through September 30, 2028, for necessary expenses of the IRS to make annual reports to the public with information on QOFs. Section 70421(e)(2) of the OBBBA directs the Secretary to make the report publicly available as soon as practical after the date of enactment of the OBBBA, and then annually thereafter. Under section 70421(e)(3) of the OBBBA, the report must include, to the extent available, the following information: (i) the total amount of money

invested in opportunity zones and QOFs; (ii) the percentage of eligible census tracts receiving opportunity zone investment (and how much has been invested in each one); (iii) the approximate number of employees in opportunity zone-financed businesses for each census tract; (iv) the number of residential units resulting from QOF projects; (v) information on investment sectors using North American Industry Classification System (NAICS) codes; and (vi) breakdowns of real estate versus business equity investments.

Section 70421(e)(4)(A) of the OBBBA also requires the Secretary to include in the annual reports beginning in 2031 (the sixth year following enactment of the OBBBA) information on the impacts and outcomes resulting from designating a census tract as an opportunity zone, as measured by economic indicators, such as job creation, poverty reduction, new business starts, and other metrics. Additionally, section 70421(e)(4)(B) of the OBBBA requires the Secretary to include in the annual reports provided in 2031 and 2036 certain comparative data for QOZs. Section 70421(e)(4)(B)(i)(I) of the OBBBA requires these reports provided in 2031 and 2036 to include longitudinal comparisons (based on aggregate information) of specific factors for population census tracts designated as a QOZ during the 5-year period ending on the date of the enactment of the OBBBA and the most recent 5-year period for which data is available. These specific factors in section 70421(e)(4)(B)(iii) of the OBBBA include: (i) the unemployment rate; (ii) the number of persons working in the population census tract, including the percentage of such persons who were not residents in the population census tract in the preceding year; (iii) individual, family, and household poverty rates; (iv) median family income of residents of the population census tract; (v) demographic information on residents of the population census tract, including age, income, education, race, and employment; (vi) the average percentage of income of residents of the population census tract spent on rent annually; (vii) the number of residences in the population census tract; (viii) the rate of home ownership in the population census tract; (ix) the average value of residential property in the population census tract; (x)

the number of affordable housing units in the population census tract; (xi) the number of new business starts in the population census tract; and (xii) the distribution of employees in the population census tract by NAICS code. In addition, section 70421(e)(4)(B)(i)(II) of the OBBBA requires the 2031 and 2036 reports to provide, for the most recent 5-year period for which data is available, a cross-sectional comparison of these specific factors, comparing population census tracts designated as a QOZ with similar population census tracts that were not designated as a QOZ. For purposes of making these comparisons, section 70421(e)(4)(B)(ii) of the OBBBA permits the Secretary to combine population census tracts into such groups as the Secretary determines appropriate.

To ensure that taxpayer return information is protected in making any of the reports required by section 70421(e) of the OBBBA, section 70421(e)(5) of the OBBBA requires the Secretary to establish appropriate procedures to ensure that any amounts reported do not disclose taxpayer return information that can be associated with any particular taxpayer or competitive or proprietary information. Section 70421(e)(5) also permits the Secretary to combine information required with respect to individual population census tracts into larger geographic areas if necessary to protect taxpayer return information. Finally, section 70421(e)(7) of the OBBBA requires the Secretary to prepare similar reports with respect to rural QOZs.

Explanation of Provisions

I. Proposed § 1.1400Z2(d)-1

A. QOF self-certification and annual reporting procedures

1. Overview

Section 1.1400Z2(d)-1(a)(2)(i) provides that an entity's self-certification as a QOF must be timely filed and effected annually in such form and manner as may be prescribed in forms and instructions, or in publications or guidance published in the IRB. Form 8996 provides instructions for entities to self-certify as a QOF.

The Treasury Department and the IRS have received several questions regarding

the meaning and scope of § 1.1400Z2(d)-1(a)(2)(i), as well as Form 8996 and its instructions. For example, stakeholders have questioned whether an entity's self-certification as a QOF must be renewed annually through the filing of Form 8996, which would then create an annual option for voluntary decertification. Others have questioned whether failure to file Form 8996 would give rise to penalties. Lastly, stakeholders have questioned whether a failure to file Form 8996 could, or should, result in the decertification of a QOF.

In response, the Treasury Department and the IRS have proposed revisions to the QOF self-certification and annual reporting procedures (including as imposed by section 6039K) that are intended to clarify these procedures and facilitate taxpayer compliance with the QOF self-certification and annual reporting procedures. Furthermore, the proposed regulations would further enhance the ability of the IRS to administer and enforce the specified opportunity zone tax benefits provided by section 1400Z-2. The QOF self-certification and annual reporting procedures serve as the foundation for the voluntary decertification procedures proposed by these proposed regulations, which underscores the importance for clarity and certainty.

The Treasury Department and the IRS encourage comments on these proposed rules, with particular emphasis on recommendations to further achieve those intended objectives.

2. Provisions Clarifying Beginning Date of Certification

The QOF self-certification and annual reporting requirements require clear rules on when self-certification becomes effective and when an entity self-certifying as a QOF must provide required information to the IRS. Accordingly, the proposed regulations would revise § 1.1400Z2(d)-1(a)(2)(i) to clarify the beginning of an entity's self-certification as a QOF. Proposed § 1.1400Z2(d)-1(a)(2)(i) would clarify that an entity that satisfies the initial requirements to self-certify as a QOF would be treated as a QOF from the date the self-certification is effective (self-certification date).

3. Clarification of First Taxable Year Requirements and Subsequent Annual Requirements

a. First taxable year requirements

Proposed § 1.1400Z2(d)-1(a)(2)(ii)(A) would provide that self-certification of an eligible entity as a QOF would not be valid unless that self-certification is timely filed and effected in the entity's first taxable year by filing with the IRS a Form 8996 (or any successor form) by the due date for the eligible entity's original Federal tax return (including extensions) and in accordance with instructions to that form. In the view of the Treasury Department and the IRS, Form 8996 (or any successor form) would provide the most responsive and efficient form of guidance to address specific self-certification procedures. Comments are requested on the procedures set forth herein.

The proposed regulations would retain the existing rules in the section 1400Z-2 regulations for determining the first taxable year and month of the certification (*see* proposed § 1.1400Z2(d)-1(a)(2)(ii)(B)) and for applying the section 1400Z-2(f) penalty for that first taxable year of certification (*see* proposed § 1.1400Z2(d)-1(a)(2)(ii)(C)).

Additionally, proposed § 1.1400Z2(d)-1(a)(2)(ii)(D) would provide that the self-certification must include an affirmative statement that the entity is organized for the purpose of investing in QOZ property as required by section 1400Z-2(d)(1).

b. Annual requirements

With regard to an entity that has validly self-certified as a QOF, the proposed regulations would set forth annual reporting requirements that the entity would be required to satisfy for the second and each subsequent taxable year of the QOF. Proposed § 1.1400Z2(d)-1(a)(2)(iii) would require an entity certified as a QOF, for the second and each subsequent taxable year of the QOF to file an annual information return on Form 8996 (or any successor form) consistent with the instructions provided for that IRS form and consistent with the annual reporting requirements under section 6039K. These annual information returns for taxable years after the

initial self-certification taxable year would not require the QOF to provide an annual self-certification.

B. Revocation of an election to self-certify

The Treasury Department and the IRS have received requests from stakeholders for a revocation process for inadvertent elections to self-certify as a QOF. These comments have stated that certain entities, such as a QOZB, may have unintentionally self-certified as QOFs by mistakenly filing Form 8996 with the IRS. These comments also have indicated that owners of entities inadvertently self-certifying as QOFs have not held a qualifying investment in the entity. Therefore, according to the comments, no owner of such entity would have derived any specified opportunity zone tax benefit at any time since the entity's inadvertent self-certification as a QOF.

Based on these comments from stakeholders, the Treasury Department and the IRS have proposed a revocation process for inadvertent QOF elections. In addition to the concern expressed by stakeholders, permitting the revocation of an unintentional QOF self-certification for entities that have no qualifying investments would help facilitate effective tax administration and enforcement of the opportunity zone tax incentives. Permitting these entities to revoke their self-certifications would remove them from audit consideration due to their noncompliance with the statutory and regulatory requirements under section 1400Z-2(d)(2), while permitting the IRS to consider whether the entities met the other requirements of section 1400Z-2(d)(3), if applicable. In addition, a revocation process for these inadvertent QOF elections would eliminate unnecessary compliance obligations for investors in these entities who never had any intention to achieve a specified opportunity zone tax benefit. However, to assist in enforcement and compliance, as well as to provide certainty for investors who make a qualifying investment in QOFs, the proposed regulations would provide that the election to self-certify as a QOF is not revocable in any situation other than the specific situation outlined in proposed § 1.1400Z2(d)-1(a)(2)(iv). For entities that do not qualify

for a revocation of their initial self-certification, the proposed voluntary decertification procedures described in part I.C. of this Explanation of Provisions would provide a procedure to terminate QOF certification.

Consistent with the foregoing, the proposed regulations would provide that an entity inadvertently self-certified as a QOF may revoke that election only if the entity satisfies the eligibility requirement set forth in proposed § 1.1400Z2(d)-1(a)(2)(iv)(B) and files the revocation in accordance with the procedures set forth in proposed § 1.1400Z2(d)-1(a)(2)(iv)(C). Proposed § 1.1400Z2(d)-1(a)(2)(iv)(B) would permit an entity that had inadvertently self-certified as a QOF to revoke its election to self-certify as a QOF only if no qualifying investment in the QOF was made. In other words, an entity is only eligible to revoke its election to self-certify if no qualifying investment by an investor was made between the self-certification date throughout the entire period in which the entity was certified. Proposed § 1.1400Z2(d)-1(a)(2)(iv)(C) would provide that an inadvertent election to self-certify as a QOF may be revoked only with the consent of the Commissioner in accordance with forms and instructions, or in publications or guidance published in the IRB. Finally, proposed § 1.1400Z2(d)-1(a)(2)(iv)(D) would provide that an entity that has revoked its inadvertent election to self-certify may not again self-certify as a QOF at any future date, and the TIN assigned to that entity may not be used by another entity to self-certify as a QOF in the future. The Treasury Department and the IRS regard these proposed rules as necessary for the administration of section 1400Z-2 and to prevent abuse of section 1400Z-2.

C. Voluntary decertification

1. Overview

Proposed § 1.1400Z2(d)-1(a)(3) would provide the exclusive procedures by which an entity that self-certified as a QOF may voluntarily decertify as a QOF. In addition, the proposed regulations would set forth the Federal income tax consequences resulting from voluntary decertification with regard to each person that held a qual-

ifying investment in the QOF as of the last day the entity was certified as a QOF (voluntary decertification date). To facilitate reinvestment in other QOFs by persons who held investments in the QOF on the QOF's voluntary decertification date, the proposed regulations also would require the entity to notify all investors who hold an investment in the QOF of its decertification as a QOF no later than 15 days after the QOF's voluntary decertification date (15-day notification). This proposed notification is separate from the notification required under section 6039K(c) discussed in part II.C. of this Explanation of Provisions, that is required to be provided on or before March 1 of the calendar year following the calendar year of the voluntary decertification date. Lastly, the proposed regulations would provide rules to clarify the effective date of the voluntary decertification of the entity (that is, the voluntary decertification date).

2. Contemporaneous Written Documentation

Proposed § 1.1400Z2(d)-1(a)(3)(i) would require that an entity certified as a QOF that wants to voluntarily decertify as a QOF may do so only if the certified entity maintains contemporaneous written documentation of the intent to decertify in accordance with proposed § 1.1400Z2(d)-1(a)(3)(iii). Such contemporaneous written documentation must memorialize the entity's intent to terminate its certification and identify the last month for which the entity is certified as a QOF. Proposed § 1.1400Z2(d)-1(a)(3)(iii) would clarify the contemporaneous written documentation requirement in proposed § 1.1400Z2(d)-1(a)(3)(i) and would provide an example of contemporaneous written documentation that would satisfy this requirement. Proposed § 1.1400Z2(d)-1(a)(3)(iii)(A) would define "contemporaneous written documentation" to mean written documentation that is created at the same time the QOF makes the determination that it wishes to voluntarily decertify as a QOF. Proposed § 1.1400Z2(d)-1(a)(3)(iii)(B) would provide that such documentation would include, but is not limited to, contemporaneous meeting minutes demonstrating the wish to decertify. The Treasury Department and the IRS view

the requirement to maintain contemporaneous written documentation as necessary because it demonstrates the entity's intent to self-decertify as of a certain date and that the entity is not acting with inappropriate hindsight.

Under proposed § 1.1400Z2(d)-1(a)(3)(v)(A), a failure to fulfill this contemporaneous written documentation requirement would invalidate the entity's voluntary decertification and would result in the continued certification of the entity as a QOF for the period beginning on the date the entity self-certified as a QOF until the occurrence of an event that results in the revocation or decertification of the entity as a QOF. Proposed § 1.1400Z2(d)-1(a)(3)(v)(B) would also clarify that such entity would continue to be subject to the requirements of section 1400Z-2 and the section 1400Z-2 regulations (including the statutory penalty under section 1400Z-2(f) for failure to maintain the 90-percent investment standard) until the entity decertifies or revokes its election.

To provide flexibility and facilitate compliance with the proposed voluntary decertification procedures, proposed § 1.1400Z2(d)-1(a)(3)(vi)(A) would provide that the voluntary decertification is effective on the last day of the month that the entity identifies in its contemporaneous written documentation as the last month for which the entity is certified as a QOF. For example, an entity that indicates in its contemporaneous written documentation that it voluntarily decertifies in July would have its last day of QOF certification as July 31st under this proposed rule and would not be certified as a QOF starting on August 1st.

3. Required Form and Manner

Under the proposed regulations, a QOF that voluntarily decertifies would be required to report to the IRS in the form and manner set forth in proposed § 1.1400Z2(d)-1(a)(3)(ii). Those proposed rules would provide that an entity certified as a QOF that voluntarily decertifies must file a Form 8996 (or any successor form) (final information return) in the manner set forth in the instructions to Form 8996 by the due date for the entity's original Federal tax return (including extensions) for the taxable year including the last month

in which the entity seeks to be certified as a QOF, referred to as the entity's "voluntary decertification year." Under proposed § 1.1400Z2(d)-1(a)(3)(ii), the entity's final information return would be required to indicate that it is voluntarily decertifying and the last month for which the entity is intended to be certified as a QOF. *See also* proposed § 1.6039K-1(c). *See* parts II.B.3. and B.4. of this Explanation of Provisions for an explanation of the investor information that would be required to be reported to the IRS if a QOF voluntarily decertifies and the requirement that the information return containing this information must be attached to the QOF's annual tax return.

4. Requirement of Entity to Notify Investors Within 15 Days of Decertification

Proposed § 1.1400Z2(d)-1(a)(3)(iv) would require that the QOF provide the 15-day notification of the voluntary decertification to its investors with both qualifying and non-qualifying investments. This 15-day notification would be separate from the later notification proposed in the proposed regulations under section 6039K that would require the entity to provide a timely notification of the voluntary decertification by the entity (formerly certified as a QOF) to its investors on or before March 1 of the calendar year following the calendar year during which the voluntary decertification occurred. The Treasury Department and the IRS view these two timely notifications as necessary to facilitate the ability of those investors with investments resulting in eligible gain to reinvest their gains under section 1400Z-2(a), if applicable, and to properly and timely report any Federal income tax consequences arising as a result of the decertification. *See* part II.C. of this Explanation of Provisions for an explanation of the notification that would be required under section 6039K(c).

Proposed § 1.1400Z2(d)-1(a)(3)(iv)(B) would require the entity formerly certified as a QOF to provide the 15-day notification of the voluntary decertification to each investor that holds a qualifying or non-qualifying investment in the QOF by the earlier of 15 days after the QOF's voluntary decertification date or by the date contracted upon by the parties for the

receipt of such written notification by the investors. Proposed § 1.1400Z2(d)-1(a)(3)(iv)(C) would require the notification to be made in writing and furnished to the investors using any reasonable manner. The Treasury Department and the IRS anticipate that it may be difficult for entities to know which, if any, of their investors has an investment that is a qualifying investment in the entity, and so the proposed regulations' requirement that the entity send a voluntary decertification notice to each of its investors is intended to facilitate compliance and tax administration. Additionally, because the modifications by the OBBBA to section 1400Z-2 provide that the last day of deferral is dependent upon the date the investor invests in the QOF, rather than December 31, 2026, as the TCJA required, the Treasury Department and the IRS view it as necessary that this notice be sent to all investors because an investor may be able to reinvest the gain in another QOF to receive the benefits of section 1400Z-2. This requirement would accord with the reporting requirements in section 6039K(b)(8) and proposed § 1.6039K-1(f) with respect to each reportable investor on the final Form 8996 in the event of a voluntary decertification.

The proposed regulations set forth two items that would be required to be contained in the 15-day notification. First, pursuant to proposed § 1.1400Z2(d)-1(a)(3)(iv)(A)(1), the notification would be required to contain a statement that informs each investor that they may no longer make an election under section 1400Z-2(c) with regard to the investor's qualifying investment in the QOF because the certification of the entity as a QOF has terminated. Second, pursuant to proposed § 1.1400Z2(d)-1(a)(3)(iv)(A)(2), the notification would be required to contain information sufficient for the investors to report an inclusion event on the QOF's voluntary decertification date, if the effective date of voluntary decertification occurs prior to the date specified in section 1400Z-2(b)(1)(B). Section 1.1400Z2(b)-1(c)(15) provides (and proposed § 1.1400Z2(b)-1(c)(15) would provide) that the decertification of a QOF is an inclusion event. The Treasury Department and the IRS view the 15-day notification that informs the investors that the

ability to make an election under section 1400Z-2(c) is no longer available and that the investors may have an inclusion event as critical for tax compliance purposes and to ensure that investors are fully aware of the decertification, which may carry Federal income tax consequences. In addition, notification by the entity to its investors of the voluntary decertification within 15 days of the QOF's effective date of voluntary decertification would more readily permit these investors to reinvest in another QOF before the expiration of the 180-day period, as provided in section 1400Z-2(a)(1).

5. Federal Income Tax Consequences to Qualifying Investors

A QOF's decertification is binding on the investors in the QOF. The decertification may have Federal income tax consequences to investors in that QOF, especially for an investor that is a QOF owner. Under § 1.1400Z2(a)-1(b)(23), a "QOF owner" means a QOF shareholder or a QOF partner. Sections 1.1400Z2(a)-1(b)(24) and (27) provide that a QOF partner or QOF shareholder are persons that directly or indirectly own a qualifying investment in a QOF that is organized as a corporation or as a partnership, respectively.

