Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Part 30

[212A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1094–AA55

American Indian Probate Regulations

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Department of the Interior (Department) proposed revisions to its regulations governing probate of property that the United States holds in trust or restricted status for American Indians. We are reopening the comment period to effectively extend original March 8, 2021 comment deadline. Any comments received after the original March 8, 2021 comment deadline and before the new comment deadline will be accepted as timely submitted. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published January 7, 2021 (86 FR 1037), is reopened. Submit written comments by April 29, 2021.

ADDRESSES: You may submit comments by any one of the following methods:

- Federal rulemaking portal *www.regulations.gov.* The rule is listed under Agency Docket Number DOI–2019–0001.
- *Email:* Tribes may email comments to: *consultation@bia.gov.* All others should email their comments to: *comments@bia.gov.*
- *Mail or Courier:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660 MIB, Washington, DC 20240.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, *Elizabeth.appel@bia.gov,* (202) 273–4680.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2021, we published a proposed rule (86 FR 1037) to revise regulations governing probate of property that the United States holds in trust or restricted status for American Indians. The proposed rule had a 60-day public comment period, ending March 8, 2021. During the comment period for the proposed rule, we received a request for additional time to submit comments. In response to that request, we are allowing additional time for the public to comment on the proposed rule.

Public Comments

We will accept comments from the public during this reopened comment period on our proposed rule. If you already submitted comments on the proposed rule, please do not resubmit them. Any comments received before the new comment deadline will be accepted as timely submitted, including comments received after the original March 8, 2021 comment deadline, as long as they are received before the new comment deadline listed in the **DATES** section of this document. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in preparation of our final determination.

You may submit your comments by any one of the methods listed in **ADDRESSES**. Please note that your comment—including your personal identifying information—will be posted on *www.regulations.gov,* regardless of which method you submit your comments. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

Rachael S. Taylor,

Principal Deputy Assistant Secretary-Policy, Management and Budget.

[FR Doc. 2021–07188 Filed 4–13–21; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121095–19]

RIN 1545–BP50

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 1400Z–2, 1445, and 1446 (proposed regulations). Section 13823 of Public Law 115–97, 131 Stat. 2054, 2184 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added sections 1400Z–1 and 1400Z–2 to the Code. The purposes of section 1400Z–2 and the section 1400Z–2 regulations (that is, the final regulations set forth in §§ 1.1400Z2(a)–1 through 1.1400Z2(f)–1, 1.1502–14Z, and 1.1504–3) are to provide specified Federal income tax benefits to owners of qualified opportunity funds (QOFs) to encourage the making of longer-term investments, through QOFs and qualified opportunity zone businesses, of new capital in one or more qualified opportunity zones designated under section 1400Z–1 and to increase economic growth in such qualified opportunity zones. See § 1.1400Z2(f)–1(c)(1) (describing the purposes of section 1400Z–2 and the section 1400Z–2 regulations; Notice 2018–48, 2018–28 I.R.B. 9, and Notice 2019–42, 2019–29 I.R.B. 352 (setting forth the combined list of population census tracts designated as qualified opportunity zones).

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

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

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

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

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

To ensure the collection of tax, in certain circumstances, the Code imposes withholding requirements on payments or allocations of ECI to foreign persons. See sections 1445, 1446(a), and 1446(f). The amount of withholding under these provisions is intended to serve as a

proxy for the amount of the foreign person's substantive tax liability and may not match the actual amount of tax due. The amount withheld may be claimed as a credit against the amount of tax due and shown on the foreign person's tax return.

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

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

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

Section 1445(e)(3) requires a domestic corporation that is or has been a United States real property holding corporation to withhold 15 percent of a distribution to a nonresident alien or foreign corporation.

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

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

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

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

Explanation of Provisions

I. Overview of Proposed Regulations

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

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

A. Coordination of the Deferral Election Under Section 1400Z–2(a) With the Withholding Rules Under Sections 1445, 1446(a) and 1446(f)

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

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

B. Requirement for Certain Persons To Obtain Eligibility Certificate

1. In General

The proposed regulations provide that a taxpayer that is a security-required person may not make a deferral election under section 1400Z–2(a) with respect to part or all of a security-required gain from a covered transfer unless the taxpayer obtains an eligibility certificate from the IRS with respect to such security-required gain by the date on which the deferral election is filed with the IRS. Proposed § 1.1400Z2(a)–1(a)(3). The eligibility certificate must specify the permitted deferral amount, and the taxpayer may not make a deferral election with respect to the security-required gain in an amount that exceeds the permitted deferral amount. Id.

