Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7479, email *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(1) Pool and Hot Tub Alliance (PHTA), 1650 King Street, Suite 602, Alexandria, VA 22314; phone: (703) 838–0083; website: *www.phta.org.*

(i) ANSI APSP ICC–16, *American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas, and Hot Tubs,* (approved August 18, 2017).

(ii) [Reserved]

(2) Underwriters Laboratories (UL), 1250 Connecticut Avenue NW, Suite 520, Washington, DC 20036; phone: (202) 296–7840; website: *www.ul.com.*

(i) ANSI/CAN/UL 12402–9, *Standard for Personal Flotation Devices—Part 9: Test Methods,* (published February 11, 2021).

(ii) [Reserved]

(3) National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: *www.nema.org.*

(i) ANSI/NEMA Z535.4–23, *American National Standard for Product Safety Signs and Labels* (approved December 14, 2023).

(ii) [Reserved]

(4) ASTM International (ASTM), *100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959;* phone: (610) 832–9585; website: *www.astm.org.*

(i) ASTM F833–21, *Standard Consumer Safety Performance Specification for Carriages and Strollers,* (approved June 15, 2021).

(ii) ASTM F1967–19, *Standard Consumer Safety Specification for Infant Bath Seats,* (approved May 1, 2019).

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–25446 Filed 11–19–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116017–24]

RIN 1545–BR36

Administrative Requirements for an Election To Exclude Applicable Unincorporated Organizations From the Application of Subchapter K

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would provide certain administrative requirements for unincorporated organizations taking advantage of modifications to the rules governing elections to be excluded from the application of partnership tax rules. These proposed regulations would affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election.

DATES: Written or electronic comments must be received by January 21, 2025. A public hearing on these proposed regulations has been scheduled for February 7, 2025, at 10 a.m. Eastern Standard Time (EST). Requests to speak and outlines of topics to be discussed at the public hearing must be received by January 21, 2025. If no outlines are received by January 21, 2025, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on February 5, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–116017–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket.

Send paper submissions to: CC:PA:01:PR (REG–116017–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Cameron Williamson at (202) 317–6684; and concerning submissions of comments and requests for a public hearing, contact the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) issued by the Secretary of the Treasury or her delegate (Secretary) under the express authority granted under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Code (proposed regulations).

Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, ''[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter.''

Section 6031(a) provides an express grant of a regulatory authority for the Secretary to prescribe in forms or regulations partnership reporting information required ''for the purpose of carrying out the provisions of subtitle A.''

Section 6417(d) provides several express delegations of authority to the Secretary to enforce requirements for elective payments of applicable credits under section 6417 and recapture excessive payments. Section 6417(h) requires the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

Finally, section 7805(a) authorizes the Secretary to ''prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

I. Elective Payment of Applicable Credits

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an ''applicable entity'' (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an ''applicable credit'' (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (88 FR 40528) final regulations (TD 9988) providing guidance on the section 6417 elective payment election (section 6417 regulations). Section 1.6417–2(a)(1)(iv) provides that partnerships are not applicable entities described in section 6417(d)(1)(A) or § 1.6417–1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in § 1.6417–1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, § 1.6417–2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property (as defined in § 1.6417–1(e)), through an organization that has made a valid election under section 761(a) (section 761(a) election) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property is treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such applicable credit property.

Also on March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 17613) proposed amendments (REG–101552–24) to the regulations under section 761(a) to carry out the purposes of section 6417 (March 2024 proposed regulations). Generally, the March 2024 proposed regulations would have amended certain provisions of § 1.761–2 to provide that unincorporated organizations meeting certain requirements (applicable unincorporated organizations) are eligible for certain modifications to the existing requirements for making a section 761(a) election.

Concurrently with the publication of these proposed regulations, the Treasury Department and the IRS are publishing in the Rules and Regulations section of this edition of the **Federal Register** a Treasury decision (TD 10012, RIN 1545–BR09) adopting certain provisions of § 1.761–2 of the March 2024 proposed regulations as final regulations under section 761(a) (final regulations). The provisions of § 1.761–2 of the final regulations are explained in greater detail in the preamble to the final regulations. The provisions of § 1.761–2 in effect as of January 19, 2025, are referred to in this preamble as ''revised § 1.761–2.''