Proposed § 1.1400Z2(d)-1(a)(3)(vi) would outline the consequences of decertification for the investors in the entity that was formerly certified as a QOF. First, proposed § 1.1400Z2(d)-1(a)(3)(vi)(B)(i) would provide that voluntary decertification is an inclusion event with respect to the entire qualifying investment of a QOF owner. This result is already provided in § 1.1400Z2(b)-1(c)(15), but proposed § 1.1400Z2(b)-1(c)(15) would include updated language to mirror the language of § 1.1400Z2(d)-1(a)(3), which uses the phrase "voluntary decertification" instead of "self-decertification." The date of the inclusion event would be the QOF's voluntary decertification date, as provided in proposed § 1.1400Z2(d)-1(a)(3)(vi)(A). Additionally, proposed § 1.1400Z2(d)-1(a)(3)(vi)(B)(2) would provide that gain that is otherwise required to be included in gross income by a final investor that is a QOF owner is eligible for continued deferral if the gain is reinvested in a QOF

with a TIN that is different from the decertified QOF and all requirements to elect to defer eligible gain under section 1400Z-2(a)(1)(A) are satisfied.

Second, proposed § 1.1400Z2(d)-1(a)(3)(vi)(C) would provide that each QOF owner of a QOF that voluntarily decertifies is not eligible to make an election under section 1400Z-2(c) with regard to the sale or exchange of that investment on any date on or after the QOF's voluntary decertification date. Such disallowance would also apply to QOFs that voluntarily decertify after the inclusion date provided in section 1400Z-2(b)(1)(B) but before the QOF owner makes an election under section 1400Z-2(c).

II. Proposed § 1.6039K-1

A. Overview

As discussed in part II.B. of the Background, section 6039K(a) requires every QOF to file an annual return (at such time and in such manner as the Secretary may prescribe) containing certain information. These regulations propose the time and manner by which QOFs would have to file these annual information returns, as well as the information that would be required to be reported on these returns.

For consistency with the regulations in § 1.1400Z2(d)-1(a), including proposed § 1.1400Z2(d)-1(a)(2)(i), which treats as a QOF any entity that makes an election to self-certify as a QOF, proposed § 1.6039K-1(a)(5) would define a "QOF" for this purpose with respect to an entity's taxable year or portion thereof as any entity that files a self-certification under § 1.1400Z2(d)-1(a)(2)(i) for that taxable year or a portion thereof. To ensure that this definition will treat an entity as a QOF for its first taxable year (or the portion of that taxable year that begins on the effective date for the election identified in the entity's self-certification), the definition also provides that an entity that files a self-certification under § 1.1400Z2(d)-1(a)(2) for its taxable year will be treated as certified as a QOF for the portion of the taxable year beginning on the effective date identified in that self-certification. Proposed § 1.6039K-1(b) would set forth the requirement that every QOF must file an annual return of information

on Form 8996 (or any successor form) to report the information set forth in proposed § 1.6039K-1(c) through (f). See parts II.B.1. through 3. of this Explanation of Provisions for an explanation of the information that would be required to be reported on this annual information return. Proposed § 1.6039K-1(e), however, is reserved for future use for when the specific information reporting rules for qualified rural opportunity funds and rural QOZBs are promulgated. Proposed § 1.6039K-1(g) would set forth the due date for the annual information return and the manner by which a QOF must file it. See part II.B.4. of this Explanation of Provisions for an explanation of these proposed rules. Finally, proposed § 1.6039K-1(i)(1) would cross reference to the penalty for QOFs that fail to comply with these information reporting requirements as well as to the penalty waiver rules for failures due to reasonable cause and not due to willful neglect.

As discussed in part II.B. of the Background, section 6039K(c) requires every QOF to furnish an investor statement to each person who disposed of an investment in the QOF (reportable investor) during the year (at such time and in such manner as the Secretary may prescribe). These proposed regulations also propose the time and manner that QOFs must furnish these investor statements as well as the information required to be reported on these statements. Proposed § 1.6039K-1(h) would set forth the requirement that every QOF must furnish to each reportable investor an investor statement for each calendar year containing the information set forth in proposed § 1.6039K-1(h)(1)(i) through (iv). See part II.C.1 of this Explanation of Provisions for an explanation of the information that would be required to be reported on the investor statements, as well as the rationale for requiring the information to be furnished on a calendar year basis. Proposed § 1.6039K-1(h)(2) would set forth the due date for the investor statements. In addition, proposed § 1.6039K-1(h)(3) would set forth the manner by which these statements must be furnished. See part II.C.2 of this Explanation of Provisions. Proposed § 1.6039K-1(i)(2) would cross reference to the penalty for failure to furnish timely a correct payee statement as well as to the penalty

waiver rules for failures due to reasonable cause and not due to willful neglect.

Finally, proposed § 1.6039K-1(j) would apply the proposed rules under § 1.6039K-1 regarding information returns and investor statements to information returns and investor statements originally due (without extensions) on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*.

B. Information returns required to be filed under section 6039K(a)

As discussed in part II.A. of this Explanation of Provisions, proposed § 1.6039K-1(b) would set forth the requirement that every QOF file an annual return of information on Form 8996 (or any successor form) to report the information set forth in proposed § 1.6039K-1(c) through (f). Proposed § 1.6039K-1(c) would set forth the information to be included on this return with respect to the QOF itself, proposed § 1.6039K-1(d) would set forth the information to be included on this return with respect to each applicable QOZB in which the QOF owns an interest, and proposed § 1.6039K-1(f) would set forth the information to be included on this return with respect to each reportable investor that disposed of an investment in the QOF during the calendar year. *See* parts II.B.2. and II.B.3.a. in this Explanation of Provisions for explanations of the terms applicable QOZB and reportable investor, respectively, as used for these purposes.

1. Proposed § 1.6039K-1(c): Information About the QOF

Proposed § 1.6039K-1(c) lists the information that QOFs would be required to report with respect to the QOF itself. This information generally falls within three categories.

a. Information currently required

First, much of the information that would be required by proposed § 1.6039K-1(c) is information that QOFs are currently required to report on Parts I through V of the December 2021 revision of Form 8996 (current Form 8996). For example, as currently required to be

reported on Part I of the current Form 8996, proposed § 1.6039K-1(c)(2) and (3) would require the QOF to indicate whether it is organized as a corporation or a partnership and whether it is organized for the purpose of investing in QOZ business property (other than another QOF). In addition, as currently required to be reported on Parts II through IV of the current Form 8996, proposed § 1.6039K-1(c)(4) and (5) would require the QOF to calculate the 90-percent investment standard and, if applicable, the penalty under section 1400Z-2(f)(1) if the QOF fails to meet that investment standard. Proposed § 1.6039K-1(a)(1) would define the term “90-percent investment standard” as having the same meaning as in section 1400Z-2(d)(1) and § 1.1400Z2(a)-1(b)(4). Finally, as currently required to be reported on Part V of the current Form 8996, proposed § 1.6039K-1(c)(7) would require the QOF to report each population census tract number in which QOZ business property is directly owned or leased by the QOF, and, for each of these tracts, proposed § 1.6039K-1(c)(7)(iii) would require the QOF to report the total value of QOZ business property directly owned by the QOF and the total value of QOZ business property directly leased by the QOF for the QOF testing dates. The information that would be required to be reported by the QOFs in this section would ensure compliance with section 1400Z-2(d), and in particular, with the 90-percent investment standard.

b. Information for public reporting

Second, some of the information that would be required by proposed § 1.6039K-1(c) is information that would enable the Secretary to comply with the public reporting requirements under section 70421(e)(3) of the OBBBA. For example, under proposed § 1.6039K-1(c)(6) and (c)(7)(vi), QOFs would be required to report the approximate average monthly number of total full-time equivalent employees of the QOF working in all locations as well as the approximate average monthly number of full-time equivalent employees of the QOF that work within the population census tract for the calendar year ending with or within the QOF’s taxable year. Section 6039K requires this information

be reported “within numerical ranges identified by the Secretary.” The Treasury Department and the IRS anticipate that updated instructions to Form 8996 will provide these numerical ranges.

The proposed regulations would base the definition of full-time equivalent employees on the definition of that term in section 6039K. Section 6039K(d)(2) defines full-time equivalent employees with respect to any month as the sum of: (A) the number of full-time employees as defined in section 4980H(c)(4) for the month; plus (B) the number of other employees determined (under rules similar to the rules of section 4980H(c)(2)(E)) by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. A full-time employee is defined in section 4980H(c)(4)(A), with respect to any month, as an employee who is employed on average at least 30 hours of service per week. Section 4980H(c)(4)(B) authorizes the Secretary, in consultation with the Secretary of Labor, to prescribe regulations addressing how to calculate an employee’s hours of service for this purpose, including for employees who are not compensated on an hourly basis.

Consistent with the rules and definitions set forth in section 4980H(c), as required by section 6039K(d)(2), proposed § 1.6039K-1(a)(4)(i) would define “full-time equivalent employees” of the QOF with respect to a calendar month as the sum of the number of employees who are employed on average at least 30 hours per week (full-time employees) plus the number of other employees who are not full-time employees. The number of employees who are not full-time employees would be determined for this purpose by dividing the aggregated number of hours of service of all employees who are not classified as full-time by 120.

The regulations defining full-time employees under section 4980H(c)(4) provide a rule for converting an employee’s monthly service hours into weekly service hours for purposes of determining if the employee is a full-time employee. Specifically, under § 54.4980H-1(a)(21)(ii) of the Pension Excise Tax Regulations (26 CFR part 54), 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service

per week. Section 54.4980H-1(a)(21)(iii) also provides an optional rule that allows employers to treat as a full-time employee any employee who performs 120 service hours during months with four weekly periods and any employee who performs 150 service hours during months with five weekly periods.

For these proposed rules on section 6039K reporting requirements, the Treasury Department and the IRS considered whether and how the rules from the section 4980H regulations should apply to the calculation of full-time employees. In determining the number of full-time employees under section 6039K(d)(2)(A), the Treasury Department and the IRS considered whether the QOFs should use the monthly equivalent rule that treats 130 hours of service as the monthly equivalent of at least 30 hours of service per week consistent with § 54.4980H-1(a)(21)(ii) or whether the QOFs should use a monthly equivalent rule that is consistent with the 120-hour divisor used to calculate the number of other employees under section 6039K(d)(2)(B). Because using the more restrictive (130 hours of service) monthly equivalent rule merely converts employees that would be full-time employees under section 6039K(d)(2)(A) into other employees under section 6039K(d)(2)(B), proposed § 1.6039K-1(a)(4)(ii)(A) would use a monthly equivalent rule that is consistent with the 120-hour divisor used to calculate the number of other employees under section 6039K(d)(2)(B). Using this less restrictive (120 hours of service) monthly equivalent rule should also be easier for QOFs to apply because they are already required to use the 120 hours as a divisor in calculating other employees under section 6039K(d)(2)(B).

The Treasury Department and the IRS also considered whether the QOFs should be permitted to use the optional monthly equivalent rule under § 54.4980H-1(a)(21)(iii) that allows employers to treat as a full-time employee any employee who performs 120 service hours during months with four weekly periods and any employee who performs 150 service hours during months with five weekly periods. For the same reasons that the Treasury Department and the IRS chose to propose requiring QOFs to use a monthly equivalent rule that is consistent with the

120-hour divisor used to calculate the number of other employees under section 6039K(d)(2)(B), the proposed regulations do not adopt this optional weekly period rule. Accordingly, proposed § 1.6039K-1(a)(4)(ii)(A) would provide that a QOF may treat an employee who performs at least 120 total hours of service in a calendar month as the equivalent of an employee who performs an average of at least 30 hours of service per week (that is, as a full-time employee) for that month. This alternative definition would reflect the application of a 30-hour work week to the shortest month possible and therefore would promote consistency by ensuring the same employee would not be categorized differently in months of different lengths. No inference is intended with respect to the definition of these terms for purposes of section 4980H. Comments are specifically requested regarding this more simplified definition of full-time employee for purposes of this reporting requirement.

Finally, the regulations defining full-time equivalent employees under section 4980H(c)(2)(E) permit employers to round to the nearest one hundredth when the calculation under that section results in a fraction. To simplify the reporting under section 6039K in the event that the calculation in proposed § 1.6039K-1(a)(4)(i) results in a fraction, proposed § 1.6039K-1(a)(4)(ii)(B) would require QOFs to round the total calculated number to the nearest whole employee. This rule is also proposed because whole numbers are more easily understood for purposes of public reporting and will be sufficient to track the employment impact resulting from QOFs and QOZBs as long as this rounding is applied consistently. Comments are requested addressing whether these changes would help make reporting full-time equivalent employees less burdensome. Comments are also requested addressing whether any other changes to the definition would make reporting less burdensome without losing data on the employment impact of the QOZ regime.

Proposed § 1.6039K-1(c)(7)(ii), (iv), and (v) would also require reporting of information that would enable the Secretary to comply with the public reporting requirements under the OBBBA. Proposed § 1.6039K-1(c)(7)(ii) would require the QOF to report the NAICS code

that applies to the QOF's business activity within each census tract. In addition, proposed § 1.6039K-1(c)(7)(iv) and (v) would require the QOF to report, for each census tract, the total value of QOZ business property directly owned or leased by the QOF that is real property and the total number of residential units for the calendar year ending with or within the QOF's taxable year.

Proposed § 1.6039K-1(a)(11) would define "real property" for this purpose as land and any improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not tangible personal property as defined in § 1.48-1(c). See proposed § 1.6039K-1(a)(14). In addition, proposed § 1.6039K-1(a)(13) would define "residential units" for this purpose as any building or structure for use as a dwelling unit or as a residence (including a house, apartment, condominium, mobile home or similar property) and for which a certificate of occupancy, or similar document indicating that the unit is available for use, has been received. A dwelling unit has basic living accommodations, such as a sleeping space, a toilet, and cooking facilities. A residential unit does not include property used as a hotel, motel, inn, or similar establishment if it is regularly available for occupancy by paying customers on a transient basis. Although the standards applicable to certificates of occupancy may vary by jurisdiction, these certificates likely provide the best measure of the impact that the opportunity zone rules have on the housing market.

Proposed § 1.6039K-1(c)(7)(iv) and (v) would require certain information collected for the public report to be reported as of December 31 of the calendar year ending with or within the QOF's taxable year for several reasons. First, reporting the information as of December 31 would facilitate consistent reporting from the greatest number of QOFs because the overwhelming majority of all QOFs file their Federal tax returns using a calendar year (calendar year QOFs). Additionally, from a standpoint of data analysis and investment review, calendar year reporting is beneficial to stakeholders and Congress as it better reflects investment cycles and development plans. Finally, requiring

applicable QOZBs to furnish this information to QOFs as of the end of a QOF's taxable year could impose unnecessary burdens on applicable QOZBs with multiple QOF investors to keep track of their QOF investors' taxable years and to collect this information as of multiple dates. Comments are requested regarding whether reporting this information on a calendar year basis would create any undue burdens for QOFs.

c. Information regarding compliance

Third, the remainder of the information that would be required by proposed § 1.6039K-1(c) is information regarding the QOF's compliance with the section 1400Z-2 statutory and regulatory requirements and with the information furnishing requirements under section 6039K(c). To enable the IRS to enforce the section 1400Z-2 requirements, proposed § 1.6039K-1(c)(7)(i) would require the QOF to report a physical address for the QOF's business activity within each census tract in which the business operates. To enable the IRS to know which decennial designation period is applicable to the QOF, proposed § 1.6039K-1(c)(7)(vii) would require the QOF to report the first date that any such QOZ business property was acquired by purchase or leased by the QOF. Proposed § 1.6039K-1(c)(7)(viii) would require the QOF to report whether there is any QOZ business property that the QOF is substantially improving and the date on which that improvement began. This information would help the IRS to determine which QOFs are substantially improving QOZ business property and whether the improvements are completed within the time required by section 1400Z-2(d)(2)(D)(ii).

Proposed § 1.6039K-1(c)(8) would require the QOF to report whether it was using the applicable financial statement valuation method or the alternative valuation method, as defined in § 1.1400Z2(d)-1(b)(3) and (4), respectively, in providing the information that would be required under proposed § 1.6039K-1(c)(1) through (10). This information is already requested on Parts VI and VII of the current Form 8996 with respect to the QOZBs and would provide information to the IRS that is important for tax

administration purposes. Additionally, for a QOF that is voluntarily decertifying in the taxable year to which the return relates, as would be permitted by proposed § 1.1400Z2(d)-1(a)(3), proposed § 1.6039K-1(c)(9) would require the QOF to report that it is voluntarily decertifying and would require the QOF to provide the last month for which it was certified as a QOF. Finally, proposed § 1.6039K-1(c)(10) would require the QOF to report such other information as required by the form or instructions.

2. Proposed § 1.6039K-1(d): Information About Applicable QOZBs

In addition to information about the QOF itself, proposed § 1.6039K-1(d) would require the QOF to report certain information with respect to each applicable QOZB in which the QOF has an ownership interest. Proposed § 1.6039K-1(a)(2) would define "applicable QOZB" for this purpose as any entity that meets, intends to meet, or was organized for the purposes of meeting, the requirements to be a QOZB, as defined in section 1400Z-2(d)(3)(A) and § 1.1400Z2(d)-1(d)(1), which is either a corporation in which a QOF holds QOZ stock or a partnership in which a QOF holds a QOZ partnership interest. *See* part III.A. of this Explanation of Provisions for an explanation of the rationale for using a narrower definition of the applicable QOZB than the statutory definition of applicable QOZB under section 6039L(b).

Akin to the reporting under proposed § 1.6039K-1(c), the information that would be reported with respect to each applicable QOZB also generally falls within three categories.

a. Information currently required

First, some of the information that would be required by proposed § 1.6039K-1(d) is information that QOFs are currently required to report on Parts VI and VII of the current Form 8996. For example, proposed § 1.6039K-1(d)(1) would require the QOF to report the TIN of each applicable QOZB. Additionally, proposed § 1.6039K-1(d)(6) would require the QOF to report the population census tract number(s) in which the QOZ business property

directly owned or leased by the applicable QOZB is used. In addition, proposed § 1.6039K-1(d)(3) would require the QOF to report, as of the QOF testing dates, the value of the QOF's investment in the QOZ stock or QOZ partnership interest of the applicable QOZB. Further, proposed § 1.6039K-1(d)(6)(iii)(A) and (B) would require the QOF to report, as of the QOF testing dates, the value of the QOZ business property directly owned by the applicable QOZB and the value of the QOZ business property directly leased by the applicable QOZB. Finally, proposed § 1.6039K-1(d)(7) would require the QOF to report whether the QOZB used the applicable financial statement valuation method or the alternative valuation method, as defined in § 1.1400Z2(d)-1(b)(3) and (4), respectively, in providing any valuation information that would be required under proposed § 1.6039K-1(d)(1) through (8).

