Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 901.—Taxes of Foreign countries and of possessions of United States

26 CFR 1.901–2: Income, war profits, or excess profits tax paid or accrued
(Also: Section 952(a)(5))

Modification of Rev. Rul. 2005–3. Rev. Rul. 2005–3, 2005–1 C.B. 334, with respect to countries described in section 901(j)(2)(A) of the Internal Revenue Code ("Code"), is modified.

Rev. Rul. 2016–08

This ruling modifies Rev. Rul. 2005–3, 2005–1 C.B. 334, which lists countries subject to special rules under sections 901(j) and 952(a)(5) of the Code.

LAW AND ANALYSIS

Sections 901, 902, and 960 of the Code generally allow U.S. taxpayers to claim a foreign tax credit for income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or to any possession of the United States. The foreign tax credit is subject to various limitations and restrictions under section 901.

Section 901(j)(1) imposes restrictions in the case of income and taxes attributable to certain countries. Section 901(j)(1)(A) denies the credit for taxes paid or accrued (or deemed paid or accrued under section 902 or 960) to any country described in section 901(j)(2)(A) if the taxes are with respect to income attributable to a period during which section 901(j) applies. Section 901(j)(1)(B) requires taxpayers to apply subsections (a), (b), and (c) of section 904 and sections 902 and 960 separately with respect to income attributable to such a period from sources within such country. In addition, section 952(a)(5) provides that subpart F income includes income derived by a controlled foreign corporation from any foreign country during any period during which section 901(j) applies to that foreign country.

The special rules under sections 901(j) and 952(a)(5) cease to apply to a country when the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in section 901(j)(2)(A). Revenue Ruling 2005–3 sets forth the countries which are (or were) described in section 901(j)(2)(A) and the period during which the special rules under sections 901(j) and 952(a)(5) apply with respect to each such country. Based on the certification by the Secretary of State, this revenue ruling states the date on which Cuba ceased to be described in section 901(j)(2)(A).

HOLDING AND EFFECTIVE DATE

The list of countries in Revenue Ruling 2005–3 is modified by changing the reference to Cuba as follows:

Country	Starting Date	Ending Date
Cuba	January 1, 1987	December 21, 2015

For guidance on issues arising in a taxable year when section 901(j) ceases to apply to a country, see Rev. Rul. 92–62, 1992–2 C.B. 193.

EFFECT ON OTHER REVENUE RULINGS

This ruling modifies Rev. Rul. 2005–3, 2005–1 C.B. 334, with respect to countries subject to special rules under sections 901(j) and 952(a)(5) of the Code.

DRAFTING INFORMATION

The principal author of this revenue ruling is Richard L. Chewning of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Chewning at (202) 317-6936 (not a toll-free number).

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26 CFR 1.42–5T, 26 CFR 1.42–5

T.D. 9753

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the compliance-monitoring duties of a State or local housing credit agency for purposes of the low-income housing credit. The final and temporary regulations revise and clarify the requirement to conduct physical inspections and review low-income certifications and other documentation. The final and temporary regulations will affect State or local housing credit agencies. The text of these temporary regulations also serves as the text of the proposed regulations (REG–150349–12) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Internal Revenue Bulletin**.

DATES: *Effective date*: These regulations are effective on February 25, 2016.

Applicability date: For dates of applicability, see § 1.42–5T(h)(2).

FOR FURTHER INFORMATION CONTACT: Jian H. Grant, (202) 317-4137, and Martha M. Garcia, (202) 317-6853 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to revise and clarify rules relating to sec-

tion 42 of the Internal Revenue Code (Code). On March 5, 2012, the Treasury Department and the IRS published Notice 2012–18, 2012–10 IRB 438. Notice 2012–18 informed State and local housing credit agencies participating in a physical inspections pilot program of an alternative method for satisfying certain inspection and review responsibilities under § 1.42–5(c)(2) for projects for which the Department of Housing and Urban Development (HUD) conducted physical inspections.[1] Notice 2012–18 also requested comments on various issues relating to § 1.42–5. The Treasury Department and the IRS received written and electronic comments in response. After consideration of all of the comments received, the Treasury Department and the IRS are issuing these final and temporary regulations.