II. Overview of Section 761(a) and Revised § 1.761–2

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, provided that the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

Unincorporated organizations seeking to make an election to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be availed of for the purposes listed in section 761(a)(2), that is, for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Pursuant to the authority in section 761(a), revised § 1.761–2(a)(3) provides additional requirements for an unincorporated organization to elect to be excluded from the application of subchapter K under section 761(a)(2). Specifically, revised § 1.761–2(a)(3) requires that the participants in the joint production, extraction, or use of property: (i) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used, and (iii) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year.

The final regulations modify the co-ownership and joint marketing requirements for ''applicable unincorporated organizations.'' Under revised § 1.761–2(a)(4)(ii), an applicable unincorporated organization is defined as an unincorporated organization (1) that is owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and § 1.6417–1(c), (2) the members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits, (3) that, pursuant to the joint operating agreement, is organized exclusively to own and operate applicable credit property (as defined in § 1.6417–1(e)), (4) for which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property, (5) the members of which are able to compute their income without the necessity of computing partnership taxable income, and (6) which is not a syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association.

Revised § 1.761–2(b) provides rules for making a section 761(a) election. Revised § 1.761–2(b)(2)(i) generally provides that a section 761(a) election

must be made in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income,* which must contain, in lieu of the information required by Form 1065 and the instructions relating thereto, the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3) (taking into account revised § 1.761–2(a)(4), as applicable); a statement that all of the members of the organization elect to be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

If an unincorporated organization does not make the section 761(a) election provided in this manner, revised § 1.761–2(b)(2)(ii) provides (as it provided before the final regulations) that the organization will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization (deemed election rule). Although the following facts are not exclusive, the requisite intent may be indicated if (1) at the time of the formation of the organization there is an agreement among the members that the organization be excluded from the application of subchapter K beginning with the first taxable year of the organization, or (2) the members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

III. Reason for Proposed Regulations

Section 6417(d)(5) provides that as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments. Section 6417(h) requires the Secretary to issue regulations or other guidance to ensure that the amount of a payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable.

The Treasury Department and the IRS have determined that additional guidance outlining certain administrative requirements is needed to comply with these statutory directives. After an unincorporated organization makes a section 761(a) election, each member may increase or reduce (even to zero) its interest in the unincorporated organization without affecting the validity of the section 761(a) election. As a result, the information submitted to the IRS in connection with an organization's section 761(a) election, as required under revised § 1.761–2(b), can become inaccurate at any time without notice to the IRS. This lack of reliable and accurate information about the applicable entity owners (if any) of an applicable unincorporated organization constrains the IRS's ability to ensure that the amount of payments or deemed payments made under section 6417 are commensurate with the amount of applicable credits that would otherwise be allowable, as directed under section 6417(h).

This problem is compounded by the deemed election rule in revised § 1.761–2(b)(2)(ii). A deemed election obscures any record of an organization's members (including any applicable entities) that are subject to a section 761(a) election and can be discovered by the IRS only upon examination. In contrast, a written election is a relatively simple and effective means of identifying any applicable entity owners of applicable credit property held through an applicable unincorporated organization with a valid section 761(a) election. Moreover, members of an organization who form an entity or enter into long-term contracts together are especially likely to know that their activities could create a partnership subject to subchapter K. The Treasury Department and the IRS have concerns that deemed elections are not appropriate in such situations, especially when (as is anticipated to be typical) applicable entities intend to make section 6417 elections with respect to applicable credit property owned by an unincorporated organization, as such elections are generally permitted only when the organization has a valid section 761(a) election.