Proposed § 1.6039K-1(a)(6) would define the "QOF testing dates" as the QOF's 6-month testing date and year-end testing date used for determining if the 90-percent investment standard has been met. Proposed § 1.6039K-1(a)(9) would define a "QOZ partnership interest" as having the same meaning as in section 1400Z-2(d)(2)(C) and § 1.1400Z2(d)-1(c)(3), and proposed § 1.6039K-1(a)(10) would define "QOZ stock" as having the same meaning as in section 1400Z-2(d)(2)(B) and § 1.1400Z2(d)-1(c)(2). *See* part III.B.1 of this Explanation of Provisions for an explanation of the testing dates that these proposed regulations would require applicable QOZBs to use for purposes of reporting this information to QOFs and the safe harbor rules that detail how a QOF can use information provided by an applicable QOZB with a different taxable year than the QOF in calculating the 90-percent investment standard.

b. Information for public reporting

Second, some of the information that would be required under proposed § 1.6039K-1(d) is information that would enable the Secretary to comply with the public reporting requirements under sections 70421(c)(2) and (3) of the OBBBA. For example, proposed § 1.6039K-1(d)(6)(ii) would require the QOF to report the

NAICS code that applies to each applicable QOZB's business activity within each census tract. Proposed § 1.6039K-1(d)(6)(iv) and (v) would require the QOF to report for each census tract as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year, the total value of QOZ business property directly owned or leased by the applicable QOZB that is real property and the total number of residential units. *See* part II.B.1. of this Explanation of Provisions for the rationale behind requesting this information as of December 31 of the year for which the return is required. Comments are requested regarding whether this uniform December 31 valuation date creates any undue burdens for applicable QOZBs.

In addition, proposed § 1.6039K-1(d)(6)(vi) would require the QOF to report the approximate average monthly number of full-time equivalent employees of the QOZB who work within the population census tract during the calendar year. Finally, although not included in the specific information required under section 6039K(b)(5) with respect to the QOF's investments in QOZ stock or QOZ partnership interests, proposed § 1.6039K-1(d)(2) would have the QOF report the percent of equity ownership by the QOF in the applicable QOZB (or in the case of an applicable QOZB that is a partnership, the capital or profits interest in the applicable QOZB owned by the QOF) as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year. This information is requested pursuant to the Secretary's authority to request additional information under section 6039K(b)(9) to ensure that the information reported with respect to applicable QOZBs with multiple investors is not double-counted in the public report.

c. Information regarding compliance

Third, the remainder of the information that would be required under proposed § 1.6039K-1(d) relates to overall compliance with section 1400Z-2(d). As such, this information would provide certainty to the QOF that it may treat its stock or partnership interest in the QOZB as QOZ property.

Proposed § 1.6039K-1(d)(1) would have the QOF report the name and

address of each applicable QOZB in which the QOF owns an interest. Proposed § 1.6039K-1(d)(6)(i) would require the QOF to report a physical address for a QOZB's business activity within each census tract in which the business operates to ensure compliance with the requirements of section 1400Z-2(d)(3).

To inform the IRS of which decennial designation period applies to the applicable QOZB, proposed § 1.6039K-1(d)(6)(vii) would require the QOF to report the first date that any such QOZ business property was acquired by purchase or leased by the applicable QOZB. Proposed § 1.6039K-1(d)(6)(viii) would require the QOF to report whether there is any QOZ business property within each census tract that the applicable QOZB is substantially improving and (if applicable) the date on which that improvement began. This information would help the QOF and the IRS to determine which applicable QOZBs are substantially improving QOZ business property and whether these improvements are completed within the time required by section 1400Z-2(d)(2)(D)(ii) as well as which applicable QOZBs have property that satisfies the original use requirement of section 1400Z-2(d)(2)(D)(i)(II).

Proposed § 1.6039K-1(d)(6)(ix) would require the QOF to report for each census tract whether the applicable QOZB is utilizing a working capital safe harbor, as provided in § 1.1400Z2(d)-1(d)(3)(v), and (if so) the date that the working capital safe harbor is expected to end. This information would assist the QOF in determining whether the QOZB's tangible property, required to be reported under section 6039K(b)(5)(E) and (F), is QOZ business property during the safe harbor period. Such information would also assist the IRS in enforcing the requirements of section 1400Z-2(d)(3) by ensuring that the property being substantially improved under a working capital safe harbor eventually becomes QOZ business property used in the QOZB's trade or business.

In addition, proposed § 1.6039K-1(d)(5) would require the QOF to report the total value of tangible property of the applicable QOZB (including tangible property that is both QOZ business property and not QOZ business property) held by the applicable QOZB as of the 6-month and year-end testing dates. This informa-

tion would assist the QOF in determining whether 70 percent of the underlying value of the tangible property owned or leased by the QOZB is QOZ business property under § 1.1400Z2(a)-1(b)(2).

Proposed § 1.6039K-1(d)(4) would require the QOF to indicate whether it received an attestation from the applicable QOZB that the applicable QOZB meets all the requirements of § 1.1400Z2(d)-1(d)(1)(i) through (iii) or (if applicable) is utilizing the cure period, as defined in § 1.1400Z2(d)-1(d)(6). Under § 1.1400Z2(d)-1(d)(6)(iii), a QOZB is only permitted to avail itself of the cure period once and may require the QOF to request an extension of time to file a Federal tax return. A QOF may need to calculate a penalty under section 1400Z-2(f) if the QOZB fails to correct the error in the required time under § 1.1400Z2(d)-1(d)(6). By requesting this information from the applicable QOZB, the QOF would gain a better understanding of its Federal income tax obligations, such as whether it must request an extension of time to file a Federal tax return and whether it may need to calculate a penalty under section 1400Z-2(f). This information would also help the IRS ensure that QOFs and QOZBs are complying with the requirements under section 1400Z-2(d) and ensure that each QOZB is only receiving one cure period. Finally, proposed § 1.6039K-1(d)(8) would also require the QOF to report such other information as required by the form or instructions.

3. Information About Reportable Investors Disposing of QOF Investments

a. Disposition events and reportable investors.

In addition to information about the QOF and the applicable QOZBs, proposed § 1.6039K-1(f) would require the QOF to report certain information about each reportable investor that has a disposition event during the calendar year in which the QOF's taxable year began. Proposed § 1.6039K-1(a)(3) would define a "disposition event" for this purpose as any inclusion event under § 1.1400Z2(b)-1(c). Under § 1.1400Z2(b)-1(c), an event generally is an inclusion event if and to the extent that: (i) the event reduces an eli-

gible taxpayer's direct equity interest for Federal income tax purposes in the qualifying investment; (ii) an eligible taxpayer receives property in the event with respect to its qualifying investment and the event is treated as a distribution for Federal income tax purposes, whether or not the receipt reduces the eligible taxpayer's ownership of the QOF; (iii) an eligible taxpayer claims a loss for worthless stock under section 165(g) of the Code, or otherwise claims a worthlessness deduction, with respect to its qualifying investment; or (iv) a QOF in which an eligible taxpayer holds a qualifying investment loses its status as a QOF.

Thus, for example, a disposition event for purposes of proposed § 1.6039K-1(a)(3) would include: (i) taxable sales or exchanges of QOF interests; (ii) the termination or liquidation of a QOF for Federal income tax purposes (for example, the conversion of a QOF C corporation to an entity disregarded from its owner for Federal income tax purposes), the voluntary decertification of a QOF, or the QOF's failure to qualify as a QOF for any other reason; (iii) certain distributions of property by a QOF partnership, a partnership that directly or indirectly owns a QOF, a QOF S corporation, or a QOF C corporation with respect to a qualifying investment; (iv) stock redemptions by QOF C corporations or QOF S corporations; (v) the receipt of boot by QOF shareholders in certain corporate transactions involving QOF corporations; and (vi) certain distributions of stock or securities of a controlled corporation by a QOF corporation to a QOF shareholder with respect to a qualifying investment in a transaction to which section 355 of the Code applies. *See* § 1.1400Z2(b)-1(c) for a more detailed list of inclusion events and exceptions.

Treating investors that have had an inclusion event as "person[s] who disposed of an investment" in the QOF under section 6039K(b)(8) is appropriate for several reasons. First, either the QOF no longer qualifies as such or these investors have reduced or eliminated their qualifying investment in the QOF (for example, through a sale or transfer of QOF interests or the receipt of certain distributions). Second, providing the IRS with the names and TINs of these investors and informing these investors that they may have

Federal income tax consequences with respect to their qualifying investment in the QOF, is important to ensure taxpayer awareness of, and compliance with, their obligations under section 1400Z-2. The Treasury Department and the IRS anticipate that reporting on these disposition events would improve taxpayer compliance because QOFs would provide the information necessary for investors to accurately prepare their Federal tax returns and reduce the number of errors or intentional omissions or misstatements shown on those returns.

Proposed § 1.6039K-1(a)(12)(i) would define a "reportable investor" as any person that held a stock or partnership interest in the QOF for which a disposition event with respect to such stock or partnership interest occurred during the QOF's taxable year. To ensure that investors in publicly traded QOFs also receive this information about disposition events, proposed § 1.6039K-1(a)(12)(ii) would include in the definition of reportable investor any broker, as defined in § 1.6045-1(a)(1), that holds a QOF interest on behalf of a customer, as defined in § 1.6045-1(a)(2), for which a disposition event occurred. Brokers would be included in the definition of reportable investor, however, only to the extent the QOF does not otherwise know the identity of the person for whom the broker holds the QOF stock or partnership interest. In cases where the QOF knows the identity of the underlying owner of the QOF stock or partnership interest, such as where the owner holds a significant portion of the QOF stock or partnership interests, that underlying owner would be the reportable investor. In contrast, in cases where the QOF does not know the identity of the underlying owner of the QOF stock or partnership interest, the QOF would be required to inform brokers that are the registered holders of the QOF investment of a voluntary decertification. To ensure that brokers holding QOF interests on behalf of customers for which a disposition event occurred report on such events under the section 6045 broker reporting rules, proposed § 1.6045-1(d)(2)(i)(A) would expand the information that a broker would be required to report to the IRS with respect to a sale of a QOF investment to include whether the sale constitutes a disposition of an ownership

interest in a QOF or an inclusion event associated with a voluntary decertification of a QOF. Finally, proposed § 1.6045-1(a)(9)(i) would expand the definition of a "sale" that a broker is required to report to the IRS to include an "inclusion event" as defined in § 1.1400Z2(b)-1(c)(1)(iv) caused by the voluntary decertification of a QOF as defined in § 1.1400Z2(d)-1(a)(3). These proposed changes are intended to ensure that both the IRS and investors in publicly traded QOFs are made aware of these taxable transactions.

b. Reporting period

As discussed in part II.B. of the Background, before the OBBA was enacted, Form 8996 required QOFs to report on each investor that disposed their QOF investment during the QOF's taxable year. In addition, each QOF was also required to file Form 1099-B (or Form 1099-DA, if the QOF interest is a dual classification asset under § 1.6045-1(c)(8)) with the IRS (and furnish a written statement to the investor) to report on each investor that disposed of their QOF investment during the calendar year.

Section 6039K(b)(8) does not address whether the dispositions to be reported by QOFs "during the year" should be based on investor dispositions during the QOF's taxable year or should be based on investor dispositions during the calendar year. These proposed regulations would require QOFs to report and furnish information on disposition events occurring during each calendar year for several reasons. First, IRS information reporting generally is required on a calendar year basis. *See, for example*, §§ 1.6041-1(a)(1); 1.6042-2(a)(1)(i); 1.6045-1(c)(6); 1.6050P-1(a)(1); and 1.6050W-1(a)(1). Second, the calendar year is the standard accounting period for most individual taxpayers and the default accounting period for corporations and partnerships that do not keep formal books and records or otherwise do not qualify for a fiscal taxable year. Requiring QOFs to report and furnish this information on a calendar year basis is therefore consistent with the needs of the majority of taxpayers, who would use this information to prepare their Federal tax returns on a calendar year basis. Although fiscal year investors with taxable years that coincide

with that of a fiscal year QOF might find the furnished information to be more useful if it were instead based on the QOF's fiscal year, these fiscal year investors are also more likely to have the capability and sophistication to keep track of furnished information that does not coincide with their taxable years. Finally, as discussed in part II.C.2. of this Explanation of Provisions, requiring QOFs to report this information on a calendar year basis would also facilitate a single due date for investor statements that is conducive to the tax reporting needs of the reportable investors. Accordingly, for all of these reasons, proposed § 1.6039K-1(f) would require QOFs to report on reportable investors that have a disposition event during the calendar year in which the QOF's taxable year began. Comments are requested regarding whether this reporting creates any undue burdens for fiscal year QOFs.

c. Specific information required

Proposed § 1.6039K-1(f)(1) would require the QOF to report the name, address, and TIN of each reportable investor in the QOF that has a disposition event with respect to their investment in the QOF. Proposed § 1.6039K-1(f)(2) would require QOFs to report the date of the disposition event for each share of stock or partnership interest in the QOF to which the disposition event applies. This information is consistent with the information required under section 6039K(b)(8)(C) and the information required to be reported on the current Form 8996. In addition, for each share of stock or partnership interest in the QOF to which the disposition event applies, proposed § 1.6039K-1(f)(3) would require QOFs to report the date that the reportable investor's share or interest in the QOF was acquired by the reportable investor. This information is consistent with the information required under section 6039K(b)(8)(B). Comments are requested with respect to whether non-publicly traded QOFs would generally know the dates that a reportable investor acquired and disposed of their ownership interest in the QOF. Proposed § 1.6039K-1(f)(4) is discussed later in this part II.B.3.c.

For a disposition event with respect to a disposition of the reportable investor's

ownership interest in the QOF, proposed § 1.6039K-1(f)(5) would also require QOFs to report the total number of shares of stock or partnership interests in the QOF held immediately before the disposition event and the total number of shares of stock or partnership interests that were disposed. This information is consistent with information required under section 6039K(b)(8)(C), which asks for the "amount of the investment disposed."

Additionally, pursuant to section 6039K(b)(9), which authorizes the Secretary to require additional information to be reported, the proposed regulations would require the QOF to report several other pieces of information.

First, proposed § 1.6039K-1(f)(6) would require QOFs to indicate whether the disposition is with respect to an inclusion event caused by the QOF's decertification. Pursuant to proposed § 1.1400Z2(d)-1(a)(3)(iv), a QOF would be required to provide notification to every investor in a QOF that the QOF voluntarily decertified and the date of the decertification. As explained in part I.C.4 of this Explanation of Provisions, an investor in a QOF may have Federal income tax consequences when a QOF decertifies. Absent a QOF's notification to its investors of the voluntary decertification, investors may not be aware of the decertification.

Second, to help reportable investors determine their basis in their disposed QOF interest, proposed § 1.6039K-1(f)(4) would require QOFs to report the amount of cash plus the fair market value of property received by the QOF in exchange for the reportable investor's shares or partnership interest in the QOF when first acquired by the reportable investor. Comments are requested with respect to whether non-publicly traded QOFs would generally know this basis information. Finally, proposed § 1.6039K-1(f)(7) would require QOFs to report such other information as the forms or instructions may require.

4. Time and Manner for Filing the QOF Information Return

As discussed in part II.A. of the Background, before the OBBBA was enacted Form 8996 was required to be attached to the QOF's annual tax return by the due

date (including extensions) for the QOF's annual tax return. As previously described, the Treasury Department and the IRS intend to update Form 8996 to include the information required by section 6039K(b) and final regulations under § 1.6039K-1. Pursuant to sections 6039K(a) and 6726(a), this updated Form 8996 will be considered a "return" of information that is separate from the QOF's Federal tax return. Additionally, proposed § 1.6039K-1(g)(1) would require that Form 8996 be filed with the IRS in the manner set forth in the instructions to the form. For QOFs that fail to file Form 8996 in the manner so provided by the due date for the QOF's original Federal tax return (or fail to include all the correct information required to be shown on the Form 8996), proposed § 1.6039K-1(g)(2) would direct the QOF to file the original Form 8996 (or a corrected Form 8996) in the manner set forth in the instructions to Form 8996 for a late or corrected filing. Filing the late original Form 8996 (or corrected Form 8996) would be important to terminating the per-day penalty under section 6726 applicable to QOFs that fail to comply with the information reporting requirements under section 6039K. See part VII of this Explanation of Provisions for an explanation of the penalties that apply to the failure to timely file a correct information return under section 6039K.

C. Investor statements required to be furnished under section 6039K(c)

1. Information to be Included on the Investor Statements

Pursuant to section 6039K(c)(2), proposed § 1.6039K-1(h)(1)(i) would require every QOF that is required to file an information return under section 6039K that includes (or is required to include) a reportable investor's name, address, and TIN to furnish to that reportable investor an investor statement showing the information required by proposed § 1.6039K-1(f)(1) through (7) with respect to the reportable investor. See also part II.B.3.c. of this Explanation of Provisions for an explanation of the information that QOFs would be required to report to the IRS with respect to these reportable investors. Under this proposed rule, the information

required to be provided to each reportable investor would be only the information reported to the IRS that is with respect to that particular reportable investor and not information reported with respect to other reportable investors with disposition events during the same calendar year. This proposed rule would thus preserve the privacy of individual investors' personally identifiable information.

In addition to the information that each QOF would be required to report under proposed § 1.6039K-1(f)(1) through (7), proposed § 1.6039K-1(h)(1)(ii) and (iii) would require the QOF to include on the investor statement the name, address, and phone number of a contact at the QOF regarding the furnished statement, as well as a legend stating that the information included on the statement is being reported to the IRS. These requirements are consistent with general information furnishing requirements. Additionally, proposed § 1.6039K-1(h)(1)(iv) would require the QOF to include on this investor statement, if applicable, a statement that the entity has voluntarily decertified as a QOF under § 1.1400Z2(d)-1(a)(3). Finally, if the QOF has voluntarily decertified as a QOF, proposed § 1.6039K-1(h)(1)(iv) would require the QOF to include on the investor statement a statement that the reportable investor's election under section 1400Z-2(c) is no longer available because the certification of the entity as a QOF has terminated. Under section 1400Z-2(c) and § 1.1400Z2(c)-1(b)(1)(i), a taxpayer who makes a deferral election with respect to a qualifying investment in a QOF, recognizes the deferred gain by the date provided in section 1400Z-2(b)(1)(B), and whose holding period of such qualifying investment is at least 10 years, may make an additional election under section 1400Z-2(c) upon the sale or exchange of that investment. However, under § 1.1400Z2(c)-1(b)(1)(i), to the extent that an eligible taxpayer has an inclusion event with respect to any portion of that qualifying investment, that portion is no longer a qualifying investment and the eligible taxpayer may not make the section 1400Z-2(c) election for that portion. Section 1.1400Z2(b)-1(c)(15) provides that the decertification of a QOF is an inclusion event. The Treasury Department and the IRS view the statement noti-

fying the investors that the section 1400Z-2(c) election is no longer available critical for tax compliance purposes and to ensure that investors are fully aware of the decertification, which may carry attendant Federal income tax consequences.

2. Time and Manner for furnishing the Investor Statements

a. Due date for furnishing the investor statements

As discussed in part II.B.3.b. of this Explanation of Provisions, proposed § 1.6039K-1(f) would require QOFs to report on each reportable investor that has a disposition event during the calendar year in which the QOF's taxable year began. This reporting is required for disposition events occurring in the calendar year in which the QOF's taxable year began because the calendar year is the standard accounting period for most individual taxpayers and the default accounting period for corporations and partnerships that do not qualify for a fiscal taxable year. It is anticipated that these reportable investors would use this information on their furnished investor statements to prepare their Federal tax returns, which, for individuals are due on April 15 of the year following the calendar year for which the return is required (excluding extensions).