This document also updates the authority citation of 26 CFR part 1. The Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239) re-designated section 42(m) of the Code as section 42(n). The updates in this document reflect that re-designation.

General Overview

Section 42 provides rules for determining the amount of the low-income housing credit, which section 38 allows as a credit against income tax. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. Section 42(c)(2) defines a qualified low-income building as any building that is part of a qualified low-income housing project at all times during the compliance period (the period of 15 taxable years beginning with the first taxable year of the credit period).

Section 42(g)(1) defines a qualified low-income housing project as any project for residential rental property if the project meets one of the following tests, as elected by the taxpayer:

(A) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or

(B) At least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. In general, under section 42(i)(3)(A), a low-income unit is a residential unit that is rent-restricted and the occupants of which meet the applicable income limit elected by the taxpayer as described in section 42(g)(1)(A) or (B).

Under section 42(i)(3)(B)(i), a unit is not treated as a low-income unit unless it is suitable for occupancy and used other than on a transient basis. Under section 42(i)(3)(B)(ii), the suitability of a unit for occupancy must be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Failure of one or more units to qualify as low-income units may result in a project's ineligibility for the low-income housing credit, reduction in the amount of the credit, and/or recapture of previously allowed credits.

Under section 42(m)(1), the owners of an otherwise-qualifying building are not entitled to low-income housing credits that are allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency or its Authorized Delegate within the meaning of § 1.42–5(f)(1) ("Agency") will make these allocations. A QAP also provides a procedure that an Agency must follow in monitoring for compliance with the provisions of section 42. A plan fails to be a QAP unless, in addition to other requirements, it—

> provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of [section 42] and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

Section 42(m)(1)(B)(iii).

Section 1.42–5 (the compliance-monitoring regulations) describes some of the provisions that must be part of any QAP. As part of its compliance-monitoring responsibilities, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations specifically provide that, for each low-income housing project, an Agency must conduct on-site inspections of all buildings by the end of the second calendar year following the year the last building in the project is placed in service (the all-buildings requirement). In addition, prior to the amendments in this document, the regulations provided that, for at least 20 percent of the project's low-income units (the 20-percent rule), the Agency must both inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those same units (the same-units requirement). The regulations provide that the Agency must also conduct on-site inspections and low-income certification review at least once every 3 years after the initial on-site inspection. Further, the regulations require the Agency to randomly select which low-income units and tenant records to inspect and review (the random-selection rule). The regulations also require the Agency to choose the low-income units and tenant records in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed (the no-notice rule). However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30-day notice of inspection or review).

[1]Notice 2014–15, 2014–12 IRB 661, extended permission through December 31, 2014, for State and local housing credit agencies to use the alternative method in Notice 2012–18.

Summary of Comments and Explanation of Provisions

Use of the REAC Protocol, Physical Inspections, and Low-Income Certification Reviews

Notice 2012–18 asked whether the 20-percent rule for both physical inspections and low-income certification review is appropriate, including whether this percentage appropriately balances the IRS's compliance concerns against the desirability of reducing the inspection burden on Agencies, tenants, and building owners; whether the percentage should vary depending on the type of inspection the Agencies are performing; and whether the percentage should vary with the number of units in a building.

Notice 2012–18 also asked whether the regulations should provide an exception from the inspection provisions of § 1.42–5(d) for inspections done under the HUD Real Estate Assessment Center protocol (REAC protocol) similar to the exception under § 1.42–5(d)(3) for inspections performed by the Rural Housing Service under the section 515 program. Notice 2012–18 had permitted use of the REAC protocol by participants in an inter-Departmental physical inspections pilot program that sought to align the section 42 physical inspection requirements with the physical inspection requirements under HUD programs.