2. Security-Required Persons

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

A specified partnership is a partnership, foreign or domestic, that meets three tests with respect to a transfer that produces a security-required gain: An ownership test, a closely-held test, and a gain or asset test. Proposed § 1.1400Z2(a)–2(b)(3). The ownership test is met if, at the time of transfer, 20 percent or more of the capital or profits interests in the partnership are owned (directly or indirectly through one or more partnerships, trusts, or estates) by one or more nonresident aliens or foreign corporations. Proposed § 1.1400Z2(a)–2(b)(3)(i). The closely-held test is met if, at any time during a look-back period, a partnership has 10 or fewer direct partners that own 90 percent or more of the capital or profits interests in the partnership, with any related partners (within the meaning of section 267(b) or 707(b)(1)) being treated as a single partner. Proposed § 1.1400Z2(a)–2(b)(3)(ii). For purposes of the closely-held test, the look-back period is the period that begins on the later of the date that is one year before the date of the transfer or the date on which the partnership was formed, and that ends on the date of the transfer. Id. Further, a partner that is a partnership or trust is considered a direct partner. Id. The gain or asset test is met if either: (i) The amount of security-required gain from the transfer exceeds $1 million (the gain test) or (ii) at any time during a look-back period, the value of the partnership's assets that are U.S. real property interests or assets used in a U.S. trade or business exceeds 25 percent of the total value of the partnership's assets (the asset test). Proposed § 1.1400Z2(a)–2(b)(3)(iii). For purposes of the asset test, the look-back period is the same as the look-back period for purposes of the closely held test. Id. The proposed regulations allow the partnership to determine the value of an asset on the last day of the taxable year preceding the year in which the look-back period begins or, for any asset acquired after this date (including upon formation of the partnership), on the date of acquisition. Id. The proposed regulations also provide rules for looking through interests in other partnerships to value assets that are held indirectly. Id. Finally, the proposed regulations state that the value of each asset will be measured according to its gross fair market value. Id. The Treasury Department and the IRS request comments on whether a method of valuing assets other than fair market value should be used for purposes of the asset test. The Treasury Department and the IRS also request comments on whether net value, instead of gross value, should be used for purposes of the asset test.

3. Covered Transfer and Security-Required Gain

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

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

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

4. Application for an Eligibility Certificate and Acceptable Security

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

Acceptable security is defined as an irrevocable standby letter of credit issued by a U.S. bank that meets certain capital and other requirements specified in these proposed regulations. Proposed § 1.1400Z2(a)–2(d)(6)(ii). The proposed regulations provide that the IRS may identify in published guidance additional financial institutions that may qualify as issuers of letters of credit. Id. The Treasury Department and the IRS request comments on financial institutions other than banks that should qualify as issuers of letters of credit. The Treasury Department and the IRS also request comments on whether additional types of security are needed. Any additional proposed types of security should preserve administrative flexibility to require electronic submission of applications and protect the IRS's collection ability.

5. Deferral Agreement and Events of Default

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

An event of default under the deferral agreement is an inclusion event that triggers recognition of the security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a). Proposed § 1.1400Z2(a)–2(d)(4)(ii)(E). Defaults, upon which an event of default may be based, will be specified in the deferral agreement, and may include the following: A determination that the security is no longer adequate to protect the IRS's interests; a change in the creditworthiness of the issuer of a letter of credit; and a failure by the security-required person to file returns or attach an eligibility certificate (when required) during the period covered by the deferral agreement. Proposed § 1.1400Z2(a)–2(d)(4)(ii)(E). In addition, the deferral agreement will specify whether notice of default and an opportunity to cure will be provided to the security-required person before an event of default arises. Id.

6. Amount of Eligibility Certificate

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

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

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

For a disposition of property (including an interest in another partnership or a U.S. real property interest) by a partnership that is not a specified partnership, or a distribution

to such a partnership, that gives rise to gain that is included in determining the allocable share of a security-required person's ECTI, the maximum security amount is the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(D).