In proposing the date by which these investor statements should be furnished, the Treasury Department and the IRS considered the due dates for other payee statements with respect to taxpayer investments. For example, under section 6042(c), payee statements reflecting payments of dividends are required to be furnished to the dividend recipient on or before January 31 of the year following the calendar year for which Form 1099-DIV, *Dividends and Distributions*, is required. Under section 6045(b), payee statements reflecting sale transactions effected by brokers on behalf of their customers are required to be furnished to the customer on or before February 15 of the year following the calendar year in which the transaction occurred.

Except in the case of investor statements required to be furnished to reportable investors that are brokers, proposed § 1.6039K-1(h)(2)(i) would require QOFs

to furnish investor statements to reportable investors on or before March 1 of the calendar year following the calendar year during which the reported disposition occurred because disposition events are more analogous to sale transactions than payments of dividends and because QOFs may need more time after the end of the calendar year to obtain the information necessary to determine which investors had disposition events. The Treasury Department and the IRS propose this March 1 due date to account for the possibility that QOFs may not have sufficient information necessary to inform investors of the required reporting under section 6039K. This due date is anticipated to provide individual investors with the information they need with sufficient time to prepare their individual tax returns, many of which the Treasury Department and the IRS anticipate will be filed on extension. Nevertheless, comments are requested regarding whether this due date would give reportable investors sufficient time for use in preparing their tax returns. Comments are also requested regarding whether this due date would create any undue burdens for QOFs, including for fiscal year QOFs.

It is the understanding of the Treasury Department and the IRS that, in the case of publicly traded QOFs, brokers would typically be the record holders of the QOF stock or partnership interests. As a result, publicly traded QOFs might not know the identities of all of the customers for whom brokers hold these interests. As discussed in part II.B.3.a. of this Explanation of Provisions, to ensure the IRS receives information returns with respect to disposition events of the brokers' customers and to ensure that these customers receive statements indicating that a disposition event has occurred in order to prepare their tax returns, proposed § 1.6039K-1(a)(12)(ii) would include in the definition of "reportable investor" any broker that holds a QOF interest on behalf of a customer for which a disposition event occurred but only where the QOF does not know the identity of the actual owners of these QOF interests. In addition, under proposed § 1.6045-1(a)(9)(i) and (d)(2)(i)(A), brokers would be required to report to the IRS dispositions of ownership interests in a QOF as well as inclusion events

caused by a voluntary decertification of a QOF. Thus, under these proposed rules, a publicly traded QOF would be required to furnish an investor statement to a reportable investor that is a broker, and that broker would be required to file an information return (Form 1099-B) with respect to the customer and furnish a statement to the customer. As a result, publicly traded QOFs that do not know the identity of the actual owners of QOF interests would be required to inform brokers that are registered holders of these QOF interests of a voluntary decertification, and these brokers would be required to report that information to the IRS and furnish it to their customers. It is anticipated that the Form 1099-B would be revised to facilitate this reporting by brokers.

To provide brokers with sufficient time to comply with these filing and furnishing requirements, the proposed regulations would provide for an earlier due date for investor statements required to be furnished to brokers. Proposed § 1.6039K-1(h)(2)(ii) would require QOFs to furnish investor statements to brokers that are record holders of interests in the QOF on or before January 15 of the calendar year following the calendar year of the disposition event. Comments are requested regarding whether this due date would give brokers sufficient time to report on these disposition events under section 6045. Comments are also requested regarding whether the proposed March 1 due date for furnishing the investor statements to reportable investors other than brokers should be conformed to this January 15 due date for furnishing the investor statements to brokers to simplify the furnishing requirements for publicly traded QOFs.

b. Manner of furnishing the investor statements

Proposed § 1.6039K-1(h)(3)(i) would generally provide that an investor statement is considered to be furnished to a reportable investor if it is mailed to the last address of the reportable investor known to the QOF and is considered to be furnished on the date that it is so mailed. Proposed § 1.6039K-1(h)(3)(ii)(A) would permit QOFs to furnish these investor statements in an electronic format in lieu

of a paper format by following the procedures for payee statements generally as set forth in the applicable revenue procedures relating to electronic delivery of payee statements. *See*, for example, section 4.6 of Rev. Proc. 2024-29, 2024-30 I.R.B. 121 (July 22, 2024), which is published as IRS Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns* (Publication 1179). In the event that the QOF chooses to electronically furnish an investor statement to a reportable investor pursuant to these procedures, proposed § 1.6039K-1(h)(3)(ii)(A) would provide that such investor statement would be treated as furnished on: (i) the date that the QOF electronically transmits the investor statement to that reportable investor, for QOFs that electronically transmit the investor statement; or (ii) the date that the QOF sends a notice to the reportable investor that the investor statement has been posted to an electronically accessible online platform, for QOFs that so post the investor statement.

For an investor statement that is required to be furnished to a broker, proposed § 1.6039K-1(h)(3)(ii)(B) would permit the QOF to furnish the investor statement in an electronic format in lieu of a paper format if the broker agrees to such manner of furnishing. Like the general rule for an investor statement furnished electronically, proposed § 1.6039K-1(h)(3)(ii)(B) would treat an investor statement that is electronically furnished to a broker pursuant to such written agreement as furnished on: (i) the date that the QOF electronically transmits the investor statement to the broker, for QOFs that electronically transmit the investor statement; or (ii) the date that the QOF sends notice to the broker that the investor statement has been posted to an electronically accessible online platform, for QOFs that so post the investor statement.

III. Proposed § 1.6039L-1

A. Overview

As discussed in part II.B. of the Background, section 6039L(a) generally requires every applicable QOZB to furnish a QOZB statement to each QOF that holds an interest in that applicable

QOZB at such time, in such manner, and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such QOFs to meet their reporting obligations under section 6039K(b)(5). These proposed regulations propose rules for the time and manner that applicable QOZBs would have to furnish these QOZB statements as well as the information that would be required to be reported on these statements.

As a starting point for the section 6039L furnishing requirement, section 6039L(b) defines the term “applicable QOZB” to mean any QOZB which is a trade or business of a QOF, in which a QOF holds QOZ stock, or in which a QOF holds a QOZ partnership interest. Proposed § 1.6039L-1(a)(3) would generally follow this definition of an “applicable QOZB” except it would not include a trade or business of a QOF in the definition because these trades or businesses are conducted by the QOF itself. Therefore, QOFs should generally have the ability to obtain the information they need from such trades or businesses without being subject to the furnishing requirements of section 6039L and the penalties under section 6722 that would apply if these trades or businesses of the QOF failed to comply with these furnishing requirements. Accordingly, under proposed § 1.6039L-1(a)(3), an “applicable QOZB” is defined to mean any entity that meets, intends to meet, or was organized for the purposes of meeting, the requirements to be a QOZB, as defined in section 1400Z-2(d)(3)(A) and § 1.1400Z2(d)-1(d), which is a corporation in which a QOF holds QOZ stock, or a partnership in which a QOF holds a QOZ partnership interest. Comments are requested regarding whether there are any circumstances under which QOFs need section 6039L to obtain the information required to be furnished under section 6039L from their trades or businesses.

Section 6039L(a) cross references to section 6039L(b) for a description of the QOF to whom applicable QOZBs must furnish the QOZB statement. However, section 6039L(b) does not describe any QOF but instead provides a definition for applicable QOZBs required to furnish these statements. To account for this drafting anomaly and to clarify the QOFs to whom the QOZB statements should be

furnished, the proposed regulations would create the term “relevant QOF.” Proposed § 1.6039L-1(a)(12) would define “relevant QOF” to mean, with respect to an applicable QOZB that is a corporation, any QOF that holds QOZ stock in that corporation, and with respect to an applicable QOZB that is a partnership, any QOF that holds QOZ partnership interest(s) in that partnership.

Proposed § 1.6039L-1(b) would set forth the requirement that every applicable QOZB must furnish to each relevant QOF a QOZB statement, signed under penalties of perjury, for each taxable year of the applicable QOZB containing the information set forth in proposed § 1.6039L-1(b) (1) through (7). See parts III.B.1. through 3. of this Explanation of Provisions for an explanation of the information that would be required to be reported on the QOZB statement. Proposed § 1.6039L-1(c) is reserved for future use for when the information reporting and furnishing rules for qualified rural opportunity funds and qualified rural opportunity zone businesses are promulgated. Proposed § 1.6039L-1(d) would set forth the due date for the QOZB statements and the manner by which the QOZB statements must be furnished. See part III.C. of this Explanation of Provisions. Finally, proposed § 1.6039L-1(e) would cross reference to §§ 301.6722-1 (failure to furnish timely a correct payee statement) and 301.6724-1 (penalty waiver for failures due to reasonable cause and not due to willful neglect), and proposed § 1.6039L-1(f) proposes to apply § 1.6039L-1 to QOZB statements required to be furnished on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*.

B. Information to be Included on the QOZB Statements

As discussed in part III.A. of this Explanation of Provisions, proposed § 1.6039L-1(b) would set forth the requirement that every applicable QOZB must furnish to each relevant QOF a QOZB statement for each calendar year containing the information set forth in proposed § 1.6039L-1(b)(1) through (7). This information generally falls within three categories. First, some of the information that would

be required by proposed § 1.6039L-1(b) is information that QOFs are generally required to report on Parts VI and VII of the current Form 8996. Second, some of the information that would be required by proposed § 1.6039L-1(b) is information that would enable the Secretary to comply with the public reporting requirements under section 70421(e)(3) of the OBBBA. Third, some of the information that would be required by proposed § 1.6039L-1(b) is information regarding the QOZB's compliance with additional requirements under section 1400Z-2(d)(3). This information would provide certainty to the QOF that it may treat its ownership interest in the applicable QOZB as QOZ stock or as a QOZ partnership interest for which the QOF must provide information under section 6039K(b)(5).

1. Information Generally Required on Current Form 8996

As discussed in part II.B.2. of this Explanation of Provisions, some of the information required under section 6039L is information required to be reported on Parts VI and VII of the current Form 8996. For example, proposed § 1.6039L-1(b) (1) and (4) would require the applicable QOZB to furnish its TIN and all the population census tract number(s) in which the QOZ business property directly owned or leased by the applicable QOZB is used. In addition, some of this information is needed by the relevant QOF to determine if it meets the 90-percent investment standard. Each QOF must calculate if it meets the 90-percent investment standard based on the value of the QOF's investment in the QOZ stock or QOZ partnership interest of the applicable QOZB, the value of the QOZ business property directly owned by the applicable QOZB, and the value of the QOZ business property directly leased by the applicable QOZB as of the QOF's 6-month testing date and the QOF's year-end testing date as provided in section 1400Z-2(d)(1).

Although requiring applicable QOZBs to furnish this information based on a QOF's 6-month and year-end testing dates would coincide with the needs of the relevant QOFs, the Treasury Department and the IRS are concerned that requiring applicable QOZBs to report this valua-

tion information as of the QOFs' testing dates could be unadministrable for some applicable QOZBs. For example, some applicable QOZBs have multiple QOF investors with different taxable years. Requiring applicable QOZBs to report this valuation information based on the testing dates of each relevant QOF would force these applicable QOZBs to keep track of the taxable years of each of their relevant QOFs and to collect this valuation information as of the testing dates of each of these relevant QOFs. In addition, this requirement would also necessitate multiple due dates for each QOZB statement based on the due dates of the returns required under section 6039K.

To address these administrability concerns for applicable QOZBs and QOFs, the Treasury Department and the IRS considered whether applicable QOZBs should instead be required to furnish this information to QOFs based on calendar year testing dates (that is, June 30 and December 31 of the year for which the QOZB statement is required) because calendar year testing dates are generally the default accounting period for QOFs. Using calendar year testing dates for this purpose would also eliminate the need for applicable QOZBs with multiple relevant QOF investors to keep track of the taxable years of these relevant QOFs and to furnish valuation information as of multiple testing dates. This approach was not adopted in these proposed regulations, however, because it would be inconsistent with the premise that QOZBs must meet the section 1400Z-2(d)(3) requirements during their taxable years, determined using the 70-percent use test and the section 1397C(b) tests. Indeed, the Treasury Department and the IRS provide a safe harbor under § 1.1400Z2(d)-1(b)(2)(i)(C) to permit a QOF to determine whether equity in an entity with a taxable year that is different from its own is QOZ property for purposes of the 90-percent investment standard. Generally, under this safe harbor, the QOF may limit the period tested for purposes of the 90-percent investment standard to the period that starts with the beginning of the QOF's status as a QOF and lasts until the last day of the entity's taxable year ending on or before the relevant testing date. Under this safe harbor, the

QOF may treat the entity as satisfying the requirements of section 1400Z-2(d)(3) for the entity's entire taxable year if the entity satisfies the requirements on the last day of its taxable year.

Finally, the Treasury Department and the IRS considered whether the information provided by an applicable QOZB should be based on the last day of the first 6-month period of the applicable QOZB's taxable year and the last day of the applicable QOZB's taxable year (applicable QOZB's testing dates). This approach would also alleviate the administrability concerns of applicable QOZBs that have multiple relevant QOFs. In addition, this approach would be consistent with the safe harbor rule under § 1.1400Z2(d)-1(b)(2)(i)(C), which would permit QOFs with taxable years that are different from an applicable QOZB to apply the 90-percent investment standard using information provided by the applicable QOZB based on the testing dates that coincide with the applicable QOZB's taxable year. Section 1.1400Z2(d)-2(d)(3) would be clarified by proposed § 1.1400Z2(d)-2(d)(3) to state explicitly that QOZBs use the semiannual testing dates corresponding to their taxable year to clarify that the applicable semiannual testing dates an applicable QOZB uses are the semiannual dates corresponding to its own taxable year and not the taxable year of the QOF. In addition, proposed § 1.1400Z2(d)-2(d)(3)(iii) would be added to clarify that for purposes of determining whether a QOZB satisfies the 90-percent QOZ business property holding period test, the QOZB determines whether it has met the 70-percent use test on its semiannual testing dates, not the QOF's semiannual testing dates. Comments are requested regarding whether the use of the applicable QOZB's testing dates for this valuation information creates any undue burdens for applicable QOZBs or for fiscal year QOFs. Lastly, proposed § 1.1400Z2(d)-2(d)(1), (d)(3)(i) and (ii), and (d)(4)(i) would replace references to "eligible entity" in the corresponding provisions of § 1.1400Z2(d)-2 with separate references to QOFs and QOZBs to emphasize the differences between QOF and QOZB holding period testing.

2. Information for the Public Report

In addition to information that QOFs have been required to report on the current Form 8996, proposed § 1.6039L-1(b)(4)(ii), and (iv) through (vi) would require the applicable QOZB to furnish information that would enable the Secretary to comply with the public reporting requirements under section 70421(e)(3) of the OBBBA. For example, proposed § 1.6039L-1(b)(4)(i) and (ii) would require the applicable QOZB to provide the NAICS code that applies to each applicable QOZB's business activity within each census tract and to provide a physical address of the QOZB's business activity within each census tract in which the business operates. In addition, proposed § 1.6039L-1(b)(4)(iv) and (v) would require the applicable QOZB to provide, for each census tract as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year, the total value of QOZ business property directly owned or leased by the applicable QOZB that is real property and the total number of residential units. Proposed § 1.6039L-1(b)(4)(vi) would require the applicable QOZB to provide the approximate average monthly number of full-time equivalent employees of the QOZB that work within the population census tract for the calendar year ending with or within the applicable QOZB's taxable year. *See* part II.B.2. of this Explanation of Provisions for the rationale behind requesting this information as of December 31 of the year ending with or within the applicable QOZB's taxable year. Comments are requested regarding whether the use of December 31 for this information creates any undue burdens for applicable QOZBs. Finally, to avoid double counting of information provided for the public reporting requirement if multiple QOFs have investments in the same applicable QOZBs, proposed § 1.6039L-1(b)(2) would require the applicable QOZB to report the percent of equity ownership or (if applicable) capital or profits interest in the applicable QOZB by the relevant QOF as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year.

Proposed § 1.6039L-1(b)(3) would require the applicable QOZB to provide the value of all of its tangible property

(including tangible property that is QOZ business property and tangible property that is not QOZ business property) held as of the applicable QOZB's testing dates. This information is required to be reported by the QOF to the IRS under sections 6039K(b)(5)(E) and (b)(5)(F). Without this information, the QOF would not likely be able to make a complete and accurate report to the IRS, which would impair the ability of the Secretary to make a complete and accurate public report, as required under section 70421(e) of the OBBBA. Additionally, in order to be characterized as a QOZB, an entity must meet the 70-percent tangible property standard, which requires that at least 70 percent of the tangible property owned or leased must be QOZ business property. The value of the owned and leased property is used in calculating this 70-percent tangible property standard. If an entity does not satisfy this standard, the equity in that entity might not be treated as QOZ property by the QOF.

3. Other Information Regarding Compliance With QOZB Requirements

These proposed regulations would require certain additional information to be furnished to the relevant QOFs that is not specifically enumerated in section 6039K(b)(5) but is nonetheless required in order for the relevant QOFs to provide accurate information in response to the specifically enumerated information requested by that section.

Section 6039L(a) provides that the Secretary may by regulations require the applicable QOZB to furnish such information to assist the QOF in meeting the requirements of section 6039K(b)(5). Section 6039K(b)(5) provides that the QOF must report such information for investments that are treated by the QOF as QOZ stock or QOZ partnership interests. However, in order for the relevant QOF to know whether it can treat its investments as QOZ stock or QOZ partnership interests (and whether it must provide the information required under section 6039K(b)(5) with respect to such investments), the entity in which the QOF invests must be a QOZB for substantially all of the QOF's holding period of such investment. Under section 1400Z-2(d)(3) and § 1.1400Z2(d)-

2(d)(1), to be treated as a QOZB for substantially all of the QOF's holding period of such investment, the entity in which the QOF invests must satisfy the 70-percent tangible property standard with respect to its tangible property; must be engaged in a trade or business that satisfies the requirements of sections 1397C(b)(2), (4) and (8); and must not be a trade or business listed in section 144(c)(6)(B).

Under section 1400Z-2(d)(2)(D)(i), tangible property must meet three requirements in order to be treated as QOZ business property. First, the property must be acquired after December 31, 2017, which is modified by section 70421(c)(4)(A) of the OBBBA to require that the property be acquired after the applicable start date (as defined in section 1400Z-1(e)(2)). Second, the original use of the property must commence with the QOF or QOZB in the QOZ or the QOF or QOZB must substantially improve the property, as provided in section 1400Z-2(d)(2)(D)(ii). And third, during substantially all of the QOF or QOZB's holding period for such property, substantially all of the use of the property was in a QOZ. If such property meets all of these requirements, it is characterized as QOZ business property and may be used by the QOZB in determining its 70-percent tangible property standard and compliance with the other statutory and regulatory requirements of section 1400Z-2(d)(3). This determination would then assist the QOF in reporting the investment on its Federal tax return.

Thus, these proposed regulations would require applicable QOZBs to furnish additional information to the relevant QOFs to provide information sufficient for the relevant QOF to determine if the equity investments it holds in another entity may be characterized as QOZ stock or QOZ partnership interests about which it is required to provide the information specifically enumerated in section 6039K(b)(5). This information would provide an additional compliance benefit since it would also enable the relevant QOF to determine if the equity investments can be included in the numerator of the QOF's calculation of the 90-percent investment standard. As a corollary, these proposed regulations would also enable the relevant QOFs to provide information to the IRS to help in determining whether these equity invest-

ments are compliant with section 1400Z-2(d)(3) and the regulations thereunder.