Several commenters asserted that the 20-percent rule is appropriate. Others claimed that it is overly burdensome for larger properties (30 units or more). Several commenters suggested that the regulations permit an Agency to satisfy the physical inspection requirement by using the REAC protocol. These commenters generally suggested that availability of the REAC protocol for physical inspections would promote flexibility and lessen burden. Allowing an Agency to use the REAC protocol for purposes of the section 42 physical inspection requirements would eliminate the need for multiple Federal inspections on the same property if the property also benefits from HUD programs. Additionally, for larger properties, the minimum number of low-income units that an Agency must inspect under the REAC protocol may be fewer than under the 20-percent rule.

In response to the comments received, the final and temporary regulations authorize the IRS to specify in guidance published in the Internal Revenue Bulletin the minimum number of low-income units for which an Agency must conduct physical inspections and low-income certification review. Rev. Proc. 2016–15, which is being issued concurrently with these regulations, provides that, in a low-income housing project, the minimum number of low-income units that must undergo physical inspection is the lesser of 20 percent of the low-income units in the project, rounded up to the nearest whole number of units, or the number of low-income units set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart in the revenue procedure. The revenue procedure applies the same rule to determine the minimum number of units that must undergo low-income certification review. An Agency is free to conduct physical inspections or low-income certification review on a larger number of low-income units if it believes that to be appropriate.

The Treasury Department and the IRS, however, are concerned about application of this 20 percent rule in some situations. For projects with a relatively smaller number of low-income units, physical inspection or low-income certification review of a randomly chosen 20 percent of those units may not produce a sufficiently accurate estimate of the remaining units' overall compliance with habitability or low-income requirements. Accordingly, not later than when these temporary regulations are finalized, the Treasury Department and the IRS intend to consider whether Rev. Proc. 2016–15 should be replaced with a revenue procedure that does not permit use of the 20 percent rule in those circumstances.

In response to Notice 2012–18's request for comments on whether the IRS should provide an exception from the inspection provisions of § 1.42–5(d) for inspections done under the REAC protocol, commenters generally supported creating such an exception. The final and temporary regulations, however, do not fully adopt this suggestion. Instead, the regulations authorize the IRS to provide in guidance published in the Internal Revenue Bulletin exceptions from, or alternative means of satisfying, the inspection provisions of § 1.42–5(d). Rev. Proc. 2016–15 provides that the REAC protocol is among the inspection protocols that satisfy both § 1.42–5(d) and the physical inspection requirements of § 1.42–5T(c)(2)(ii) and (iii). The revenue procedure contains a rigorous definition of which inspection regimes it will treat as being the REAC protocol for this purpose. Comments are requested on all aspects of the provisions in the revenue procedure that define "performed under the REAC protocol" for purposes of satisfying §§ 1.42–5(d) and 1.42–5T(c)(2)(ii) and (iii).

Because vacant low-income units contribute to a building's qualified basis, both occupied and vacant low-income units in a low-income housing project must be included in the population of units from which units are selected for inspection. This is the case even if the vacant unit or units may be temporarily unsuitable for occupancy as a result of work that is being done to repair or rehabilitate the unit or units. See § 1.42–5(e)(4). Potential inspection of vacant units is the rule for all compliance-monitoring inspections that do not use the REAC protocol, and Rev. Proc. 2016–15 therefore requires similar treatment when an Agency conducts a physical inspection under the REAC protocol.

Some commenters recommended using a risk-based assessment model in place of the 20-percent rule. Such a model would determine the frequency of inspections and the number of low-income units to inspect based on the probability of noncompliance of a low-income housing project. The probability of noncompliance would be determined for this purpose by the degree of compliance of the project over one or more prior years. The final and temporary regulations do not adopt this approach. However, in response to the request for comments on these temporary regulations, commenters wishing to renew this suggestion should provide both greater detail regarding the suggested risk-based procedure and a thorough justification for that procedure, including why a multi-year approach fits within the compliance requirements of section 42.