Explanation of Provisions

The proposed regulations would impose new requirements on applicable unincorporated organizations whose section 761(a) elections would not be valid without the application of revised § 1.761–2(a)(4)(iii) (specified modifications for applicable unincorporated organizations). Proposed § 1.761–2(a)(4)(iv)(A) would provide that a specified applicable unincorporated organization's section 761(a) election will terminate as a result of a ''terminating transaction.'' A terminating transaction is the acquisition or disposition of an interest in a specified applicable unincorporated organization, other than as the result of a transfer between a disregarded entity (as defined in § 1.6417–1(f)) and its owner since such transfer does not change the identity of the applicable entity for purposes of section 6417. *See* § 1.6417–2(a)(1)(ii); *see also* proposed § 1.6417–1(f) contained in the notice of proposed rulemaking *Entities Wholly Owned by Indian Tribal Governments* (REG–113628–21) published in the **Federal Register** (89 FR 81871) on October 9, 2024, which alters the definition of disregarded entities for purposes of section 6417.

Terminating transactions will not terminate an applicable unincorporated organization's section 761(a) election if the organization meets the requirements to make a new section 761(a) election and makes such an election not later than the time prescribed by § 1.6031(a)–1(e) (including extensions thereof) for filing a partnership return with respect to the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the section 761(a) election, the organization continued to have taxable years and such taxable years were determined by reference to the taxable year in which the organization made the section 761(a) election (hypothetical partnership taxable year). Such election will protect the organization's section 761(a) election against all terminating transactions in a hypothetical year only if it contains, in addition to the information required by § 1.761–2(b), information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred. If a new election is not timely made, the section 761(a) election would terminate on the first day of the taxable year beginning after the hypothetical partnership taxable

year in which one or more terminating transactions occurred. Proposed § 1.761–2(a)(5)(iv) would add *Example 4* to illustrate this new rule. These provisions are inapplicable to an organization that is no longer eligible to elect to be excluded from the application of subchapter K. When an organization becomes ineligible to make a section 761(a) election, the organization's section 761(a) election automatically terminates, and the organization must begin complying with the requirements of subchapter K.

The proposed regulations would also clarify that the deemed election rule in § 1.761–2(b)(2)(ii) does not apply to specified applicable unincorporated organizations. This change is necessary to ensure that an unincorporated organization cannot benefit from the modifications in revised § 1.761–2(a)(4)(iii) without providing written information to the IRS about its members. The change also ensures that a specified applicable unincorporated organization that terminates as the result of a terminating transaction cannot have its election restored without making a new election in writing. However, if such an organization can make a valid section 761(a) election without the application of either of the specified modifications in revised § 1.761–2(a)(4)(iii), the organization may be deemed to make such an election under the deemed election rule.

In addition, the proposed regulations would clarify that an applicable unincorporated organization making a section 761(a) election must submit all information required by the instructions to Form 1065, *U.S. Return of Partnership Income,* for making a section 761(a) election. This requirement is intended to ensure that the organization making a section 761(a) election provides all of the information necessary for the IRS to properly administer section 6417 with respect to applicable unincorporated organizations making a section 761(a) election.

The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election. Prior to revision in the final regulations, § 1.761–2(b)(3) provided that taxpayers could revoke a section 761(a) election by submitting an application for permission to revoke a section 761(a) election to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply. Though this language did not define what the application would include, it historically has been interpreted to mean a private letter ruling request. However, the language in § 1.761–2(b)(3) was imprecise, lists an incorrect address, and was removed by the final regulations. The proposed regulations would clarify that such an application must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance. This language would ensure that the process for making this application is up-to-date and clear. Taxpayers may continue to submit applications for permission to revoke an election by requesting a private letter ruling and can rely on the process in Revenue Procedure 2024–1 or successor guidance prior to the date regulations finalizing these proposed regulations are published in the **Federal Register**.

Proposed Applicability Dates

These proposed regulations are proposed to apply to taxable years ending on or after November 20, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

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

These proposed regulations mention reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to make and maintain an election out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

These proposed regulations would also require unincorporated organizations to provide all information required by the instructions to Form 1065 for making a section 761(a) election. This reporting requirement will be approved by OMB under 1545–0123 for business filers and 1545–0047 for tax-exempt organizations in accordance with the PRA procedures in 5 CFR 1320.10.