C. Elimination or Reduction of Withholding Based on an Eligibility Certificate

Comments on the May 2019 proposed regulations requested relief from withholding under section 1445, 1446(a), or 1446(f) on transactions if gain from those transactions was deferred under section 1400Z–2. One comment requested that a foreign taxpayer engaging in a sale subject to withholding under section 1445 be able to provide a certificate or other form of documentation to avoid withholding based on the taxpayer's intention to invest the resulting gain in a QOF pursuant to a deferral election under section 1400Z–2(a)(1). In addition, the comment suggested that a foreign taxpayer would be required to certify that it will file a tax return in the year the QOF interest is sold. Another comment requested an exemption from withholding when a foreign person enters into an agreement with the IRS to pay the tax when the deferred gain is included under section 1400Z–2(a)(1)(B) and (b), similar to when a gain recognition agreement is ''triggered'' under section 367 and the regulations thereunder. Another comment suggested that the IRS provide a reduced FIRPTA withholding certificate for foreign persons who intend to invest in QOFs.

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

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

Section 1.1446–3 currently allows a partnership to consider certain partner level deductions and losses certified in accordance with § 1.1446–6 in determining its section 1446 tax. The proposed regulations modify the rules in §§ 1.1446–3 and 1.1446–6 to allow a partnership to also consider in determining its section 1446 tax the permitted deferral amount of an eligibility certificate submitted by a partner. When determining installments of 1446 tax, to ensure that the reduction in effectively connected items by the permitted deferral amount is fully taken into account, the eligibility certificate must be considered before the effectively connected items are annualized. Proposed §§ 1.1446–3(b)(2)(i)(B)(*1*) and 1.1446–6(c)(1)(iv).

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

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

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

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

IV. Applicability Dates

A. Proposed Regulations Related to Covered Transfers

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

B. Proposed Regulations Related to Federally Declared Disasters

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

Special Analyses

I. Regulatory Planning and Review

This proposed regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

A. Collection of Information for Proposed § 1.1400Z2(a)–2

Proposed § 1.1400Z2(a)–2 contains collections of information that are not on existing or new IRS forms. The proposed regulations require that security-required persons submit to the

[2] See *https://www.fema.gov/coronavirus/disaster-declarations.*

IRS an application that includes the following information and documents to obtain an eligibility certificate with respect to security-required gain.

1. Identification of security-required person (proposed § 1.1400Z2(a)–2(d)(3)(ii));

2. Information about the covered transfer (proposed § 1.1400Z2(a)–2(d)(3)(iii));

3. Agreement for deferral of tax and provision of security (proposed § 1.1400Z2(a)–2(d)(4));

4. U.S. agent agreement (proposed § 1.1400Z2(a)–2(d)(5)); and

5. Security and any related required documents (proposed § 1.1400Z2(a)–2(d)(6)).

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Comments and recommendations for the proposed information collection may be submitted via *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' then by using the search function. Comments can also be emailed to the IRS at *omb.unit@irs.gov* (indicate REG–121095–19 on the subject line). Comments also may be mailed to OMB, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed to the IRS, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by June 14, 2021. Comments are specifically requested concerning:

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

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

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

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

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

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

Estimated total annual reporting burden: 35,000 hours.

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

Estimated number of respondents: 3,500.

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

B. Collection of Information for Proposed § 1.1400Z2(d)–1(d)(3)(v)(D)

Proposed § 1.400Z2(d)–1(d)(3)(v)(D) imposes an additional information collection requirement in the form of recordkeeping. The creation of, or modification of, existing written schedules as required under proposed § 1.1400Z2(d)–1(d)(3)(v)(D) will be performed by qualified opportunity zone businesses that want to receive an additional 24 months to expend their working capital assets, under the extension of time permitted by proposed § 1.1400Z2(d)–1(d)(3)(v)(D). This recordkeeping requirement will not be conducted using a new or existing IRS form. Such businesses must maintain, as part of their records, a copy of the written working plan including any modifications to the plan and provide these records to the IRS upon its request. This modification encourages investment in QOFs by providing greater specificity to how an entity may consistently satisfy the statutory requirements to be a qualified opportunity zone business in light of the current economic climate. However, the increase in burden on these entities is minimal as these entities were required to maintain such records prior to the proposed modification if they wanted to utilize a working capital safe harbor under § 1.1400Z2(d)–1(d)(3)(v).

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

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

III. Regulatory Flexibility Act

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

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

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

significant economic impact on a substantial number of small entities.

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

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

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

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

Comments and Requests for Public Hearing

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

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

Drafting Information

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

Statement of Availability of IRS Documents

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

* * * * *

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

* * * * *

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

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

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

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

* * * * *

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

* * * * *

■ **Par. 2.** Section 1.1400Z2–0 is amended by:

■ 1. Revising the introductory text.

■ 2. Adding an entry for § 1.1400Z2(a)–1(a)(3).