Several commenters suggested modifying the 20-percent rule by requiring more units for the initial physical inspection than for the subsequent physical inspections on the ground that a comprehensive initial physical inspection establishes a baseline of compliance for a low-income housing project. By contrast, some commenters suggested requiring more units for the subsequent physical inspections, asserting that the quality of compliance of a low-income housing project often decreases after the initial physical inspection. These comments, however, did not provide sufficient analysis to justify increasing the number of units to be inspected in either the initial or a subsequent inspection. Without a reasonable basis for doing so, requiring more units for either the initial or subsequent inspections would unreasonably increase the administrative burden on Agencies, owners, and tenants of low-income housing projects. The final and temporary regulations, therefore, do not adopt these suggestions. Commenters wishing to renew either of these suggestions should provide both greater detail and a thorough justification for the suggestion.

On the question of whether the required percentage of low-income units should vary depending on the type of compliance review (physical inspection or low-income certification review), one commenter recommended against a varying percentage, stating that there is no compelling reason for the required percentage to vary. A second commenter suggested that, in order to assess tenant eligibility, an Agency should review more than 20 percent of the low-income certifications because noncompliance relating to tenant eligibility may be harder to detect than noncompliance relating to habitability. The final and temporary regulations adopt the first commenter's suggestion. Just as an Agency may always physically inspect more than the minimum number of units, if an Agency deems it appropriate, the Agency may always review more than the minimum number of low-income certifications in a project to assess tenant eligibility. Commenters wishing to renew comments on this issue should provide both greater detail and a thorough justification for their suggestion.

Two commenters suggested that the regulations not impose an all-buildings requirement for physical inspection, but merely require an Agency to apply the physical inspection and low-income certification review requirements on a project-wide basis. According to these commenters, an all-buildings requirement can make the inspection process overly burdensome, particularly in rural areas where projects often consist of small buildings such as single-unit buildings, duplexes, or triplexes. The final and temporary regulations do not fully adopt this suggestion. The regulations continue to require that Agencies comply with the all-buildings requirement unless guidance published in the Internal Revenue Bulletin pursuant to § 1.42–5T(a)(iii) provides otherwise.

Rev. Proc. 2016–15 does provide for such an exception. Under Rev. Proc. 2016–15, the all-buildings requirement does not apply to an Agency that uses the REAC protocol, under HUD oversight, to satisfy the physical inspection requirement (although the REAC protocol itself may require inspection of all buildings in certain cases). The rigor with which Rev. Proc. 2016–15 defines the REAC protocol justifies this exception. Among the requirements set forth in the revenue procedure is the requirement that a physical inspection performed under the REAC protocol utilize the standards adopted, and inspectors certified, by HUD. Inspections performed under the REAC protocol or by the Rural Housing Service under the section 515 program require federal agency oversight. Thus, such oversight substitutes for an all-buildings requirement for inspection. Similar to inspections performed by the Rural Housing Service under the section 515 program, inspections performed under the REAC protocol are not subject to an all-buildings requirement. A physical inspection that the revenue procedure treats as being performed under the REAC protocol also involves the use of the most recent REAC UPCS inspection software, which has a strong statistical basis. Therefore, under the revenue procedure, the REAC protocol is an acceptable method for satisfying both § 1.42–5(d) and the physical inspection requirement of § 1.42–5T(c)(2)(ii) and (iii). If, in the future, the Treasury Department and the IRS become persuaded that there are one or more additional suitable alternatives to the all-buildings requirement, they may provide one or more additional exceptions to that requirement.

A commenter suggested that the regulations permit an Agency to treat multiple buildings with a common owner and plan of financing as a single low-income housing project, regardless of whether the owner has elected this treatment under section 42(g)(3)(D). The final and temporary regulations do not adopt this suggestion. Section 42(c)(2)(A) defines a "qualified low-income building" as, in part, any building that is part of a qualified low-income housing project at all times throughout the compliance period. Section 42(g) defines a "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of section 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The scope of the term "qualified low-income housing project" for purposes of physical inspections should be the same as for other purposes under section 42.