Examples of information that would be requested for these purposes include proposed § 1.6039L-1(b)(3), which would require the applicable QOZB to provide the value of all of its tangible property (including tangible property that is QOZ business property and tangible property that is not QOZ business property) held as of the applicable QOZB's testing dates. Additionally, proposed § 1.6039L-1(b)(4) (vii) would require the applicable QOZB to provide the first date that any QOZ business property directly owned or leased by the applicable QOZB was leased or purchased by the applicable QOZB. For similar reasons, proposed § 1.6039L-1(b)(4) (viii) would require the applicable QOZB to inform the relevant QOF whether there is any QOZ business property within each census tract that the applicable QOZB is substantially improving and (if applicable) the date on which that improvement began. In addition, proposed § 1.6039L-1(b)(4)(ix) would require the applicable QOZB to inform the relevant QOF, with respect to each census tract in which QOZ business property is directly owned or leased by the applicable QOZB, whether the applicable QOZB is utilizing a working capital safe harbor to acquire, construct, or substantially improve tangible property in a QOZ, as provided in § 1.1400Z2(d)-1(d)(3). The applicable QOZB would also be required to provide, if applicable, the date that the working capital safe harbor is expected to end.

In addition, for the same reasons, proposed § 1.6039L-1(b)(5) would require the applicable QOZB to provide an attestation that the applicable QOZB meets all the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d) including that—

- The applicable QOZB meets the 70-percent tangible property standard;
- The applicable QOZB meets the gross income requirement under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3);
- The applicable QOZB meets the use of intangible property requirement under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3);
- The applicable QOZB satisfies the non-qualified financial property lim-

itation under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3); and

- The trade or business of the applicable QOZB is not described in section 144(c)(6)(B).

If the applicable QOZB cannot provide this attestation because the applicable QOZB does not meet all the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d), proposed § 1.6039L-1(b)(6) would require the applicable QOZB to provide an attestation that the applicable QOZB is utilizing the cure period, as defined in § 1.1400Z2(d)-1(d)(6), to correct its failure to meet the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d). This statement would also be required to include the month in which the stock or partnership interest of the applicable QOZB lost its qualification as qualified opportunity zone stock or a qualified opportunity zone partnership interest. A QOF receiving this information would be better able to determine whether its investments in the entity may be treated as QOZ stock or QOZ partnership interests before, during, and after the cure period. This information would also help ensure compliance with the statutory requirements of section 1400Z-2(d), as each QOF is only entitled to one cure period per QOZB, as provided in § 1.1400Z2(d)-1(d)(6)(iii).

Finally, proposed § 1.6039L-1(b)(7) would also require the applicable QOZB to report whether it used the applicable financial statement valuation method or the alternative valuation method, as defined in § 1.1400Z2(d)-1(b)(3) and (4), respectively, in providing any valuation information that would be required under proposed § 1.6039L-1(b)(1) through (8). Proposed § 1.6039L-1(b)(8) would require the applicable QOZB to provide to the relevant QOF such other information as the relevant QOF is required to report with respect to the applicable QOZB as set forth in Form 8996 or instructions. It is anticipated that the IRS will issue a publication or other announcement to inform applicable QOZBs of any new information that should be included on the QOZB statements in order for the relevant QOFs to meet their reporting obligations under section 6039K.

C. Time and manner for furnishing the QOZB statements

Section 6039L(a) authorizes the Secretary to determine the due date for furnishing the QOZB statements. As discussed in part III.B.1. of this Explanation of Provisions, these proposed regulations would generally require applicable QOZBs to furnish information needed by the QOFs to compute their 90-percent investment standard as of testing dates that are based on the QOZB's taxable year. The Treasury Department and the IRS are of the view that, for the overwhelming majority of QOFs and QOZBs operating on a calendar year basis (or on the same fiscal year basis), the due date for furnishing the QOZB statements should be a reasonable time after the end of the QOZB's taxable year but in advance of the due date of the relevant QOF's Federal tax return because relevant QOFs need the information on the furnished QOZB statements to meet their filing obligations under section 6039K.

Because it would be administratively burdensome to require applicable QOZBs to determine whether the relevant QOFs to which the applicable QOZBs must furnish a QOZB statement will obtain an extension to file their Federal tax returns, these proposed regulations would require a due date for the furnished statements in advance of the due date of the relevant QOF's Federal tax return without extensions. Under section 6072(b), returns of calendar year QOFs that are partnerships are required to be filed on or before March 15 following the close of the calendar year to which the return applies, and returns made on the basis of a fiscal year are required to be filed on or before the 15th day of the third month following the close of the fiscal year. Under section 6072(a), returns of calendar year QOFs that are corporations are required to be filed on or before April 15 following the close of the calendar year to which the return applies, and returns made on the basis of a fiscal year are required to be filed on or before the 15th day of the fourth month following the close of the fiscal year. Given these unextended due dates, proposed § 1.6039L-1(d)(1) would require every applicable QOZB required to furnish a QOZB statement to one or more relevant QOFs to furnish those statements on or

before the 1st day of the second month following the close of the applicable QOZB's taxable year. For calendar year QOZBs, this rule would result in QOZB statements being due on February 1, which is one and a half months before the date that a relevant QOF's partnership return would be due and two and a half months before the date that a relevant QOF's corporate return would be due. Comments are requested regarding whether this due date would provide applicable QOZBs with sufficient time to complete the QOZB statements. Comments are also requested regarding whether this due date would provide relevant QOFs with sufficient time to comply with their reporting obligations under section 6039K.

Proposed § 1.6039L-1(d)(2) would permit an applicable QOZB to furnish the QOZB statement using any form that includes all the information set forth in proposed § 1.6039L-1(b). If the IRS prescribes a form for this QOZB statement, however, proposed § 1.6039L-1(d)(2) would require that the applicable QOZB use that prescribed form or a form that contains provisions that are substantially similar to those in the prescribed form. Additionally, proposed § 1.6039L-1(d)(2) would provide that a QOZB statement is considered furnished to a relevant QOF if it is mailed to the last known address of the relevant QOF and is considered furnished on the date that it is so mailed. Proposed § 1.6039L-1(d)(2) would also permit an applicable QOZB to furnish the QOZB statement in an electronic format in lieu of a paper format if the relevant QOF consents in writing (including electronically) to the electronic furnishing of the QOZB statement. Proposed § 1.6039L-1(d)(2) would also provide that QOZB statements electronically furnished pursuant to the consent of the relevant QOF will be treated as furnished on the date that the statement is electronically transmitted to the relevant QOF.

IV. Proposed §§ 1.6011-2(b)(1), 1.6011-3(d)(4), 1.6011-5(d)(4), and 1.6037-2(d)(3)

Generally, under sections 6011(e)(1), (2) and (5), the Secretary may not require a person to file a return electronically unless that person is required to file at

least 10 returns during that calendar year. Section 70421(d)(3) of the OBBBA added section 6011(e)(8) to the Code, which generally provides that any return filed by a QOF or qualified rural opportunity fund under section 6039K must be electronically filed. To ensure that Form 8996 is counted as a return in determining if the filer has filed 10 returns for purposes of the QOF's other return filing obligations, proposed § 301.6011-2 would be amended to include Form 8996 as a form used for the purpose of making an information return. In addition, proposed § 301.6011-3(d)(4), proposed § 301.6011-5(d)(4), and proposed § 301.6037-2(d)(3) would be amended to clarify that a Form 8996 is a separate return from the partnership return, corporate income tax return, or electing small business corporation return, respectively, to which the Form 8996 is attached for purposes of determining if the QOF is required to file at least 10 returns for the year.

V. Proposed § 1.6045-1

As discussed in parts II.B.3.a. and C.2. of this Explanation of Provisions, to ensure that the IRS receives information returns with respect to disposition events of customers for whom brokers hold QOF investments and to ensure that these brokers' customers receive investor statements that they need to prepare their Federal tax returns with respect to these transactions, the proposed rules under § 1.6039K-1 would require QOFs to inform any broker that holds a QOF interest on behalf of a customer that a disposition event occurred. This is particularly important because, although it is likely that the broker would know which customer disposed of the ownership interest in the QOF (and it is unlikely that the QOF would know the name of such customer), it is unlikely that the broker would know that the QOF voluntarily decertified. To ensure that the IRS and customers receive information about these disposition events as related to specific customers of the broker, these proposed regulations would modify § 1.6045-1 to require brokers to report this information to the IRS and furnish statements with this information to the impacted customer. Accordingly, proposed § 1.6045-1(a)(9)(i) would expand

the definition of a sale that a broker is required to report to the broker's customers to include an inclusion event as defined in § 1.1400Z2(b)-1(c)(1)(iv) caused by the voluntary decertification of a QOF as defined in § 1.1400Z2(d)-1(a)(3). In addition, proposed § 1.6045-1(d)(2)(i)(A) would expand the information that a broker would be required to report to the IRS with respect to a sale of a QOF investment to include whether the sale constitutes the disposition of an ownership interest in a QOF or constitutes an inclusion event as defined in § 1.1400Z2(b)-1(c). These changes would ensure that both the IRS and investors in publicly traded QOFs (customers of the broker) are made aware of these taxable transactions.

Comments are requested regarding whether these additional reporting requirements create any undue burdens for brokers.

VI. Proposed §§ 301.6722-1 and 301.6724-1

To conform with the OBBBA's addition of investor statements and QOZB statements to the definition of "payee statements" that are subject to the \$250 penalty (inflation adjusted) for each failure to furnish a payee statement (or failure to furnish a correct information statement) under section 6722(a), proposed § 301.6722-1(e)(2)(xxxix) and (xl) would modify the definition of "payee statements" subject to these penalties to include investor statements required by section 6039K(c) and QOZB statements required by section 6039L.

As discussed in part II.B. of the Background, because the OBBBA added section 6726 as an additional information reporting penalty to part II of subchapter B of chapter 68 of the Code, the reasonable cause waiver under section 6724 applies to penalties under section 6726. Accordingly, the proposed regulations would modify the references to the penalties to which the reasonable cause (and not willful neglect) rules apply to include the penalty under section 6726.

VII. Proposed § 301.6726-1

The proposed regulations under section 6726 applicable to QOFs that fail to

meet their information reporting requirements under section 6039K generally follow the statutory amendments made by the OBBBA. Proposed § 301.6726-1(a)(1) would impose a penalty of \$500 for each day that a QOF, required to file an information return by section 6039K (that is, Form 8996 (or any successor form) referred to in proposed § 301.6726-1 and this part VII as section 6039K return), fails to file such return. Proposed § 301.6726-1(a)(1) would also provide that no more than one penalty would be imposed under section 6726 with respect to a single section 6039K return, even though there may be more than one failure with respect to such return. Proposed § 301.6726-1(a)(1) would also add a cross reference to the penalty waiver rules under section 6724 applicable to a failure that is due to reasonable cause. *See* part VI. of this Explanation of Provisions for an explanation of proposed § 301.6724-1.

Proposed § 301.6726-1(a)(2)(i) would limit the scope of "failures" subject to this penalty as a failure to file the section 6039K return on or before the required filing date (failure to file timely) and any failure to include all the information required to be shown on the section 6039K return or including incorrect information (failure to include correct information).

A failure to file timely, under proposed § 301.6726-1(a)(2)(ii) would include a failure to file in the required manner, for example, electronically or in other machine-readable form as provided under section 6011(e). Thus, to the extent the instructions to Form 8996 require that the section 6039K return be filed electronically, a penalty for the failure to file timely would apply to a QOF that mails a paper section 6039K return to the IRS. In addition, under proposed § 301.6726-1(a)(2)(ii), a failure to include correct information would include a failure to include all information required by § 1.6039K-1(b), Form 8996 (or any successor form) and the applicable form instructions. Finally, under proposed § 301.6726-1(a)(2)(ii), a failure to include information in the correct format could be either a failure to file timely an information return, or a failure to include correct information on the information return. For example, an error on an electronic submission to the IRS that prevents processing by the IRS may

constitute a failure to file timely under this proposed rule. However, if information is set forth in the wrong field of the electronic submission, that error may constitute a failure to file timely or a failure to include correct information under this proposed rule, depending upon the extent of the failure.

Proposed § 301.6726-1(a)(3) would make it clear that the per-day penalty imposed under § 301.6726-1(a) terminates on the day that the QOF files the section 6039K return (showing all the correct information required to be shown on that return) as provided in § 1.6039K-1(g)(2).

Proposed § 301.6726-1(b) provides limitations on the penalty that may be imposed under section 6726 with respect to any one section 6039K return. Proposed § 301.6726-1(b)(1) would generally limit the total penalty amount that may be imposed on any person under section 6726 with respect to a single section 6039K return to \$10,000. Proposed § 301.6726-1(b)(2) would raise that maximum \$10,000 penalty to \$50,000; however, in the case of any single section 6039K return failure if that return is required to be filed by a large QOF. For this purpose, a large QOF would mean a QOF with gross assets (determined on the last day of the QOF's taxable year) that exceed \$10,000,000. Proposed § 301.6726-1(d) would provide that each of these dollar amounts would be adjusted for inflation pursuant to section 6726(d). Like the cost-of-living inflation adjustment applicable to the information reporting penalty under section 6721, these inflation adjustments are made annually pursuant to revenue procedures published in the IRB.

Proposed § 301.6726-1(c) imposes higher penalties if a failure is due to intentional disregard of the requirement to file timely correct information returns. If a failure to file timely or to include correct information is due to intentional disregard of the requirement to file timely or to include correct information on a return, the per-day penalty would be increased from \$500 to \$2,500 and the annual cap would be increased to \$50,000 (or \$250,000 for a large QOF), per return. To define "intentional disregard" for this purpose, similar to the rules in § 301.6721-1(g)(2), proposed § 301.6726-1(c)(2) would provide that a failure to file timely or to include

correct information is due to intentional disregard if it is a knowing or willful failure. Whether a person knowingly or willfully fails to file timely or fails to include correct information would be determined on the basis of all the facts and circumstances in the particular case. Like the information reporting penalty regulations under § 301.6721-1(g)(3), proposed § 301.6726-1(c)(3) would set forth facts and circumstances that are considered in determining whether a failure is due to intentional disregard. These facts include, but are not limited to: (i) whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information; (ii) whether correction was promptly made upon discovery of the failure; (iii) whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the IRS to file or to correct; and (iv) whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return. Comments are requested regarding whether this definition and the associated facts and circumstances create any undue burdens for QOFs.

Proposed Applicability Dates

The proposed regulations under section 1400Z-2 regarding the QOF certification and decertification requirements and QOZ business property are proposed to be applicable to taxable years ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*. The proposed regulations regarding information returns under sections 6039K(a) and 6045(a) and information reporting penalties under section 6726 are proposed to apply to information returns and investor statements required to be filed or furnished (without regard to extensions of the filer's annual return) on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*. The proposed regulations regarding statements required to be fur-

nished under sections 6039K(c), 6045(b), and 6039L(a) and information furnishing penalties under section 6722 are proposed to apply to investor statements, QOZB statements, and payee statements required to be furnished on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*. Finally, the proposed regulations under sections 6011 and 6037 that would require Form 8996 to be counted as a return in determining if the QOF has filed 10 returns for purposes of the QOF's electronic return filing obligations are proposed to apply to returns required to be filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the *Federal Register*.

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The collections of information in these proposed regulations are required under sections 6039K and 6039L of the Code. Proposed § 1.6039K-1(b) would generally require QOFs to report to the IRS certain information set forth in proposed § 1.6039K-1(c) and (d) with respect to the QOFs' operations and investments. Proposed § 1.6039K-1(b) would also require QOFs to report to the IRS certain information set forth in proposed § 1.6039K-1(f) with respect to investors

whose QOF investments were subject to a disposition event during each calendar year. Responses to this collection of information are mandatory. This collection of information would be satisfied by filing an updated Form 8996, annually in the manner set forth in the instructions to Form 8996. The form would be revised to include the additional items listed in proposed § 1.6039K-1(c), (d), and (f) that are not already included on the pre-existing Form 8996. This information is necessary to allow the IRS to verify whether the entities qualify for QOF status and whether investors in these entities qualify for related income tax benefits under sections 1400Z-1 and 1400Z-2.

Proposed § 1.6039K-1(h) would also require QOFs to furnish investor statements to every investor who had a disposition event during the calendar year. Publicly traded QOFs would be required to furnish these investor statements to every broker acting as an intermediary for an investor that had a disposition event during the year to the extent the QOF does not otherwise know the identity of the investor for whom the broker acts. The investor statement furnished to the broker would contain the same information pertaining to the investor reported to the IRS under proposed § 1.6039K-1(f). There is no prescribed form for this furnishing requirement. This information is necessary to provide notice of disposition events to investors, and to allow them to determine the tax consequences of these events under section 1400Z-2.

Brokers that receive the investor statements described in the previous paragraph would thereafter be required, pursuant to proposed § 1.6045-1(a)(9)(i) and (d)(2)(i) (A), to report to the IRS the information received with respect to each investor that had a disposition event during the year. This collection of information would be satisfied by filing an updated Form 1099-B, annually. This information is necessary to provide notice of disposition events to investors, and to allow them to determine the tax consequences of these events, including under section 1400Z-2, as well as to allow the IRS to verify whether QOF investors qualify for related income tax benefits under section 1400Z-2.

Proposed § 1.6039L-1(b) would generally require applicable QOZBs to furnish

annual QOZB statements to QOFs who hold qualified opportunity zone stock or a qualified opportunity zone partnership interest in the applicable QOZBs. These QOZB statements would contain information regarding the applicable QOZBs' operations. Responses to this collection of information are mandatory. This information is necessary to allow the QOFs receiving these statements to comply with their reporting obligations under proposed § 1.6039K-1(b).

The burdens associated with the collections of information in these proposed regulations will be included in Form 8996 and its instructions and approved under OMB control number 1545-0123, and in Form 1099-B and its instructions and approved under OMB control number 1545-0715, in accordance with PRA procedures under 5 CFR 1320.10.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to "prepare and make available for public comment an initial regulatory flexibility analysis," which will "describe the impact of the rule on small entities." *See* 5 U.S.C. 603(a). Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed regulations. The Treasury Department and the IRS have not determined whether these proposed regulations, when finalized, will have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of a significant economic impact on a substantial number of small entities, these proposed regulations include an IRFA. The Treasury Department and the IRS invite comments on both the number of entities affected by these proposed regulations and the economic impact of these proposed regulations on small entities.

A. Need for and Objectives of the Rule

These proposed regulations are needed to clarify the rules governing the time

and form of information reporting under sections 6039K and 6039L, to define key terms relating to the information reporting required, and to establish supplementary information requirements pursuant to section 6039K(b)(9). In addition, the proposed regulations would provide the rules necessary to administer information reporting penalties under sections 6722 and 6726 and to clarify that the reasonable cause rules under section 6724 apply to the newly enacted penalty under section 6726.