These proposed regulations would include recordkeeping requirements for certain unincorporated organizations to track changes in ownership of interests in each such organization. The organizations can maintain these records in any manner they deem appropriate. The recordkeeping is needed to determine whether a new written section 761(a) election must be filed with the IRS. IRS will seek OMB approval under a new OMB Control Number (1545–NEW) for the burden on business filers and tax-exempt organizations. The associated burden for the recordkeeping is estimated as follows:

Estimated number of respondents: 1,000.

Estimated average annual burden per response: 1 hour.

Estimated total annual reporting burden: 1,000 hours.

The recordkeeping in this proposed rulemaking has been submitted to OMB for review in accordance with the PRA under OMB Control Number 1545–NEW. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with copies to the IRS. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–116017–24 on the Subject line). Comments on the collection of information should be received by January 21, 2025. Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection 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 services to provide information.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

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

1. Need for and Objectives of the Proposed Rule

As discussed in this preamble, the proposed regulations are intended to ensure that each section 761(a) election by a specified applicable unincorporated organization provides all of the information necessary for the IRS to comply with the directives of section 6417(d) and (h).

2. Affected Small Entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2024 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these proposed regulations and in this IRFA, section 761(a) and these proposed regulations may affect a variety of different entities across several different industries as there are 12 different applicable credits for which an elective payment election under section 6417(a) may be made. There is uncertainty as to the exact number of small businesses within this group. The current estimated number of respondents to the section 6417 regulations is 20,000 taxpayers, and it is likely that a fraction of that number would be respondents to these proposed regulations.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when taxpayers start to make the section 761(a) election using the guidance and procedures provided in the final regulations and these proposed regulations.

3. Impact of the Proposed Rules

The proposed regulations would require certain applicable unincorporated organizations to submit section 761(a) elections in writing more frequently than they otherwise would have (though no more than once per year). In addition, a specified applicable unincorporated organization will be responsible for identifying any transactions involving ownership interests therein. Applicable unincorporated organizations that make a section 761(a) election will have administrative costs related to reading and understanding the rules as well as recordkeeping and reporting requirements. The costs will vary across different-sized entities and across the type of project(s) in which such entities are engaged.

Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burdens of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

4. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, in adopting the terminating transaction rules, the Treasury Department and the IRS considered requiring only the parties to a transaction involving an interest in a specified applicable unincorporated organization to report such transaction. However, the Treasury Department and the IRS decided that such an option would increase the opportunity for duplication, fraud, improper payments, or excessive payments under section 6417. Section 6417(d)(5) specifically authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6417 as a condition of, and prior to, any amount being treated as a payment which is made by an applicable entity under section 6417. As described in the preamble to these proposed regulations, these proposed rules carry out that congressional intent by ensuring that every member of a specified applicable unincorporated organization is informed about all transactions involving interests in the specified applicable unincorporated organization that could affect the amount or owner of any payments under section 6417.

Comments are requested on the requirements in the proposed regulations, including specifically whether there are less burdensome alternatives that do not increase the risk of duplication, fraud, improper payments, or excessive payments under section 6417.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate 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 (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on April 5, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 761(a) proposed rules published on March 11, 2024, which helped inform the development of these proposed regulations.

VII. Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

Executive Order 14112 (Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination) reaffirms the executive branch's support for Tribal self-determination as the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Executive Order 14112 requires agency heads to take certain actions, consistent with applicable law and to the extent practicable, to increase access to ''Federal funding and support programs for Tribal Nations''; provide Tribal Nations with the flexibility to improve economic growth and address the specific needs of their communities; and reduce administrative burdens. Section 2(b) of the Executive order defines ''Federal funding and support programs for Tribal Nations'' as including ''funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians.'' As section 1 of the Executive order explains, ''As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms.'' These commitments build on a recognition of principles of sovereignty, sovereign immunity, and self-governance that have been repeatedly reaffirmed by the Supreme Court. *See, e.g., Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering, P.C., et al.,* 476 U.S. 877, 890–91 (1986); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 510 (1991). The Treasury Tribal Advisory Committee has advised that Tribes consider ''financial support'' in Executive Order 14112 to include tax matters that range from tax credits to Federal tax rules that regulate Tribal revenue.