Decoupling of the Physical Inspection and Low-Income Certification Review Requirements (Ending the Same-Units Requirement)

Notice 2012–18 asked for comments on whether permitting physical inspection and low-income certification review of different low-income units (that is, ending the same-units requirement) would simplify the inspection process. The notice also asked for comments on whether ending the requirement would impair the value of the data obtained. One commenter asserted that the current rule of requiring physical inspection and low-income certification review of the same low-income units is effective in finding noncompliance on a particular unit. Most commenters, however, believed that decoupling of the physical inspection and low-income certification review requirements would reduce the administrative burden, better preserve the surprise element, and likely increase the coverage of compliance-monitoring.

In response to these comments, the final and temporary regulations end the same-units requirement by decoupling the physical inspection and low-income certification review. Therefore, an Agency is no longer required to conduct physical inspection and low-income certification review on the same units. Because the units no longer need to be the same, an Agency may choose a different number of

units for physical inspection and for low-income certification review, provided the Agency chooses at least the minimum number of low-income units in each case. If an Agency chooses to select different low-income units for physical inspections and low-income certification review, the Agency must select the units for physical inspection or low-income certification review separately and in a random manner.

Further, because the units no longer need to be the same, an Agency may choose to conduct physical inspection and low-income certification review at different times. For example, if HUD requires a physical inspection only two years after a joint HUD/low-income housing credit inspection, that second inspection may be used for both HUD and low-income housing credit purposes without accelerating the next low-income housing credit file review. (Thereafter, physical inspections performed every third year might take place a year before the every-three-year file reviews.) Also, an Agency may choose to conduct physical inspections in the summer but complete the low-income certification review in the winter when physical inspections may be difficult to conduct due to weather conditions. The inspections and reviews, however, must satisfy the applicable timeliness requirements of § 1.42–5T(c)(2)(ii)(A)(*1*) and (*2*).

In addition, to make meaningful the physical inspection and low-income certification review, the final and temporary regulations retain the random-selection rule and strengthen the no-notice rule. Accordingly, if an agency decides to decouple the physical inspection and low-income certification review, the Agency may not allow selection of a low-income unit for physical inspection (or low-income certification review) to influence the likelihood that the same unit will be selected (or will not be selected) for low-income certification review (or physical inspection).

Whether or not an Agency is selecting the same units for inspection and for low-income certification review, the Agency may give an owner reasonable notice that an inspection of the building and low-income units or review of low-income certifications will occur. This notice enables the owner to notify tenants of the inspection or to assemble low-income certifications for review. The regulations provide that reasonable notice is generally no more than 30 days, but they also provide a very limited extension for certain extraordinary circumstances beyond an Agency's control such as natural disasters and severe weather conditions.

Thus, under the final and temporary regulations, if an Agency chooses to select the same units for physical inspections and low-income certification review, the Agency may conduct physical inspections and low-income certification review either at the same time or separately. However, once the Agency informs the owner of the identity of the units for which physical inspections or low-income certification review will occur, the Agency must conduct the physical inspections and low-income certification review within the reasonable-notice time frame described in the preceding paragraph.

Comments are requested on these aspects of the regulations. For example, comments are requested on whether the same maximum amount of notice is reasonable for physical inspections and low-income certification review. Comments are also requested on whether, for physical inspections, the reasonable-notice time frame should be shortened. For example, under the REAC protocol, an inspector provides a 15-day notice of an upcoming HUD inspection to the owner and/or manager of the building and same-day notice of which units are to be inspected.

Possible Changes in the Minimum Size of Samples

The Treasury Department and the IRS believe the methods in Rev. Proc. 2016–15 reasonably balance the burden on Agencies, tenants, and building owners while adequately monitoring compliance. However, additional comments may be submitted on other possible methods, including stratified sampling procedures and estimation methodologies. To be useful, any such comments should include substantial detail regarding the procedures to be adopted and should provide thorough justification as to whether the suggested methods effectively reduce burden without negatively impacting the confidence that can be placed in the results obtained from the resulting samples.