The proposed regulations are intended to facilitate information sharing between applicable QOZBs and QOFs, to enable QOFs to meet their statutory information reporting obligations to the IRS regarding whether 90 percent of the QOF's assets are invested in QOZ property as required under section 1400Z-2. Additionally, the proposed regulations are intended to permit QOF investors to have a clear understanding of, and for the IRS to have clear visibility into, the investor's eligibility for specified QOZ tax benefits. Finally, the proposed regulations would enable the Secretary to publish annual reports that would enable policy makers to evaluate the impact of sections 1400Z-1 and 1400Z-2 on investment in QOZs.

B. Affected Small Entities

Small Business Administration (SBA) regulations provide small business size standards by NAICS Industry. *See* 13 CFR 121.201; 15 U.S.C. 632(a)(2)(A). The entities impacted by these proposed regulations would be QOFs, which invest in QOZ property, and QOZBs, which are entities engaged in trades or businesses within QOZs. Because qualification as either entity type is dependent on the relationship to one or more QOZs rather than participation in any particular industry, there could be a large number of NAICS codes representing QOZ entity investments or business operations. Thus, while it is difficult to characterize impacted entities as falling under any one specific NAICS industry or code, it is expected that QOFs and QOZBs will undertake significant economic activity, such as construction, as part of the development of the trades or businesses they will operate in the designated opportunity zones.

The NAICS classification system includes construction as sector 23, with three construction industry subsector tables. According to SBA regulations, the lowest maximum annual receipts for a concern and its affiliates within the construction sector to be considered small is \$19 million. *See* 13 CFR 121.201. Based on tax return data for tax year 2023, approximately 11,280 of the estimated 11,300 QOFs (approximately 99.8%) had total positive income less than \$19 million (small QOFs). The 2023 tax return data for QOZBs is less complete due to the inability to identify all tax returns filed by these entities. Nonetheless, of the 7,900 tax returns for 2023 that are identifiable as returns for QOZBs, approximately 7,800, or 98.7 percent, had total positive income less than \$19 million (small QOZBs).

a. Impact of the Rules

The proposed regulations would require every QOF to prepare and file Form 8996 each year. The average time to complete Form 8996 per QOF is estimated to be 1.25 hours per form, with a monetized hourly burden of \$62.83. Accordingly, the total combined annual burden for all of the estimated 11,280 small QOFs to complete and file the updated Form 8996 is estimated to be 14,100 hours of time burden (11,280 x 1.25) and \$885,903 of monetized burden (11,280 x 1.25 x \$62.83). These estimates are based on survey data collected from filers of the current Form 8996. No material increase is expected in the start-up costs to complete the updated form. There is no available data to predict the increase in the number of QOFs that will file Forms 8996. In addition, the requirement that QOFs furnish investor statements pursuant to section 6039K(c) in lieu of comparable Form 1099-B statements is not expected to result in a material increase in burden for these small QOFs.

The proposed regulations would require applicable QOZBs to prepare and furnish a QOZB statement to each relevant QOF. The average time to complete a QOZB statement per QOZB is estimated to be 1.25 hours per form, with a monetized hourly burden of \$62.83. Accordingly, the total combined annual burden for all of the estimated 7,800 small QOZBs to

complete and furnish the QOZB statement is estimated to be 9,750 hours of time burden (7,800 x 1.25) and \$612,593 of monetized burden (7,800 x 1.25 x \$62.83). These estimates are based on the fact that the QOZB will have to provide all of the information in certain parts of Form 8996. No material increase in start-up costs to collect and report the additional information on the QOZB statement is expected. There is no available data to predict the increase in the number of QOZBs that will furnish the QOZB statements.

These estimates could potentially increase once the proposed regulations are finalized and applicable. However, data that would allow for an accurate estimate of any increases is not currently available.

b. Alternatives Considered

The Treasury Department and the IRS considered alternatives to these proposed regulations but have been unable to identify any that would also allow QOFs and QOZBs to satisfy the obligations of sections 6039K and 6039L. The information reports set forth in these proposed regulations are required by statute, and exemptions for impacted entities based on size or other criteria are not permissible. Exemptions for certain small business QOZBs from the requirement to furnish a QOZB statement to their QOF investors would negatively impact the ability of those QOFs to meet their statutory obligation to file their Forms 8996. Exemptions for certain small business QOFs from the requirement to file Forms 8996 with the IRS would also render the proposed regulations unenforceable and could lead to inaccurate or incomplete information on the annual reports required to be issued by the Secretary. Additionally, exemptions for certain small business QOFs from the requirement to furnish statements to investors disposing of a QOF interest would pose tax administration difficulties for the IRS and could lead to inaccurate information reflected on the investor's annual tax return. In short, because, as indicated in Part III.B. of this Special Analysis, more than 99 percent of QOFs and 98 percent of QOZBs would be treated as small businesses under relevant SBA regulations, any small business exemption from the regulatory requirements would effectively

void the statutory requirements imposed by the OBBBA. Finally, given the statutory language of sections 6039K and 6039L, which generally gives the Secretary the authority to set the time and manner for the information reporting and to require the reporting of certain additional information, it is unlikely that the Secretary has the authority to exempt small businesses from these information reporting requirements.

c. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This proposed regulation does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

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

VI. *Small Business Administration*

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

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be made available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A telephonic public hearing has been scheduled for November 5, 2026, beginning at 10 a.m. ET. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 13, 2026. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by October 13, 2026, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-116506-25 and the language TESTIFY Telephonically. For example, the subjectline may say: Request to TESTIFY Telephonically at Hearing for REG-116506-25.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-116506-25 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-116506-25. Requests to attend the public hearing telephonically must be received by 5:00 p.m. ET on November 3, 2026.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing, please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by November 2, 2026.

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these regulations are Roseann Cutrone, Office of the Associate Chief Counsel (Procedure and Administration) and Dominic DiMattia, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS, including Jane Murphy, Office of the Associate Chief Counsel (Procedure and Administration), and Rishi Jain, Office of the Associate Chief Counsel (Income Tax and Accounting), participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.6039K-1 and 1.6039L-1 to read in part as follows:

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

Section 1.1400Z2(a)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(b)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(d)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

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

Section 1.6039K-1 also issued under 26 U.S.C. 6039K.

Section 1.6039K(a) through (d).

Section 1.6039L-1 also issued under 26 U.S.C. 6039L.

Section 1.6039L(a).

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

1. Revising the entries for § 1.1400Z2(d)-1(a)(2) and (3);

2. Adding an entry for § 1.1400Z2(d)-1(e)(3); and

3. Revising the entry for § 1.1400Z2(d)-2(d)(3).

The additions and revisions read as follows:

§ 1.1400Z2-0 Table of Contents.

* * * * *

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

* * * * *

(j) * * *

(3) Paragraph (c)(15) of this section.

* * * * *

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

(a) * * *

(2) Required self-certification of an eligible entity as a QOF.

(3) Voluntary decertification of a QOF.

* * * * *

(e) * * *

(3) Applicability date.

§ 1.1400Z2(d)-2 Qualified opportunity zone business property

* * * * *

(d) * * *

(3) Substantially all of a QOF's or qualified opportunity zone business's holding period for owned or leased tangible property.

* * * * *

Par. 3. Section 1.1400Z2(b)-1 is amended by revising paragraph (c)(15) and adding paragraph (j)(3) to read as follows:

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

* * * * *

(c) * * *

(15) *Decertification of a QOF.* The decertification of a QOF, whether a voluntary decertification pursuant to § 1.1400Z2(d)-1(a)(3) or an involuntary decertification, is an inclusion event.

* * * * *

(j) * * *

(3) *Paragraph (c)(15) of this section.* The rules of paragraph (c)(15) of this section apply to taxable years ending on or after [date of publication of final regulations in the *Federal Register*].

Par. 4. Section 1.1400Z2(d)-1 is amended by:

1. In paragraph (a), revising the second sentence.

2. Revising paragraphs (a)(2) and (3); and

3. Adding paragraph (e)(3).

The additions and revisions read as follows:

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

(a) * * * Paragraphs (a)(2) through (4) of this section provide rules that an eligible entity must follow to be certified as a QOF and to revoke an inadvertent self-certification of a QOF, as well as rules for the decertification of a QOF. * * *

* * * * *

(2) *Required self-certification of an eligible entity as a QOF*—(i) *In general.* An entity that satisfies the requirements of paragraphs (a)(2)(ii)(A) through (D) of this section to make an election to self-certify as a QOF will be treated as a QOF from the date the self-certification under this paragraph (a)(2) is effective.

(ii) *Time, form and manner*—(A) *Timely filing requirement.* The election for a self-certification as a QOF must be timely filed on Form 8996, *Qualified Opportunity Fund*, or any successor form, in the manner set forth in the instructions to that form by the due date for the eligible entity's original Federal tax return (including extensions) for the first taxable year identified under paragraph (a)(2)(ii)(B) of this section. See paragraph (a)(2)(iii) of this section for information required to be reported by QOFs annually.

(B) *First taxable year and month identified.* The self-certification of an eligible entity as a QOF must identify the first taxable year for which the self-certification takes effect and the first month (in that first taxable year) in which the self-certification takes effect.

(1) *Failure to specify first month.* If the eligible entity's self-certification as a QOF fails to specify the month in the initial taxable year that the self-certification takes effect, then the self-certification is treated as taking effect in the first month of the entity's taxable year.

(2) *Investments made before eligible entity's first month as QOF not eligible for*

deferral. If an investment in eligible interests of an eligible entity occurs prior to the eligible entity's first month as a QOF, any election under section 1400Z-2(a)(1) made for that investment is invalid and the investment is a non-qualifying investment.

(C) *Becoming a QOF in a month that is not the first month of the taxable year.* This paragraph (a)(2)(ii)(C) applies to an eligible entity if its self-certification as a QOF is first effective for a month that is not the first month of that entity's taxable year.

(1) For purposes of applying section 1400Z-2(d)(1)(A) and (B) in the first year of the QOF's existence, the phrase *first six-month period of the taxable year of the fund* means the first six months each of which is in the taxable year of the QOF and in each of which the entity is a QOF. Thus, if an eligible entity becomes a QOF in the seventh or later month of a 12-month taxable year, the 90-percent investment standard in section 1400Z-2(d)(1) takes into account only the QOF's assets on the last day of the QOF's taxable year.

(2) The computation of any penalty under section 1400Z-2(f)(1) does not take into account any months before the first month in which an eligible entity is a QOF.

(D) *Organized for the purpose of investing in qualified opportunity zone property.* The self-certification must include an affirmative statement that the entity is organized for the purpose of investing in qualified opportunity zone property.

(iii) *Annual information requirements under section 6039K.* For all taxable years in which the entity is self-certified as a QOF, see § 1.6039K-1 for the information required to be reported annually.

(iv) *Revoking an inadvertent election to self-certify as a QOF*—(A) *In general.* Except as otherwise provided in this paragraph (a)(2)(iv), an election to self-certify as a QOF made under this paragraph (a)(2) is not revocable. Notwithstanding the previous sentence, an entity that previously made an inadvertent election to self-certify as a QOF may revoke that election if the entity satisfies the eligibility requirement in paragraph (a)(2)(iv)(B) of this section and the revocation is filed in accordance with the procedures set forth in paragraph (a)(2)(iv)(C) of this section.

(B) *Eligibility for revoking an inadvertent election.* An entity self-certified as a QOF may revoke its inadvertent election to self-certify as a QOF only if no qualifying investment in the QOF was made.

(C) *Procedure for revoking an inadvertent election.* An inadvertent election to self-certify as a QOF may be revoked only with the consent of the Commissioner in accordance with guidance published in the Internal Revenue Bulletin or in forms and instructions as to the required time, form, and manner for such consent.

(D) *No certification at a later date.* An entity that has revoked its inadvertent election to self-certify as a QOF under this paragraph (a)(2)(iv) may not self-certify as a QOF at any future date. The taxpayer identification number assigned to the entity that has revoked its inadvertent election to self-certify as a QOF may not be used by any other entity to self-certify as a QOF.

(3) *Voluntary decertification of a QOF*—(i) *In general.* A QOF may voluntarily terminate its certification as a QOF (voluntary decertification) only if the QOF maintains in its books and records contemporaneous written documentation, as defined in paragraph (a)(3)(iii) of this section, of the QOF's intent to terminate its certification as of the QOF's identified effective date of voluntary decertification.

(ii) *Final form.* The election to voluntarily decertify as a QOF during the QOF's taxable year must be timely filed on a Form 8996, or any successor form, (final information return) in the manner set forth in the instructions to that form by the due date for the eligible entity's original Federal tax return (including extensions) for the taxable year. In addition, the Form 8996 must include the last month that the QOF seeks to be certified as a QOF.

(iii) *Contemporaneous written documentation.* A QOF that chooses to voluntarily decertify as a QOF during its taxable year must maintain in its books and records contemporaneous written documentation, as defined in paragraph (a)(3)(iii)(A) of this section, that memorializes the entity's intent to terminate its certification as a QOF and identifies the last month for which the entity is certified as a QOF.

(A) *Definition.* For purposes of this paragraph (a)(3), the term *contemporaneous written documentation* means written

documentation created at the same time a QOF makes the determination that it will terminate its certification as a QOF.

(B) *Example of contemporaneous written documentation.* An example of contemporaneous written documentation includes meeting minutes memorializing a QOF's intent to voluntarily decertify as of a specific date.

(iv) *Notification to final investors regarding voluntary decertification—*

(A) *Notification requirement.* A QOF that chooses to voluntarily decertify as a QOF during its taxable year must provide a written statement of the voluntary decertification (15-day notification) to each investor that holds a qualifying or non-qualifying investment in the QOF on the QOF's effective date of voluntary decertification (final investor). This 15-day notification is separate from the requirement under section 6039K(c) and § 1.6039K-1(h) that the QOF must furnish investor statements to reportable investors. The 15-day notification must be furnished by the time and in the manner set forth in paragraphs (a)(3)(iv)(B) and (C) of this section. In addition, the 15-day notification must contain—

(I) A statement that informs each final investor referred to in this paragraph (a)(3)(iv)(A) that, if applicable, the election under section 1400Z-2(c) no longer is available for that final investor's qualifying investment because the certification of the entity as a QOF has terminated (*see* paragraph (a)(3)(vi)(C) of this section); and

(2) Any information necessary for each such final investor to report, if applicable, an inclusion event on the QOF's effective date of voluntary decertification if the voluntary decertification occurs before the inclusion date specified in section 1400Z-2(b)(1)(B).

(B) *Time for furnishing 15-day notification.* The 15-day notification described in paragraph (a)(3)(iv)(A) of this section must be furnished to each final investor by the earlier of—

(I) 15 days after the QOF's effective date of voluntary decertification, as determined under paragraph (a)(3)(vi)(A) of this section; or

(2) The date contracted upon by the parties for the receipt of such written notification by investors.

(C) *Manner for furnishing 15-day notification.* The 15-day notification required by paragraph (a)(3)(iv)(A) of this section must be made in writing and furnished to the investors using any reasonable manner.

(v) *Failure to satisfy the voluntary decertification requirements.* If a QOF fails to maintain contemporaneous written documentation of the QOF's intent to terminate its certification as required by paragraph (a)(3)(iii) of this section—

(A) The voluntary decertification of the QOF will not be valid; and

(B) The QOF will continue to be subject to the requirements of section 1400Z-2 and the section 1400Z-2 regulations, as defined in § 1.1400Z2(a)-1(b)(41).

(vi) *Consequences of a voluntary decertification—*(A) *Effective date of voluntary decertification.* A QOF's voluntary decertification is effective on the last day of the month that the QOF identifies in its contemporaneous written documentation as the last month for which the entity is certified as a QOF.

(B) *Voluntary decertification is an inclusion event—*(I) *In general.* A QOF's voluntary decertification is binding on the QOF's final investors. Each final investor that is a QOF owner, as defined in § 1.1400Z2(a)-1(b)(23), will have an inclusion event, as defined in § 1.1400Z2(b)-1(c), with respect to their qualifying investment in the QOF on the QOF's effective date of voluntary decertification. *See* § 1.1400Z2(b)-1(c)(15).

(2) *Eligibility for continued deferral of gain arising from an inclusion event due to voluntary decertification.* Gain that otherwise is required to be included in gross income by a final investor is eligible for continued deferral if the gain is reinvested in a QOF with a taxpayer identification number (TIN) that is different from the decertified QOF and all requirements to elect to defer eligible gain under section 1400Z-2(a)(1)(A) are satisfied. *See* § 1.1400Z2(a)-1(b)(11)(iv).

(C) *No section 1400Z-2(c) election permitted.* Each final investor that is a QOF owner is not eligible to make an election under section 1400Z-2(c) with regard to the sale or exchange of that investment on any date on or after the QOF's effective date of voluntary decertification. *See* § 1.1400Z2(c)-1(b)(1)(i).

(vii) *Examples.* The following examples illustrate the rules described in this paragraph (a)(3).

(A) *Example 1: Valid voluntary decertification—*

(I) *Facts.* In 2027, individuals A and B formed partnership Q, which uses a calendar taxable year, for the purpose of investing in qualified opportunity zone property. The partnership agreement does not provide for a date by which partners must receive written notification of a voluntary decertification of the partnership's status as a QOF. Q properly self-certified as a QOF as of February 1, 2027, and has thereafter complied with section 1400Z-2 and the section 1400Z-2 regulations, as defined in § 1.1400Z2(a)-1(b)(41). A acquired a qualifying investment in Q on February 28, 2027. B has a non-qualifying investment in Q. On June 30, 2030, A and B held a meeting in which A and B determined that Q would voluntarily decertify and that July of 2030 would be the last month that Q is certified as a QOF. Q memorialized the determination to voluntarily decertify and the last month of Q's certification in the meeting minutes for the meeting held on June 30, 2030, and thereafter maintained a copy of the meeting minutes in its records. On August 15, 2030, Q provided written notification to A and B of its voluntary decertification as of July 31, 2030. Q's notification informs A and B that Q is voluntarily decertifying as a QOF and that A and B may have an inclusion event on July 31, 2030, with respect to their investments in Q. Q's notification also informs A and B that they are, if applicable, no longer eligible to make an election under section 1400Z-2(c) on any date on or after July 31, 2030. Q reports its voluntary decertification on its final information return on Form 8996 with its timely filed original 2030 Form 1065, *U.S. Return of Partnership Income*. Q also reports on Form 8996 that its last month for which Q is certified as a QOF is July of 2030.

(2) *Analysis.* Q's voluntary decertification is valid because Q followed the procedures set forth in paragraph (a)(3)(i) of this section. Q satisfied the contemporaneous written documentation requirement under paragraph (a)(3)(iii) of this section by memorializing A and B's determination to terminate Q's certification as a QOF in July of 2030, in the meeting minutes for the June 30, 2030, meeting. Q also furnished the written notification of Q's voluntary decertification to its final investors, A and B, within the 15-day period required under paragraph (a)(3)(iv) of this section. Q reported its voluntary decertification on its final information return on Form 8996, which was timely filed on Q's Form 1065 for the taxable year ended December 31, 2030. The result of Q following the procedures set forth in paragraph (a)(3)(i) of this section is that Q's effective date of voluntary decertification is July 31, 2030, the last day of the month identified in Q's contemporaneous written documentation. *See* paragraph (a)(3)(vi)(A) of this section. Additionally, on that effective date, A has an inclusion event with regard to A's qualifying investment in Q. *See* paragraph (a)(3)(vi)(B)(I) of this section. Finally, B does not have an inclusion event with respect to B's investment because B held a non-qualifying investment in Q on Q's effective date of voluntary decertification.