Consistent with Executive Order 14112, the Treasury Department and the IRS recognize the importance of protecting and supporting Tribal sovereignty and self-determination. These proposed regulations are necessary for compliance with sections 6417(d)(5) and (h) and do not impose undue burdens on Tribal sovereignty.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking 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. All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for February 7, 2025, beginning at 10 a.m. EST, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by January 21, 2025. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by January 21, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–116017–24 and the language ''TESTIFY In Person.'' For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–116017–24.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116017–24 and the language ''TESTIFY Telephonically.'' For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–116017–24.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–116017–24 and the language ''ATTEND In Person.'' For example, the subject line may say: Request to ATTEND Hearing In Person for REG–116017–24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116017–24 and the language ''ATTEND Hearing

Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–116017–24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by 5 p.m. EST on February 4, 2025.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble 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 *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Cameron Williamson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025, continues to read in part as follows:

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

* * * * *

Section 1.761–2 also issued under 26 U.S.C. 446(b), 761(a), 6031(a), 6417(d), and 6417(h).

* * * * *

■ **Par. 2.** Section 1.761–2, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025, is further amended by:

■ a. Adding paragraphs (a)(4)(iv) and (a)(5)(iv).
■ b. Revising the last sentence of paragraph (b)(2)(i).
■ c. Revising the first sentence of paragraph (b)(2)(ii).
■ d. Adding a sentence to the end of paragraph (b)(3)(i).
■ e. Revising paragraph (f).

The additions and revisions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(4) * * *

(iv) *Termination upon change in interest*—(A) *In general.* Except as provided in paragraph (a)(4)(iv)(E) of this section, an election under this paragraph (a) by a specified applicable unincorporated organization (as defined in paragraph (a)(4)(iv)(C) of this section) will terminate as the result of a terminating transaction (as defined in paragraph (a)(4)(iv)(D) of this section) involving an interest in that organization. Such termination will be effective beginning on the first day of the taxable year beginning after the hypothetical partnership taxable year (as defined in paragraph (a)(4)(iv)(B) of this section) in which the terminating transaction occurred.

(B) *Hypothetical partnership taxable year.* The term *hypothetical partnership taxable year* means, with respect to a specified applicable unincorporated organization, the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the election under this paragraph (a), the organization continued to have taxable years and such taxable years were determined by reference to the taxable year required to be used by the organization to make the election.

(C) *Specified applicable unincorporated organization.* The term *specified applicable unincorporated organization* means an applicable unincorporated organization that has made an election under this paragraph (a) and such election would not be valid without the application of either paragraph (a)(4)(iii)(A) or (B) of this section.

(D) *Terminating transaction.* The term *terminating transaction* means an acquisition or disposition of an interest in a specified applicable unincorporated organization (including transfers among members of the organization), other than as the result of a transfer between a disregarded entity (as defined in § 1.6417–1(f)) and its owner.

(E) *Exception.* If a specified applicable unincorporated organization meets the requirements to make a new election under this paragraph (a) and makes such an election no later than the time that would have been prescribed by § 1.6031(a)–1(e) (including extensions thereof) for filing a partnership return with respect to the hypothetical partnership taxable year in which one or more terminating transactions occurred, the organization's election will not terminate under paragraph (a)(4)(iv)(A) of this section as a result of any terminating transaction occurring during that hypothetical partnership taxable year. Such election must contain, in addition to the information required by paragraph (b) of this section, information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred.

(5) * * *

(iv) *Example 4*—(A) *Facts.* The facts are the same as in paragraph (a)(5)(ii)(A) of this section (*Example 2*), except that T owns a 60% interest in TLLC and Y owns a 40% interest in TLLC. TLLC's first taxable year ends on September 30th of year 1. On or before the 15th day of the third month following that date, TLLC makes a valid election under section 761(a) with respect to year 1. On August 31 of year 3, T sells all of T's interest in TLLC to Q.