■ 3. Revising the entry for § 1.1400Z2(a)–1(g)(2).

■ 4. Adding an entry for § 1.1400Z2(a)–2.

■ 5. Adding an entry for § 1.1400Z2(b)–1(j)(3).

■ **6. Revising the entry for § 1.1400Z2(d)–1(e)(2).**

The revisions and additions read as follows:

§ 1.1400Z2–0 Table of Contents.

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

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

(a) * * *

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

* * * * *

(g) * * *

(2) Exceptions.

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

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

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

* * * * *

(j) * * *

(3) Specific rules.

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

* * * * *

(e) * * *

(2) Exceptions.

* * * * *

■ **Par. 3.** Section 1.1400Z2(a)–1 is amended by:

■ 1. Adding paragraph (a)(3).

■ 2. Revising paragraph (g)(1).

■ 3. Redesignating paragraphs (g)(2) introductory text and (g)(2)(i) and (ii) as paragraphs (g)(2)(i) and (g)(2)(i)(A) and (B), respectively.

■ 4. Adding a subject heading for newly redesignated paragraph (g)(2).

■ 5. Adding new paragraph (g)(2)(ii).

The revisions and additions read as follows:

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

(a) * * *

(3) *Eligibility certificate needed to establish the permitted deferral amount for certain foreign persons and foreign-owned partnerships.* Notwithstanding any other provision of this section, if a taxpayer is a security-required person (as defined in § 1.1400Z2(a)–2(b)(1)) with respect to a gain and that gain is a security-required gain (as defined in § 1.1400Z2(a)–2(c)(1)), then the taxpayer may not make a deferral election under section 1400Z–2(a) with respect to part or all of that gain unless the requirements in paragraph (a)(3)(i), (ii), and (iii) of this section are satisfied.

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

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

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

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

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

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

(B) *Example 2. Deferring gain from inclusion.* In 2022, Taxpayer realizes a gain of $x, Taxpayer was a security-required person with respect to that gain, and the gain was a security-required gain. Complying with all the requirements in this section (including paragraph (a)(3) of this section), Taxpayer made a valid election to defer a gain of $x, after having invested $x in a QOF. In 2025, after Taxpayer's interest in the QOF had appreciated by $y, Taxpayer sold that interest for $x + $y. The sale was an inclusion event, requiring Taxpayer to include in income the deferred gain of $x. Under paragraph (c)(1) of this section, the $x inclusion is a security-required gain because the deferred gain was a security-required gain. If Taxpayer wants to elect to defer the $x of included gain and Taxpayer is a security-required person with respect to the included gain, the limitation in paragraph (a)(3) of this section applies. Whether the $y gain from the sale is a security-required gain is determined by whether, independent of the treatment of the inclusion, the $y gain on the sale is within the definition of security-required gain in § 1.1400Z2(a)–2(c).

* * * * *

(g) * * *

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

(2) *Exceptions.* * * *

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

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

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

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

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

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

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

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

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

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

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

(iii) *Gain or asset test.* A partnership satisfies the requirements of this paragraph (b)(3)(iii) if either the security-required gain is $1 million or more (the gain test), or the aggregate value of the partnership's assets that are United States real property interests (as defined in section 897(c)) or assets used in the conduct of a trade or business

within the United States is, at any time during the look-back period, equal to or greater than 25 percent of the value of all of the assets of the partnership (the asset test). In making the calculation under the asset test described in this paragraph (b)(3)(iii)—

(A) The value of each asset is determined on the last day of the taxable year before the year in which the look-back period begins or, for any asset acquired after this date, on the date of acquisition (including upon formation of the partnership);

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

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

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

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

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

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

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

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

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

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

(D) A disposition by a partnership of property, or a distribution to such a partnership, if any gain that arises is includible (by any partnership) in determining the allocable share of a security-required person's ECTI (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose).

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

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

(2) *Application materials.* To obtain an eligibility certificate with respect to security-required gain, a security-required person must submit to the IRS the application described in paragraph (d)(3) of this section, the deferral agreement described in paragraph (d)(4) of this section, the U.S. agent agreement described in paragraph (d)(5) of this section, and the security (or evidence of security) of the type and in the amount described in paragraphs (d)(6) and (7) of this section.