(B) *Example 2: Disallowance of the election under section 1400Z-2(c) due to a voluntary decer-*

tification—(1) *Facts*. The facts are the same as in paragraph (a)(3)(vii)(A)(I) of this section (*Example 1*) except that A and B held a meeting on June 1, 2038, and decided to voluntarily decertify Q effective on June 30, 2038. Q memorialized the determination and the last month of Q's certification in the meeting minutes for A and B's meeting on June 1, 2038, and thereafter maintained a copy of the meeting minutes in its records. On July 15, 2038, Q provided a notification of its voluntary decertification to both A and B in accordance with paragraph (a)(3)(iv) of this section. On July 1, 2039, A sells A's investment in Q.

(2) *Analysis*. The analysis regarding whether Q followed the procedure for voluntary decertification set forth in paragraph (a)(3)(i) of this section is the same as in paragraph (a)(3)(vii)(A)(I) of this section except that Q's effective date of voluntary decertification is June 30, 2038. In addition, in determining the amount of gain recognized by A upon A's sale of its partnership interest in Q, A is not permitted to make an election under section 1400Z-2(c) with regard to A's sale. See paragraph (a)(3)(vi)(C) of this section. A did not hold a qualifying investment in Q at the time of A's sale because Q was not certified as a QOF on the date of the sale. See § 1.1400Z2(c)-1(b).

(e) ***

(3) *Applicability date*. The rules of paragraphs (a)(2) and (3) of this section apply to taxable years ending on or after [date of publication of final regulations in the *Federal Register*].

Par. 5. Section 1.1400Z2(d)-2 is amended by:

1. Revising paragraph (d)(1), the heading of paragraph (d)(3), revising paragraph (d)(3)(i), and the heading of paragraph (d)(3)(ii);
2. Adding paragraph (d)(3)(iii);
3. Revising the first sentence of paragraph (d)(4)(i); and
4. Adding paragraph (e)(3).

The additions and revisions read as follows:

§ 1.1400Z2(d)-2 Qualified opportunity zone business property.

(d) ***

(1) *In general*. In the case of tangible property that is owned or leased by either a QOF or qualified opportunity zone business, during substantially all of the QOF's or qualified opportunity zone business's holding period for the tangible property, substantially all of the use of the tangible property must be in a qualified opportunity zone.

(3) *Substantially all of a QOF's or qualified opportunity zone business's holding period for owned or leased tangible property*—(i) *In general*. For purposes of determining whether the holding period requirement in paragraph (d)(1) of this section is satisfied, the term *substantially all* means at least 90 percent. The holding period is applied on a semiannual basis, based on the entire time the QOF or qualified opportunity zone business has owned or leased such property. Thus, on each semiannual testing date of the QOF or the qualified opportunity zone business, the tangible property satisfies the 90-percent qualified opportunity zone business property holding period requirement of section 1400Z-2(d)(2)(D)(i)(II) only if, during at least 90 percent of the period during which the QOF or qualified opportunity zone business has owned or leased the property, the property has satisfied the 70-percent use test in paragraph (d)(4) of this section.

(ii) *Semiannual qualified opportunity zone business property test by a QOF*. *
* *

(iii) *Semiannual qualified opportunity zone business property test by a qualified opportunity zone business*. For purposes of determining satisfaction of the 90-percent qualified opportunity zone business property holding period test described in paragraph (d)(3)(i) of this section in the case of a qualified opportunity zone business, the determination of whether property satisfies the 70-percent use test is made on a semiannual basis on the last day of the first 6-month period and the last day of the qualified opportunity zone business's taxable year and pursuant to paragraph (d)(4) of this section.

(4) ***

(i) *** Tangible property used in a trade or business of a QOF or qualified opportunity zone business satisfies the *substantially all* requirement of paragraph (d)(1) of this section if and only if the tangible property is qualified tangible property. *
* *

(e) ***

(3) *Applicability date*. The rules of paragraphs (d)(1), (d)(3)(i) through (iii), and (d)(4)(i) of this section apply to taxable years ending on or after [date of pub-

lication of final regulations in the *Federal Register*].

Par. 6. Sections 1.6039K-1 and 1.6039L-1 are added to read as follows:

Sec.

1.6039K-1 Returns of information with respect to qualified opportunity funds and qualified rural opportunity funds.

1.6039L-1 Statements of information required to be furnished by qualified opportunity zone businesses and qualified rural opportunity zone businesses.

§ 1.6039K-1 Returns of information with respect to qualified opportunity funds and qualified rural opportunity funds.

(a) *Definitions*—(1) *90-percent investment standard*. The term *90-percent investment standard* has the same meaning as in section 1400Z-2(d)(1) and § 1.1400Z2(a)-1(b)(4).

(2) *Applicable qualified opportunity zone business*. The term *applicable qualified opportunity zone business*, or *applicable QOZB*, means any entity that meets, intends to meet, or was organized for the purposes of meeting, the requirements to be a qualified opportunity zone business as defined in section 1400Z-2(d)(3)(A) and § 1.1400Z2(d)-1(d)(1) that is—

(i) A corporation in which a qualified opportunity fund holds qualified opportunity zone stock; or

(ii) A partnership in which a qualified opportunity fund holds a qualified opportunity zone partnership interest.

(3) *Disposition event*. The term *disposition event* means any inclusion event as defined in § 1.1400Z2(b)-1(c).

(4) *Full-time equivalent employees*—

(i) *In general*. With respect to a calendar month, the number of full-time equivalent employees is the sum of—

(A) The number of employees who are employed on average at least 30 hours per week (full-time employees); plus

(B) The number of other employees, determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(ii) *Alternative calculation method for full-time employees*. In determining

if an employee is a full-time employee described under paragraph (a)(4)(i)(A) of this section, the QOF may treat the performance of at least 120 total hours of service in a calendar month as the equivalent of an average of at least 30 hours of service per week for that month.

(iii) *Rounding convention for determining non-full-time employees.* In determining the number of non-full-time employees for each calendar month under paragraph (a)(4)(i)(B) of this section, an employer must round the number of non-full-time employees for each calendar month to the nearest whole number.

(5) *Qualified opportunity fund.* For purposes of this section, the term *qualified opportunity fund*, or *QOF*, means, with respect to an entity's taxable year or portion thereof, any entity that files a self-certification under § 1.1400Z2(d)-1(a)(2)(i) for such taxable year or a portion thereof. For purposes of this section, an entity that files a self-certification under § 1.1400Z2(d)-1(a)(2) for its taxable year is treated as certified as a QOF for the portion of the taxable year beginning on the effective date identified in that self-certification.

(6) *Qualified opportunity fund testing dates.* The term *qualified opportunity fund testing dates*, or *QOF testing dates*, means the QOF's 6-month testing date and year-end testing date used for determining if the 90-percent investment standard has been met.

(i) *Qualified opportunity fund 6-month testing date.* The term *qualified opportunity fund 6-month testing date* means the last day of the first 6-month period of the taxable year of the QOF.

(ii) *Qualified opportunity fund year-end testing date.* The term *qualified opportunity fund year-end testing date* means the last day of the taxable year of the QOF.

(7) *Qualified opportunity zone.* The term *qualified opportunity zone*, or *QOZ*, has the same meaning as in section 1400Z-1(a).

(8) *Qualified opportunity zone business property.* The term *qualified opportunity zone business property*, or *QOZ business property*, has the same meaning as in section 1400Z-2(d)(2)(D) and § 1.1400Z2(a)-1(b)(30). QOZ business property may be directly owned or leased by a QOF or may be owned or leased by a QOZB.

(9) *Qualified opportunity zone partnership interest.* The term *qualified opportunity zone partnership interest*, or *QOZ partnership interest*, has the same meaning as in section 1400Z-2(d)(2)(C) and § 1.1400Z2(d)-1(c)(3).

(10) *Qualified opportunity zone stock.* The term *qualified opportunity zone stock*, or *QOZ stock*, has the same meaning as in section 1400Z-2(d)(2)(B) and § 1.1400Z2(d)-1(c)(2).

(11) *Real property.* The term *real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not tangible personal property.

(12) *Reportable investor*—(i) *In general.* The term *reportable investor* means any person that held stock or a partnership interest in the QOF for which a disposition event with respect to such stock or partnership interest occurred during the QOF's taxable year.

(ii) *Brokers that are registered/record owners of QOF stock or QOF partnership interests.* To the extent a QOF does not know the identity of the reportable investor, as defined in paragraph (a)(12)(i) of this section, due to the holding of the stock or partnership interest in the QOF for which a disposition event occurred by a broker, as defined in § 1.6045-1(a)(1), on behalf of a customer, as defined in § 1.6045-1(a)(2), during the QOF's taxable year, the term *reportable investor* includes such broker.

(13) *Residential unit.* The term *residential unit* means any building or structure for use as a dwelling unit or as a residence (including a house, apartment, condominium, mobile home or similar property) and for which a certificate of occupancy, or similar document indicating that the unit is available for use, has been received. A dwelling unit has basic living accommodations, such as a sleeping space, a toilet, and cooking facilities. A residential unit does not include property used as a hotel, motel, inn or similar establishment if it is regularly available for occupancy by paying customers on a transient basis.

(14) *Tangible personal property.* The term *tangible personal property* has the same meaning as in § 1.48-1(c).

(b) *Reporting requirement.* Every QOF must file an annual return of information on Form 8996, *Qualified Opportunity Fund* (or any successor form) to report the information set forth in paragraphs (c) through (f) of this section in the time and manner set forth in paragraph (g) of this section.

(c) *Information with respect to the QOF.* The return of information described in paragraph (b) of this section must include the information set forth in paragraphs (c)(1) through (10) of this section with respect to the QOF.

(1) The name, address and taxpayer identification number of the QOF;

(2) Whether the QOF is organized as a corporation or a partnership;

(3) Whether the QOF is organized for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2)(A) and § 1.1400Z2(d)-1(c)(1) (other than another QOF);

(4) A calculation of the 90-percent investment standard consisting of the value, determined on the QOF testing dates, of—

(i) The qualified opportunity zone property as defined in section 1400Z-2(d)(2)(A) and § 1.1400Z2(d)-1(c)(1) held by the QOF; and

(ii) All assets held by the QOF;

(5) If applicable, a calculation of the penalty under section 1400Z-2(f)(1) for failure to meet the 90-percent investment standard;

(6) The approximate average monthly number of total full-time equivalent employees of the QOF working in all locations for the calendar year in which the QOF's taxable year began;

(7) The population census tract number(s) in which QOZ business property directly owned or leased by the QOF is used, and for each of these census tracts—

(i) The physical address of the QOF's business activity;

(ii) The North American Industry Classification System (NAICS) code that applies to the QOF's business activity;

(iii) For the QOF testing dates—

(A) The total value of QOZ business property directly owned by the QOF; and

(B) The total value of QOZ business property directly leased by the QOF;

(iv) The total value of QOZ business property directly owned or leased

by the QOF that is real property as of December 31 of the calendar year ending with or within the QOF's taxable year;

(v) The total number of residential units (if any) as of December 31 of the calendar year ending with or within the QOF's taxable year;

(vi) The approximate average monthly number of full-time equivalent employees of the QOF whose primary work location is within the population census tract for the calendar year ending with or within the QOF's taxable year;

(vii) The first date that any QOZ business property was acquired by purchase or leased by the QOF; and

(viii) Whether there is any QOZ business property that the QOF is substantially improving, as provided in section 1400Z-2(d)(2)(D)(ii), and the date on which that improvement began;

(8) Whether the QOF used the applicable financial statement valuation method as defined in § 1.1400Z2(d)-1(b)(3) or the alternative valuation method as defined in § 1.1400Z2(d)-1(b)(4) to value the property necessary to provide the information set forth in paragraphs (c)(1) through (10) of this section;

(9) For a QOF that is voluntarily decertifying, as provided in § 1.1400Z2(d)-1(a)(3), for the taxable year for which the return is required—

(i) An indication that the entity is voluntarily decertifying; and

(ii) The last month for which the entity was certified as a QOF; and

(10) Such other information as required by the form or instructions.

(d) *Information with respect to each applicable QOZB.* To the extent applicable, the return of information described in paragraph (b) of this section must include the information set forth in paragraphs (d)(1) through (8) of this section with respect to each applicable QOZB in which the QOF owns an interest.

(1) The name, address, and taxpayer identification number of the applicable QOZB;

(2) The percent of equity ownership or (if applicable) capital or profits interest in the applicable QOZB by the QOF as of QOF testing dates;

(3) The value, as defined in § 1.1400Z2(d)-1(b), of the QOF's

investment in such QOZ stock or QOZ partnership interest as of the QOF testing dates;

(4) Whether the QOF received from the applicable QOZB an attestation that the applicable QOZB meets all the requirements of § 1.1400Z2(d)-1(d)(1) or (if applicable) is utilizing the cure period, as defined in § 1.1400Z2(d)-1(d)(6);

(5) The total value of tangible property of the applicable QOZB (including tangible property that is qualified opportunity zone business property and tangible property that is not qualified opportunity zone business property) held by the applicable QOZB as of the QOF's 6-month and year-end testing dates;

(6) The population census tract number(s) in which the QOZ business property directly owned or leased by the applicable QOZB is used, and for each of these census tracts—

(i) The physical address of the QOZB business activity;

(ii) The NAICS code that applies to the QOZB's business activity;

(iii) For the QOF testing dates—

(A) The total value of tangible QOZ business property directly owned by the applicable QOZB; and

(B) The total value of tangible QOZ business property directly leased by the applicable QOZB;

(iv) The total value of QOZ business property directly owned or leased by the applicable QOZB that is real property as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year;

(v) The number of residential units (if any) as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year;

(vi) The approximate average monthly number of full-time equivalent employees of the applicable QOZB whose primary work location is within the population census tract for the calendar year ending with or within the applicable QOZB's taxable year;

(vii) The first date that any QOZ business property was acquired by purchase or leased by the applicable QOZB;

(viii) Whether there is any QOZ business property that the applicable QOZB is substantially improving, as provided in section 1400Z-2(d)(2)(D)(ii), and

(if applicable) the date on which that improvement began; and

(ix) Whether the applicable QOZB is utilizing a working capital safe harbor, as provided in § 1.1400Z2(d)-1(d)(3)(v), and (if applicable) the date that the working capital safe harbor is expected to end;

(7) Whether the applicable QOZB used the applicable financial statement valuation method as defined in § 1.1400Z2(d)-1(b)(3) or the alternative valuation method as defined in § 1.1400Z2(d)-1(b)(4) to value the property necessary to provide the information set forth in paragraphs (d)(1) through (8) of this section; and

(8) Such other information as required by the form or instructions.

(e) [Reserved]

(f) *Information with respect to each reportable investor.* To the extent applicable, the return of information described in paragraph (b) of this section must also include the information set forth in paragraphs (f)(1) through (7) of this section with respect to each reportable investor that has a disposition event during the calendar year in which the QOF's taxable year began.

(1) The name, address, and taxpayer identification number of the reportable investor;

(2) For each share of stock or partnership interest in the QOF to which the disposition event applies, the date of the disposition event;

(3) For each share of stock or partnership interest in the QOF to which the disposition event applies, the date that such share or interest was acquired by the reportable investor;

(4) The amount of cash plus the fair market value of property received by the QOF in exchange for the shares or partnership interest in the QOF when first acquired by the reportable investor;

(5) The total number of shares of stock or partnership interests in the QOF held immediately before the disposition event and the total number of shares or partnership interests that were disposed;

(6) Whether the disposition event is the result of a voluntary decertification, as defined in § 1.1400Z2(d)-1(a)(3); and

(7) Such other information as required by the forms or instructions.

(g) *Time and manner for filing—(1) In general.* A QOF required by paragraph (b)

of this section to file Form 8996, *Qualified Opportunity Fund* (or any successor form) must file such form with the IRS in the manner set forth in the instructions to that form by the due date (including extensions) of the QOF's Federal tax return.

(2) *Late or corrected Forms 8996.* A QOF that has not filed Form 8996 in the manner set forth in paragraph (g)(1) of this section, or that has filed that Form but without including all the correct information required to be shown on that Form, may file the original Form 8996 (or a corrected Form 8996) in the manner set forth in the instructions to Form 8996 for a late or corrected filing. See § 301.6726-1 of this chapter for penalties that apply to the failure to file timely a correct information return under this section.

(h) *Furnishing requirement for investor statement*—(1) *General requirement and content of the investor statement.* Every QOF required to make a return of information under this section that includes information set forth in paragraph (f) of this section must furnish to the reportable investor whose identifying number is (or is required to be) shown on the return a written statement (investor statement) for each calendar year showing—

(i) The information required by paragraphs (f)(1) through (7) of this section with respect to the reportable investor;

(ii) The name, address, and phone number of a point of contact at the QOF in a position to address questions by the reportable investor regarding the furnished statement;

(iii) A legend stating that the information included on the statement is being reported to the Internal Revenue Service; and

(iv) If applicable, a statement that the reportable investor's election under section 1400Z-2(c) is no longer available because the certification of the entity as a QOF has terminated.

(2) *Time for furnishing investor statements*—(i) *In general.* A QOF must furnish the investor statement required under paragraph (h)(1) of this section on or before March 1 of the calendar year following the calendar year during which the disposition event occurred.

(ii) *Special rule for reportable investors that are brokers.* A QOF that does not know the identity of the reportable investor

described in paragraph (a)(12)(i) of this section due to the holding of the stock or partnership interest in the QOF for which a disposition event occurred by a broker, as defined in § 1.6045-1(a)(1), on behalf of a customer, as defined in § 1.6045-1(a)(2), must furnish the investor statement required under paragraph (h)(1) of this section to any broker that is the registered/record owner of the stock or partnership interest in the QOF for which a disposition event occurred and that holds such stock or partnership interest on behalf of a customer on or before January 15 of the calendar year following the calendar year of the disposition event.

(3) *Manner of furnishing investor statements to reportable investors*—(i) *In general.* An investor statement is considered to be furnished to a reportable investor if it is mailed to the last known address of the reportable investor known to the QOF and is considered to be furnished on the date that it is so mailed.

(ii) *Electronic furnishing of investor statements*—(A) *In general.* A QOF may furnish the investor statement required by paragraph (h)(1) of this section in an electronic format in lieu of a paper format by following the procedures set forth in the applicable revenue procedures relating to electronic delivery of payee statements. A QOF that electronically furnishes an investor statement by transmitting it directly to a reportable investor is treated as furnishing the investor statement on the date that the QOF electronically transmits the investor statement. A QOF that electronically furnishes an investor statement to a reportable investor by posting it to an electronically accessible online platform and thereafter sends notice to the reportable investor that the investor statement has been so posted, is treated as furnishing the investor statement on the date that the QOF sends this notice to the reportable investor.