(B) *Analysis.* TLLC is a specified applicable unincorporated organization. Accordingly, the sale of T's interest is a terminating transaction and will terminate TLLC's section 761(a) election unless TLLC makes a new section 761(a) election on or before the 15th day of the third month following September 30th of year 3. This analysis would not be different if, sometime between the end of TLLC's first taxable year and the hypothetical partnership taxable year ending on September 30th of year 3, TLLC's taxable year would have changed under the rules of subchapter K (for example, as a result of a change in T's taxable year).

(b) * * *

(2) * * *

(i) * * * Such partnership return must contain the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph

(a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained); and all information required by the form and instructions to the Form 1065 for an election under paragraph (a) of this section.

(ii) * * * If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (but not a specified applicable unincorporated organization) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. * * *

(3) * * *

(i) * * * Application for permission to revoke the election must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024–1 or successor guidance.

* * * * *

(f) *Applicability date*—(1) *In general.* Except as provided in paragraphs (d) and (f)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Exceptions.* Paragraphs (a)(4)(iv) and (a)(5)(iv) of this section, the fifth sentence of paragraph (b)(2)(i) of this section, the first sentence of paragraph (b)(2)(ii) of this section, and the last sentence of paragraph (b)(3)(i) of this section, apply to taxable years ending on or after November 20, 2024.

Heather C. Maloy,

Acting Deputy Commissioner.

[FR Doc. 2024–26962 Filed 11–19–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AS16

Loan Guaranty: Loan Reporting and Partial or Total Loss of Guaranty or Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing loan reporting requirements for lenders that participate in the VA-guaranteed home loan program and circumstances when VA would assert a defense for partial or total loss of guaranty or insurance for lenders and holders. These proposed amendments would support VA's ongoing efforts to modernize and transform technology and processes within the guaranteed home loan program, capitalizing on industry standard datasets. In addition, the proposed regulatory changes would update and enhance the loan guaranty reporting requirements for lenders, providing veterans stronger protections against noncompliant loans through improved transparency and oversight of the program.

DATES: Comments must be received on or before January 21, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *www.regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at *Regulations.gov*, under RIN 2900–AS16(P).

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training; Terry Rouch, Assistant Director for Loan Policy and Valuation; and Colin Deaso, Assistant Director for Data and Technology Solutions, Loan Guaranty (26), Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street NW, Washington DC 20006, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Purpose of This Rulemaking

VA proposes to amend its reporting regulation at 38 CFR 36.4303 and its partial or total loss of guaranty or insurance regulation at 38 CFR 36.4328 to support its ongoing efforts to modernize and transform technology and processes within its VA-guaranteed home loan program and to make the regulations more reader-friendly. VA is accomplishing the technological transformation by updating reporting requirements and connecting with lenders and holders through application programming interfaces (APIs). Utilizing APIs will more efficiently and effectively support veterans, lenders, servicers, and other stakeholders who participate in the VA-guaranteed home loan program. Specifically, VA would launch an API ecosystem in which VA and veterans would, through increased VA oversight capabilities, have stronger protections against noncompliant lenders and holders. Additionally, lenders and holders would have more assurance and confidence in using their authority to close VA-guaranteed loans on an automatic basis and in carrying out lending and servicing functions in VA's home loan program.

To help ensure success, updates to 38 CFR 36.4303 and 36.4328 are necessary. Amendments to § 36.4303 would expand loan reporting requirements by allowing VA, lenders, and holders to take advantage of technological improvements that APIs provide, resulting in more efficient and more effective program administration. Section 36.4328 amendments would clarify provisions addressing partial or total loss of the guaranty or insurance when VA identifies fraud, material misrepresentations, or other noncompliance with VA requirements.

II. Section-by-Section Analysis of the Proposed Regulatory Amendments

A. 38 CFR 36.4303—Reporting Requirements

1. Reporting Loans Closed on an Automatic Basis

VA proposes to revise § 36.4303(a) to add the heading, ''Automatically guaranteed loans'', and provide that, for loans automatically guaranteed under 38 U.S.C. 3703(a)(1), a lender of a class described under 38 U.S.C. 3702(d), would be required to report the loan, after loan closing, in an electronic