Revision to Frequency and Form of Certification

The final and temporary regulations revise the rules currently in § 1.42–5(c)(3) to clarify that a monitoring procedure must require that the owner certifications in § 1.42–5(c)(1) be made to and reviewed by the Agency at least annually covering each year of the 15–year compliance period.

Effective/Applicability Dates

The temporary regulations apply on February 25, 2016 and expire on February 22, 2019. Agencies using the REAC protocol as part of the physical inspections pilot program may rely on the temporary regulations for on-site inspections and low-income certification review occurring between January 1, 2015 and February 25, 2016.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, 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 Printing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Jian H. Grant and Martha M. Garcia, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§ 1.42–1T and 1.42–2T and by adding and revising entries in numerical order to read as follows:

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

Section 1.42–1T also issued under 26 U.S.C. 42(n).

Section 1.42–2 also issued under 26 U.S.C. 42(n).

Section 1.42–5T also issued under 26 U.S.C. 42(n).

Par. 2. Section 1.42–5 is amended by:

1. Adding paragraph (a)(2)(iii).

2. Revising paragraphs (c)(2)(ii) and (iii) and (c)(3).

3. Revising the paragraph heading of paragraph (h), redesignating the text of paragraph (h) as paragraph (h)(1) and adding a paragraph (h)(1) heading, and adding paragraph (h)(2).

4. Adding paragraph (i).

The additions and revisions read as follows:

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

(a) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.42–5T(a)(2)(iii).

* * * * *

(c) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.42–5T(c)(2)(ii).

(iii) [Reserved]. For further guidance, see § 1.42–5T(c)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.42–5T(c)(3).

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(h) *Effective/applicability dates*—(1) *In general.** * *

(2) [Reserved]. For further guidance, see § 1.42–5T(h)(2).

(i) [Reserved]. For further guidance, see § 1.42–5T(i).

Par. 3. Section 1.42–5T is added to read as follows:

§ 1.42–5T Monitoring compliance with low-income housing credit requirements (temporary).

(a)(1) through (a)(2)(ii) [Reserved]. For further guidance, see § 1.42–5(a)(1) through (a)(2)(ii).

(iii) *Effect of guidance published in the Internal Revenue Bulletin*. Guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) may provide—

(A) Exceptions to the requirements referred to in § 1.42–5(a)(2)(i) and the requirements described in this section; or

(B) Alternative means of satisfying those requirements.

(b) through (c)(2)(i) [Reserved]. For further guidance, see § 1.42–5(b) through (c)(2)(i).

(ii) Require that, with respect to each low-income housing project, the Agency conduct on-site inspections and review low-income certifications (including in that term the documentation supporting the low-income certifications and the rent records for tenants).

(iii) Require that the on-site inspections that the Agency must conduct satisfy both the requirements of § 1.42–5(d) and the requirements in paragraph (c)(2)(iii)(A) through (D) of this section, and require that the low-income certification review that the Agency must perform satisfies the requirements in paragraphs (c)(2)(iii)(A) through (D) of this section. Paragraph (c)(2)(iii)(A) through (D) of this section provides rules determining how these on-site inspection requirements and how these low-income certification review requirements may be satisfied by an inspection or review, as the case may be, that includes only a sample of the low-income units.

(A) *Timing*. The Agency must conduct on-site inspections of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project—

(*1*) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and

(*2*) At least once every 3 years thereafter.

(B) *Number of low-income units*. The Agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units required by guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(C) *Selection of low-income units for inspection and low-income certifications for review*—(*1*) *Random selection*. The Agency must select in a random manner the low-income units to be inspected and the units whose low-income certifications are to be reviewed. The Agency is not required to select the same low-income units of a low-income housing project for on-site inspections and low-income certification review, and an Agency may choose a different number of units for on-site inspections and for low-income certification review, provided the Agency chooses at least the minimum number of low-income units in each case. If the Agency chooses to select different low-income units for on-site inspections and low-income certification review, the Agency must select the units for on-site inspections or low-income certification review separately and in a random manner.