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

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

(iii) *Information about the covered transfer*—(A) *Required information.* The application must identify the type of covered transfer. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is not a distribution, the application must include a description of the property transferred in the covered transfer, the amount of security-required gain, the amount realized, the adjusted basis in the property, and the maximum security amount. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is a distribution, the application must include the amount of the distribution, a description of the property distributed (including cash), the amount of security-required gain, and the maximum security amount. For a covered transfer described in paragraph (c)(2)(i)(D) of this section, the application must include the amount of security-required gain and the maximum security amount. In each case, the application for the eligibility certificate must also identify the amount of security that has been provided and the amount of security-required gain for which the eligibility certificate is being obtained. If an

amount described in this paragraph is not known when the application is submitted, a security-required person may include a reasonable estimate of the amount if the estimate is determined no earlier than 120 days before the covered transfer and the security-required person also includes in the application documentation of the basis for the estimate (for example, a purchase contract).

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

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

(ii) *Minimum terms and conditions.* The minimum terms and conditions of a deferral agreement are provided in paragraphs (d)(4)(ii)(A) through (D) of this section. The deferral agreement must also include any additional terms and conditions provided in a template provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

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

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

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

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

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

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

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

the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). See paragraph (d)(7) of this section for determining the required amount of the security.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) *Asset test.* At all times during Years 1 through 3, P did not satisfy the asset test in paragraph (b)(3)(iii) of this section because P had total assets in excess of $100 million, of which less than $25 million was United States real property interests or assets used in the conduct of a trade or business within the United States.

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

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

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

(iii) *G_3.* P satisfies the ownership test as of the date of the transfer. P also satisfies the closely-held test during the look-back period for G_3. Also, G_3 is large enough to satisfy the gain test. Accordingly, P is a security-required person with respect to G_3, and G_3 is

a security-required gain. Consequently, P may not elect to defer G_3 unless, not later than the date on which P files its Federal income tax return for Year 2, P has received an eligibility certificate with respect to G_3. Even if P has received such an eligibility certificate, P may not elect to defer a larger amount of G_3 than the permitted deferral amount shown on the eligibility certificate.

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

■ **Par. 5.** Section 1.1400Z2(b)–1 is amended by:

■ 1. Revising paragraph (c)(1)(iv).

■ 2. Adding paragraph (c)(1)(v).

■ 3. Revising paragraph (j)(1).

■ 4. Adding paragraph (j)(3).

The revisions and additions read as follows:

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

* * * * *

(c) * * *

(1) * * *

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

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

* * * * *

(j) * * *

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

* * * * *

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

■ **Par. 6.** Section 1.1400Z2(d)–1 is amended by:

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

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

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

■ 4. Adding new paragraph (e)(2)(ii).

The revisions and additions read as follows:

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

* * * * *

(d) * * *

(3) * * *

(v) * * *

(D) *Federally declared disasters.* If the qualified opportunity zone business is located in a qualified opportunity zone impacted by a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive not more than an additional 24 months to expend its working capital assets, as long as it otherwise meets the requirements of paragraph (d)(3)(v) of this section. For purposes of the preceding sentence, meeting the requirements of paragraph (d)(3)(v) of this section may be determined by reference either to the original amount of working capital assets designated in writing under paragraph (d)(3)(v)(A) of this section and reasonable written schedule under paragraph (d)(3)(v)(B) of this section or to a new or revised written designation and written schedule that satisfy the requirements of paragraph (d)(3)(v)(A) and (B) of this section, respectively. A new or revised written designation of the amount of working capital assets and reasonable written schedule for expending that amount may be used only if adopted not later than 120 days after the close of the incident period, as defined in 44 CFR 206.32(f), with respect to that disaster. In determining whether a new or revised schedule satisfies the requirements of paragraph (d)(3)(v)(B) of this section, the planned completion of spending must take into account the up-to-31 month period originally allowed under paragraph (d)(3)(v)(B) of this section, plus the up-to-24 additional months provided in this paragraph (d)(3)(v)(D).

* * * * *

(e) * * *

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

(2) *Exceptions.* * * *

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

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

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

* * * * *

(e) * * *

(5) *Special rule for gain deferred under section 1400Z–2(a).* The Internal Revenue Service will issue a withholding certificate under this paragraph (e) that excuses withholding or that permits a transferee to withhold a reduced amount if the transferor has obtained an eligibility certificate under § 1.1400Z2(a)–2 from the IRS with respect to the transfer. The amount by which the transferee may reduce the withholding (including a reduction to zero) is the amount of security provided on the eligibility certificate. If this paragraph (e)(5) applies, the requirements in paragraphs (e)(1) through (e)(4) of this section are deemed to have been satisfied. This paragraph (e)(5) applies to any covered transfer defined in § 1.1400Z2(a)–2(c)(2) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

* * * * *

■ **Par. 8.** Section 1.1446–3 is amended by revising paragraph (b)(2)(i)(B)(*1*) introductory text to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * *

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

* * * * *

■ **Par. 9.** Section 1.1446–6 is amended by:

■ 1. Revising paragraph (a)(1).