(B) *Special rule for reportable investors that are brokers.* A QOF may furnish the investor statement required by paragraph (h)(1) of this section to a broker described in paragraph (h)(2)(ii) of this section in an electronic format in lieu of a paper format if the broker agrees to such manner of furnishing. A QOF that electronically furnishes an investor statement by transmitting it directly to a broker pur-

suant to such written agreement is treated as furnishing the investor statement on the date that the QOF electronically transmits the investor statement. A QOF that electronically furnishes an investor statement to a broker pursuant to such written agreement by posting it to an electronically accessible online platform and thereafter sends notice to the broker that the investor statement has been so posted, is treated as furnishing the investor statement on the date that the QOF sends this notice to the broker.

(i) *Cross reference to penalties*—(1) *Information return.* For provisions for failure to file timely a correct information return under this section, see § 301.6726-1 of this chapter. See § 301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Investor statements.* For provisions for failure to furnish timely a correct payee statement, see § 301.6722-1 of this chapter. See § 301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(j) *Applicability date.* This section applies to information returns and investor statements originally due (without extensions) on or after [date of publication of final regulations in the *Federal Register*].

§ 1.6039L-1 Statements of information required to be furnished by qualified opportunity zone businesses and qualified rural opportunity zone businesses.

(a) *Definitions*—(1) *70-percent tangible property standard.* The term *70-percent tangible property standard* has the same meaning as in § 1.1400Z2(a)-1(b)(2).

(2) *70-percent use test.* The term *70-percent use test* has the same meaning as in § 1.1400Z2(a)-1(b)(3).

(3) *Applicable qualified opportunity zone business.* The term *applicable qualified opportunity zone business*, or *applicable QOZB*, means any entity that meets, intends to meet, or was organized for the purposes of meeting, the requirements to be a qualified opportunity zone business as defined in section 1400Z-2(d)(3)(A) and § 1.1400Z2(d)-1(d) that is—

(i) A corporation in which a qualified opportunity fund holds qualified opportunity zone stock; or

(ii) A partnership in which a qualified opportunity fund holds a qualified opportunity zone partnership interest.

(4) *Applicable QOZB testing dates.* The term *applicable QOZB testing dates* means the applicable QOZB's 6-month testing date and year-end testing date used for determining if the 70-percent tangible property standard and the 70-percent use test have been met.

(i) *Applicable QOZB 6-month testing date.* The term *applicable QOZB 6-month testing date* means the last day of the first 6-month period of the taxable year of the applicable QOZB.

(ii) *Applicable QOZB year-end testing date.* The term *applicable QOZB year-end testing date* means the last day of the taxable year of the applicable QOZB.

(5) *Full-time equivalent employee.* The term *full-time equivalent employee* has the same meaning as in § 1.6039K-1(a)(4).

(6) *Qualified opportunity fund.* The term *qualified opportunity fund*, or *QOF*, means, with respect to an entity's taxable year or portion thereof, any entity that files a self-certification under § 1.1400Z2(d)-1(a)(2)(i) for such taxable year or a portion thereof. For purposes of this section, an entity that files a self-certification under § 1.1400Z2(d)-1(a)(2) for its taxable year is treated as certified as a QOF for the portion of the taxable year beginning on the effective date identified in that self-certification.

(7) *Qualified opportunity zone.* The term *qualified opportunity zone*, or *QOZ*, has the same meaning as in section 1400Z-1(a) and § 1.1400Z2(a)-1(b)(28).

(8) *Qualified opportunity zone business property.* The term *qualified opportunity zone business property*, or *QOZ business property*, has the same meaning as in section 1400Z-2(d)(2)(D) and § 1.1400Z2(a)-1(b)(30).

(9) *Qualified opportunity zone partnership interest.* The term *qualified opportunity zone partnership interest*, or *QOZ partnership interest*, has the same meaning as in section 1400Z-2(d)(2)(C) and § 1.1400Z2(d)-1(c)(3).

(10) *Qualified opportunity zone stock.* The term *qualified opportunity zone stock*, or *QOZ stock*, has the same mean-

ing as in section 1400Z-2(d)(2)(B) and § 1.1400Z2(d)-1(c)(2).

(11) *Real property.* The term *real property* has the same meaning as in § 1.6039K-1(a)(11).

(12) *Relevant QOF.* The term *relevant QOF* means—

(i) With respect to an applicable QOZB that is a corporation, any QOF that holds QOZ stock in such corporation; and

(ii) With respect to an applicable QOZB that is a partnership, any QOF that holds QOZ partnership interest(s) in such partnership.

(13) *Residential unit.* The term *residential unit* has the same meaning as in § 1.6039K-1(a)(13).

(14) *Tangible personal property.* The term *tangible personal property* has the same meaning as in § 1.48-1(c).

(b) *Requirement to furnish qualified opportunity zone business statement.* Every applicable QOZB must furnish to each relevant QOF a written statement (QOZB statement), signed under penalties of perjury, for each calendar year containing the information set forth in paragraphs (b)(1) through (8) of this section (as applicable).

(1) The name, address, and taxpayer identification number of the applicable QOZB;

(2) The percent of equity ownership or (if applicable) capital or profits interest in the applicable QOZB by the relevant QOF as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year;

(3) Total value of tangible property (including tangible property that is qualified opportunity zone business property and tangible property that is not qualified opportunity zone business property) held by the applicable QOZB as of the applicable QOZB testing dates;

(4) The population census tract number(s) in which the QOZ business property directly owned or leased by the applicable QOZB is used, and for each of these census tracts—

(i) The physical address of the QOZB's business activity;

(ii) The North American Industry Classification System (NAICS) code that applies to the QOZB's business activity;

(iii) As of the applicable QOZB testing dates—

(A) The total value of QOZ business property directly owned by the applicable QOZB; and

(B) The total value of QOZ business property directly leased by the applicable QOZB;

(iv) The total value of QOZ business property directly owned or leased by the applicable QOZB that is real property as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year;

(v) The number of residential units (if any) as of December 31 of the calendar year ending with or within the applicable QOZB's taxable year;

(vi) The approximate average monthly number of full-time equivalent employees of the applicable QOZB whose primary work location is within the population census tract for the calendar year ending with or within the applicable QOZB's taxable year;

(vii) The first date that any QOZ business property was acquired by purchase or leased by the applicable QOZB;

(viii) Whether there is any QOZ business property that the applicable QOZB is substantially improving, as provided in section 1400Z-2(d)(2)(D)(ii), and, if applicable, the date on which that improvement began; and

(ix) Whether the applicable QOZB is utilizing a working capital safe harbor, as provided in § 1.1400Z2(d)-1(d)(3)(v), and, if applicable, the date that the working capital safe harbor is expected to end;

(5) For the applicable QOZB's taxable year, an attestation that the applicable QOZB meets all the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d) including that—

(i) The applicable QOZB meets the 70-percent tangible property standard;

(ii) The applicable QOZB meets the gross income requirement under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3)(i);

(iii) The applicable QOZB meets the use of intangible property requirement under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3)(ii);

(iv) The applicable QOZB satisfies the non-qualified financial property limitation under section 1400Z-2(d)(3)(A)(ii) and § 1.1400Z2(d)-1(d)(3)(iv); and

(v) The trade or business of the applicable QOZB is not described in section 144(c)(6)(B);

(6) If the applicable QOZB cannot provide the attestation referenced in paragraph (b)(5) of this section because the applicable QOZB does not meet all the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d), an attestation that the applicable QOZB is utilizing the cure period, as defined in § 1.1400Z2(d)-1(d)(6), to correct its failure to meet the requirements of section 1400Z-2(d)(3) and § 1.1400Z2(d)-1(d) and the month in which the stock or partnership interest of the applicable QOZB lost its qualification as qualified opportunity zone stock or a qualified opportunity zone partnership interest;

(7) Whether the applicable QOZB used the applicable financial statement valuation method as defined in § 1.1400Z2(d)-1(b)(3) or the alternative valuation method as defined in § 1.1400Z2(d)-1(b)(4) to value the property necessary to provide the information set forth in paragraphs (b)(1) through (8) of this section; and

(8) Such other information as required to be reported by the relevant QOF with respect to the applicable QOZB as set forth in Form 8996 (or any successor form) or instructions.

(c) [Reserved]

(d) *Time for and manner of furnishing statements*—(1) *Time for furnishing.* Every applicable QOZB required to furnish a QOZB statement to one or more relevant QOFs under paragraph (b) of this section must furnish such statements on or before the 1st day of the second month following the close of the applicable QOZB's taxable year.

(2) *Manner of furnishing.* An applicable QOZB required by paragraph (b) of this section to furnish a QOZB statement may furnish the statement using any form that includes all the information set forth in paragraph (b) of this section. Notwithstanding the previous sentence, if the IRS prescribes a form for the QOZB statement, the applicable QOZB must use that prescribed form or a form that contains provisions that are substantially similar to those in the prescribed form. A QOZB statement is considered to be furnished to a relevant QOF if it is mailed to the last known address of the relevant QOF and is

considered to be furnished on the date that it is so mailed. Alternatively, if the relevant QOF consents in writing to receiving the QOZB statement in an electronic format, an applicable QOZB may furnish the QOZB statement in an electronic format in lieu of a paper format. An applicable QOZB that electronically furnishes a QOZB statement to a relevant QOF pursuant to the relevant QOF's consent is treated as furnishing the QOZB statement on the date that the statement is electronically transmitted to the relevant QOF.

(e) *QOZB statements.* For provisions for failure to furnish timely a correct payee statement, see § 301.6722-1 of this chapter. See § 301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(f) *Applicability date.* This section applies to QOZB statements required to be furnished on or after [date of publication of final regulations in the *Federal Register*].

Par. 7. Section 1.6045-1 is amended by:

1. Adding a sentence to the end of paragraph (a)(9)(i);
2. Revising paragraph (c)(3)(i)(B)(I);
3. Adding a sentence after the second sentence of paragraph (d)(2)(i)(A); and
4. Adding a sentence to the end of paragraph (q).

The revision and additions read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

(a) * * *

(9) * * *

(i) * * * The term sale also includes an inclusion event as defined in § 1.1400Z2(b)-1(c).

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) * * *

(I) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in section 1361(a) and does not apply to the reporting of any

sale described in paragraph (a)(9)(i) of this section that is an inclusion event as defined in § 1.1400Z2(b)-1(c);

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) * * * In addition, a broker must also report on Form 1099-B whether the sale constitutes a disposition of ownership of an interest in a qualified opportunity fund or an inclusion event as defined in § 1.1400Z2(b)-1(c). * * *

* * * * *

(q) * * * This section applies to information returns required to be filed after [date of publication of final regulations in the *Federal Register*].

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 8. The authority citation for part 301 is amended by adding an entry for § 301.6726-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6726-1 also issued under 26 U.S.C. 6726.

* * * * *

§301.6011-2 [Amended]

Par. 9. Section 301.6011-2 is amended by, in paragraph (b)(1), removing the language “Form 8027,” and adding the language “Form 8027, Form 8996,” in its place.

Par. 10. Section 301.6011-3 is amended by adding sentences to the ends of paragraphs (d)(4) and (f) to read as follows:

§ 301.6011-3 Required use of electronic form for partnership returns.

* * * * *

(d) * * *

(4) * * * For purposes of this section, a form or schedule required to be included with or attached to a partnership return does not include an information return, such as Form 8996, that is required to be filed by attachment to a partnership return.

* * * * *

(f) * * * The revisions to this section applicable to Forms 8996 apply to partnership returns required to be filed after [date of publication of final regulations in the *Federal Register*].

Par. 11. Section 301.6011-5 is amended by adding sentences to the end of paragraphs (d)(4) and (f) to read as follows:

§ 301.6011-5 Required use of electronic form for corporate income tax returns.

* * * * *

(d) * * *

(4) * * * For purposes of this section, a form, schedule, or statement required to be attached to a corporate income tax return does not include an information return, such as Form 8996, that is required to be filed by attachment to a corporate income tax return.

* * * * *

(f) * * * The revisions to this section applicable to Forms 8996 apply to corporate income tax returns required to be filed beginning after [date of publication of final regulations in the *Federal Register*].

Par. 12. Section 301.6037-2 is amended by adding sentences to the ends of paragraphs (d)(3) and (f) to read as follows:

§ 301.6037-2 Required use of electronic form for returns of electing small business corporation.

* * * * *

(d) * * *

(3) * * * For purposes of this section, a form, schedule, or statement required to be attached to an electing small business corporation return does not include an information return, such as Form 8996, that is required to be filed by attachment to a corporate income tax return.

* * * * *

(f) * * * The revisions to this section applicable to Forms 8996 apply to electing small business corporation returns required to be filed after [date of publication of final regulations in the *Federal Register*].

Par. 13. Section 301.6722-1 is amended by:

1. Removing the word “or” from the end of paragraph (e)(2)(xxvii); and
2. Adding paragraphs (e)(2)(xxix) and (xl), and (g)(2)(iii).

The additions read as follows:

§ 301.6722-1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(xxxix) Section 6039K(c) (relating to reporting of investor dispositions and voluntary decertifications with respect to qualified opportunity funds); or

(xl) Section 6039L (relating to information required from certain qualified opportunity zone businesses).

* * * * *

(g) * * *

(2) * * *

(iii) Paragraphs (e)(2)(xxxix) and (xl) of this section apply with respect to payee statements required to be furnished on or after [date of publication of final regulations in the *Federal Register*].

Par. 14. Section 301.6724-1 is amended by:

1. In paragraph (g)(1), removing the language “6721 through 6723” wherever it appears, and adding the language “6721 through 6723 and 6726” in its places;

2. Removing the word “or” from the end of paragraph (g)(1)(i)(B);

3. Adding paragraph (g)(1)(i)(D);

4. Removing the word “and” from the end of paragraph (j)(2);

5. In paragraph (j)(3), removing the period at the end of the paragraph and adding the language “; and” in its place;

6. Adding paragraph (j)(4);

7. In paragraph (n), removing the language “6721 through 6723” and adding the language “6721 through 6723 and 6726” in its place;

8. In paragraph (o)(1), removing the language “paragraphs (o)(2) and (3)” wherever it appears, and adding the language “paragraphs (o)(2) through (4)” in its places; and

9. Adding paragraph (o)(4).

The additions read as follows:

§ 301.6724-1 Reasonable cause.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(D) Information return as required by § 1.6039K-1(a) of this chapter; or

* * * * *

(j) * * *

(4) A failure described under § 301.6726-1(a)(2) relating to the failure to file a timely correct information return as required by section 6039K(a).

* * * * *

(o) * * *

(4) *Information returns and payee statements required under §§ 1.6039K-1 and 1.6039L-1* of this chapter. This section applies to information returns required to be filed under § 1.6039K-1 of this chapter (without extensions) and payee statements required to be furnished under § 1.6039L-1 of this chapter on or after [date of publication of final regulations in the *Federal Register*].

Par. 15. Section 301.6726-1 is added to read as follows:

§ 301.6726-1 Failure to comply with information reporting requirements relating to qualified opportunity funds and qualified rural opportunity funds.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of \$500 is imposed under section 6726 of the Internal Revenue Code (Code) for each day that a person, required to file an information return under section 6039K of the Code (section 6039K return), fails to file such return under paragraph (a)(2) of this section. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single section 6039K return even though there may be more than one failure with respect to such return. *See* paragraph (b) of this section for the maximum penalty that may be imposed under this section with respect to any one section 6039K return. *See* paragraph (c) of this section for higher penalties if a failure is due to intentional disregard of the requirement to file timely correct information returns. *See* paragraph (d) of this section for inflation adjustments to penalty amounts. *See* § 301.6724-1(a)(1) for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty*—(i) *Scope.* The failures to which section 6726(a)(1) apply are—

(A) A failure to file the section 6039K return on or before the required filing date (failure to file timely); and

(B) A failure to include all the information required to be shown on the section 6039K return or including incorrect information (failure to include correct information).

(ii) *Other rules.* A failure to file timely includes a failure to file in the required manner, for example, electronically or in other machine-readable form as provided under section 6011(e) of the Code. A failure to include correct information under paragraph (a)(2)(i)(B) of this section encompasses a failure to include all information required by § 1.6039K-1(b) of this chapter, Form 8996, or any successor form, and any instructions to such form. A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on the information return. For example, an error on an electronic submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the electronic submission, that error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure.

(3) *Termination of penalty when a correction made.* The per-day penalty imposed under this paragraph (a) for any failure to file the section 6039K return will terminate on the day that the QOF files the section 6039K return (showing all the correct information required to be shown on the section 6039K return) as provided in § 1.6039K-1(g) of this chapter.

(4) *Example.* R is a corporation with gross assets that are not in excess of \$10,000,000. R is a qualified opportunity fund required under section 6039K to file a section 6039K return each year. For calendar year 2026, R fails to file its section 6039K return by the March 15, 2027, due date for that return. On March 30, 2027, R files a complete and correct section 6039K return. Because the penalty under this paragraph (a) applies for each day for

which the person required to file a section 6039K return fails to file such return, R would be subject to a \$7,500 penalty (\$500 × 15 days).

(b) *Limitation on penalties*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the total penalty amount imposed on any person under paragraph (a) of this section for any failure under paragraph (a)(2) of this section with respect to a single section 6039K return may not exceed \$10,000.

(2) *Higher limitation on the maximum penalty for large QOFs.* In the case of any failure under paragraph (a)(2) of this section with respect to a single section 6039K return required to be filed by a QOF the gross assets of which (determined on the last day of the QOF's taxable year) are in excess of \$10,000,000, the total penalty amount imposed under paragraph (a)(2) of this section may not exceed \$50,000.

(c) *Higher penalty for intentional disregard of requirement to file timely correct information return*—(1) *Application of section 6726(a).* If a failure described in paragraph (a)(2) of this section is due to intentional disregard of the requirement to file timely or to include correct information on a return, the penalty amount imposed under paragraph (a)(1) of this section must be determined under paragraph (c)(4) of this section.

(2) *Meaning of intentional disregard.* A failure is due to intentional disregard if it is a knowing or willful—

(i) Failure to file timely; or

(ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure is due to intentional disregard include, but are not limited to—

(i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the information return of

repeatedly failing to file timely or repeatedly failing to include correct information;

(ii) Whether correction was promptly made upon discovery of the failure;

(iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the IRS to file or to correct; and

(iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each failure determined under this paragraph (c)—

(i) The per-day penalty set forth in paragraph (a)(1) of this section applies by substituting “\$2,500” for “\$500”;

(ii) The limitation on penalties set forth in paragraph (b)(1) of this section applies by substituting “\$50,000” for “\$10,000”; and

(iii) The higher limitation on the maximum penalty for large QOFs set forth in paragraph (b)(2) of this section applies by substituting “\$250,000” for “\$50,000”;

(d) *Adjustment for inflation.* Each of the dollar amounts under paragraphs (a) (1), (b)(1) and (2), and (c)(4)(i) through (iii) of this section will be adjusted for inflation pursuant to section 6726(d).

(e) *Applicability date.* This section applies with respect to information returns required to be filed by corporations (without regard to extensions of the filer's annual tax return) and partnerships (without regard to extensions of the filer's annual return) on or after [date of publication of final regulations in the *Federal Register*].

Frank J. Bisignano,
Chief Executive Officer.

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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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2026–27 through 2026–52 is in Internal Revenue Bulletin 2025–52, dated December 21, 2025.

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