(*2*) *Advance notification limited to reasonable notice*. The Agency must select the low-income units to inspect and low-income certifications to review in a manner that will not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) for a particular year will or will not be inspected (or reviewed). However, the Agency may give an owner reasonable notice that an inspection of the building and low-income units or review of low-income certifications will occur. The notice is to enable the owner to notify tenants of the inspection or to assemble low-income certifications for review.

(*3*) *Meaning of reasonable notice*. For purposes of paragraph (c)(2)(iii)(C)(*ii*) of this section, reasonable notice is generally no more than 30 days. The notice period begins on the date the Agency informs the owner of the identity of the units for which on-site inspections or low-income certification review will or will not occur. Notice of more than 30 days, however, may be reasonable in extraordinary circumstances that are beyond an Agency's control and that prevent an Agency from carrying out within 30 days an on-site inspection or low-income certification review. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions. In the event of extraordinary circumstances that result in a reasonable-notice period longer than 30 days, an Agency must conduct the on-site inspection or low-income certification review as soon as practicable.

(*4*) *Applicability of reasonable notice limitation when the same units are chosen for inspection and file review*. If the Agency chooses to select the same units for on-site inspections and low-income certification review, the Agency may conduct on-site inspections and low-income certification review either at the same time or separately. The Agency, however, must conduct both the inspections and review within the reasonable-notice period described in paragraph (c)(2)(iii)(C)(*2*) and (*3*) of this section.

(D) *Method of low-income certification review*. The Agency may review the low-income certifications wherever the owner maintains or stores the records (either on-site or off-site).

(3) *Frequency and form of certification.* A monitoring procedure must require that the certifications and reviews of § 1.42–5(c)(1) and (c)(2)(i) be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalty of perjury. A monitoring procedure may require certifications and reviews more frequently than every 12 months, provided that all months within each 12-month period are subject to certification.

(c)(4) through (h)(1) [Reserved]. For further guidance, see § 1.42–5(c)(4) through (h)(1).

(2) *Effective/applicability dates of the REAC inspection protocol*. The requirements in paragraphs (a)(2)(iii), (c)(2)(ii) and (iii), and (c)(3) of this section apply beginning on February 25, 2016. Agencies using the REAC inspection protocol of the Department of Housing and Urban Development as part of the Physical Inspections Pilot Program may rely on these provisions for on-site inspections and low-income certification review occurring between January 1, 2015 and February 25, 2016. Otherwise, for the rules that apply before February 25, 2016**,** see § 1.42–5 as contained in 26 CFR part 1 revised as of April 1, 2015.

(i) *Expiration date*. The applicability of this section expires on February 22, 2019.

John Dalrymple.
Deputy Commissioner for Services and Enforcement.

Approved: January 29, 2016.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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26 CFR 301.6103(j)(1)–1: Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical .....

T.D. 9754

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that authorize the disclosure of certain items of return information to the Bureau of the Census (Bureau) in conformance with section 6103(j)(1) of the Internal Revenue Code (Code). These regulations finalize temporary regulations that were made pursuant to a request from the Secretary of Commerce. These regulations require no action by taxpayers and have no effect on their tax liabilities. Thus, no taxpayers are likely to be affected by the disclosures authorized by this guidance.

DATES: *Effective Date:* These regulations are effective on February 26, 2016.

Applicability Date: For dates of applicability, see § 301.6103(j)(1)–1(e).

FOR FURTHER INFORMATION CONTACT: William Rowe, (202) 317-5093 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 301. Section 6103(j)(1)(A) authorizes the Secretary of Treasury to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary of Treasury may prescribe by regulation to officers and employees of the Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the existing regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

By letter dated May 10, 2013, the Secretary of Commerce requested that additional items of return information be disclosed to the Bureau for purposes of structuring a census that costs less per housing unit and still maintains high quality results. A major cost in previous decennial censuses was the high number of follow-up, in-person attempts to collect information from housing units that did not return a completed census form. The Bureau intends to conduct research and testing for the next decennial census using