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

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

■ 4. Adding paragraph (c)(1)(iv).

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

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

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

The revisions and additions read as follows:

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

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

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

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

(2) * * *

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

* * * * *

(d) * * *

(3) * * *

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

* * * * *

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

* * * * *

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

§ 1.1446–7 Effective/Applicability date.

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

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

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

* * * * *

(b) * * *

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

(c) * * *

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

* * * * *

(f) *Applicability date.* * * * Paragraphs (b)(8) and (c)(5) of this section apply to any covered transfer (as defined in § 1.1400Z2(a)–2(c)(2)) that

occurs after [DATE OF PUBLICATION OF FINAL RULE].

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0077]

RIN 1625–AA11

Regulated Navigation Area; Biscayne Bay Causeway Island Slip, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area over certain navigable waters of the Biscayne Bay Causeway Island Slip, immediately west of the Coast Guard Base Miami Beach, Miami Beach, FL. This action is necessary to provide for the safety of life and federal property on this navigable water. This proposed rulemaking would require all persons and vessels to transit the Regulated Navigation Area at a speed that creates minimum wake, seven miles per hour or less, to safeguard damage to Coast Guard assets, disrupting operations, and/or injuring Coast Guard personnel. Additionally, this proposed rulemaking would prohibit vessels from passing other vessels making way within the regulated area. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 14, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0077 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Samuel Rodriguez, Sector Miami Waterways Management Division, Coast Guard at 305–535–4317 or by email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

In October 2020, the Fisher Island Ferry Communities Association relocated its ferry terminal to the Biscayne Bay Causeway Island Slip (Slip), west of the Coast Guard Base Miami Beach, Miami Beach, FL. The Slip is the primary terminal for the movement of residents, workers, and goods from Terminal Island to Fisher Island. Prior to October 2020, maritime traffic in the Biscayne Bay Causeway Island Basin (Basin) was limited in scope to occasional private yachts and Coast Guard assets. The addition of ferry traffic at the Slip has resulted in a substantial increase in maritime traffic in the Basin. The Basin has a length of approximately 380 yards and a width of approximately 97 yards. The increase in traffic, particularly of the Fisher Island Ferry, presents a hazard to Coast Guard assets operating in the Basin as the ferries occasionally pass within the Basin, dangerously close to Coast Guard assets. Additionally, and particularly when passing within the Basin, the ferries create a disrupting, and at times dangerous wake, adversely affecting Coast Guard routine operations and personnel. The passing maneuvers and resultant wake also create hazardous conditions during certain cutter operations, such as onloading and offloading of ammunition or refueling. The Coast Guard's Seventh District Commander has determined the increased ferry traffic, passing maneuvers, and resultant wake presents a safety and operational concern to Coast Guard personnel and assets moored in the Biscayne Bay Causeway Island Basin.

The purpose of this regulation is to ensure navigational safety, protection of Coast Guard assets and personnel, and to facilitate safe execution of Coast Guard statutory missions. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The Coast Guard's Seventh District Commander is proposing to establish a permanent Regulated Navigation Area that would require all persons and vessels to transit the regulated area at a speed that creates minimum wake, seven miles per hour or less, to safeguard damage to Coast Guard assets, disrupting operations, and/or injuring Coast Guard personnel. Additionally, this proposed rulemaking would prohibit vessels from passing other vessels making way within the regulated area. This Regulated Navigation Area covers all navigable waters within the Biscayne Bay Causeway Island Slip, immediately west of the Coast Guard Base Miami Beach, Miami Beach, FL.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, and location of the Regulated Navigation area. The Regulated Navigation Area will only affect vessels entering, and passing within, the Biscayne Bay Causeway Island Slip in Miami Beach, Miami Beach, FL. Vessels will continue to operate within the Biscayne Bay Causeway Island Slip with the only restriction being the requirement to operate at speeds below seven miles per hour and avoid passing other vessels making way within the regulated area. Moreover, upon activating the Regulated Navigation Area, the Coast Guard will notify the local maritime community through various means including, Local Notice to Mariners and Broadcast Notice to Mariners issued on VHF–FM marine radio channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not