

## **Treasury Decision 7995, 26 CFR, IRC Sec(s). 42**

**December 12, 1984**

### **AGENCY:**

Internal Revenue Service, Treasury.

### **ACTION:**

Temporary regulations.

### **SUMMARY:**

This document contains temporary income tax regulations relating to the tax exempt status of interest on mortgage subsidy bonds. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all purchasers and governmental issuers of mortgage subsidy bonds.

### **DATES:**

The temporary regulations relating to qualified mortgage bonds are effective for governmental obligations issued after December 31, 1984, except that the amendments to the regulations in §6a.103A-2(a)(2) are effective for obligations issued after December 31, 1983. The temporary regulations relating to qualified veterans' mortgage bonds (including the requirement that qualified veterans' mortgage bonds satisfy the requirements of section 103A(j)(3)) are effective for obligations issued after July 18, 1984, except that the volume limitation provided in §6a.103A-3(g) applies to obligations issued after June 22, 1984.

### **FOR FURTHER INFORMATION CONTACT:**

Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

### **SUPPLEMENTARY INFORMATION:**

#### *Background*

This document contains amendments to the temporary regulations relating to mortgage subsidy bonds under section 103A of the Internal Revenue Code of 1954 as amended by section 611 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98-369; 98 Stat. 901). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

#### *Explanation of Provisions*

Section 103A of the Internal Revenue Code provides that a mortgage subsidy bond shall be treated as an obligation not described in section 103(a). Thus, the interest on a mortgage subsidy bond is not excludable from gross income. However, qualified mortgage bonds and qualified veterans' mortgage bonds are not treated as mortgage subsidy bonds.

Section 611 of the Act amended section 103A in several respects. The amendments made by this document conform the temporary regulations to those amendments and provide guidance to issuers and purchasers of qualified mortgage bonds and qualified veterans' mortgage bonds.

Section 6a.103A-2(a)(2) is amended to provide that the term "qualified mortgage bond" does not include obligations issued after December 31, 1987.

The Act added three new requirements that must be met by any issue in order to be treated as an issue of qualified mortgage bonds. Section 6a.103A-2(k) provides that an obligation is not a qualified mortgage bond unless the issue of which the obligation is a part complies with the information reporting requirement. Generally, this requirement will be met if the issuer submits on Form 8038 the information required therein and files an annual report containing information regarding the extent to which the proceeds of an issue have been made available to low-income individuals. For any issue, the Form 8038 must be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligations are issued. The annual report regarding the use of proceeds is to be filed not later than February 15 of each year.

Section 6a.103A-2(l) provides that an issue of obligations will not constitute qualified mortgage bonds unless the applicable elected representative of the governmental unit publishes, after a public hearing following reasonable public notice, an annual policy statement. The policy statement must include a statement of the policies with respect to housing, development, and low-income housing assistance which such governmental unit is to follow in issuing qualified mortgage bonds and mortgage credit certificates and an assessment of the governmental unit's compliance with (i) the statement of the governmental unit's policies as set forth in its previous policy statement (if any) and (ii) the intent of Congress that State and local governments are expected to use their authority under section 103A and section 25, relating to mortgage credit certificates, to the greatest extent feasible to assist lower income families before assisting higher income families. Section 6a.103A-2(l) (4) through (6) provides the requirements with respect to the public hearing that must be held prior to the publication of a policy statement.

Section 6a.103A-2(m) provides that in order for an issue to meet the requirements of §6a.103A-2 the applicable State official must certify that the issue meets the requirements of §6a.103A-2(g), relating to the limitation on the aggregate amount of qualified mortgage bonds issued during any calendar year. The temporary regulations provide procedures for certifying officials to follow in making certifications. In order to prevent unreasonable delays in the issuance of qualified mortgage bonds, §6a.103A-2(m)(3) provides that if the certification is not provided within 30 days of the date that the issuing authority files a request for certification the issuing authority may, instead, submit an affidavit stating that the issue meets the requirements of §6a.103A-2(g) and that the State did not provide the requested

certification. The certification does not ensure that the issue meets the requirements of §6a.103A-2(g).

Although the requirements of §6a.103A-2 (k), (l), and (m) also apply to qualified mortgage credit certificate programs under section 25, these regulations do not provide specific rules relating to mortgage credit certificates. Regulations to be issued under section 25 will contain such rules.

Section 6a.103A-3 has been amended to reflect the changes made by the Act to the requirements applicable to qualified veterans' mortgage bonds. Section 6a.103A-3(b) provides that substantially all of the proceeds of a qualified veterans' mortgage bond must be used to provide financing for qualified veterans. The term "qualified veteran" is defined in §6a.103A-3(c).

Section 103A(c)(3) requires that qualified veterans' mortgage bonds issued after July 18, 1984, satisfy the information reporting requirement of section 103A(j)(3). With respect to obligations issued prior to January 1, 1985, §6a.103A-2(k)(3)(iv) provides issuers with additional time to file Form 8038; in addition, the annual report concerning use of the proceeds need not be filed with respect to such issues.

Section 6a.103A-3(g) places a limit on the aggregate amount of qualified veterans' mortgage bonds that a State may issue in a calendar year. A State's limit is determined by dividing the aggregate amount of bonds that it issued during the period January 1, 1979, through June 22, 1984 (not including the amount of qualified veterans' mortgage bonds issued during the calendar year or applicable portion of 1984 for which the amount of bonds was the lowest), by the number of years (not to exceed five) that the State issued bonds during that period. The regulations provide that the year in which the amount of bonds was the lowest may be a year in which the State did not issue qualified veterans' mortgage bonds. A State that did not issue qualified veterans' mortgage bonds during the period January 1, 1979, through June 22, 1984, may not issue qualified veterans' mortgage bonds after June 22, 1984.

Finally, §6a.103A-3(h) provides good faith compliance rules for qualified veterans' mortgage bonds. These rules are similar to those provided in §6a.103A-2(c).

#### *Non-Applicability of Executive Order 12291*

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

#### *Regulatory Flexibility Act*

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

#### *Paperwork Reduction Act*

The collection of information requirements contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0720.

#### *Drafting Information*

The principal author of these temporary regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

#### *List of Subjects in 26 CFR Part 6a*

Bonds, Income taxes, Mortgages, Veterans, Foreign investment in United States real property interests.

#### *Amendments to the Regulations*

Sections 6a.103A-2 and 6a.103A-3 of Part 6a of Title 26 of the Code of Federal Regulations are amended as follows:

#### **PART 6a-[AMENDED]**

Paragraph 1. Section 6a.103-2 is amended by revising paragraph (a)(2) and by adding new paragraphs (k), (l), and (m). These revised and added provisions read as follows:

#### **§6a.103A-2 Qualified mortgage bond.**

(a) In general.

(2) Termination date. No obligation issued after December 31, 1987, shall be treated as part of a qualified mortgage bond issue.

(k) Information reporting requirement-(1) In general. An issue meets the requirements of this paragraph only if the issuer substantially satisfies the information reporting requirement of this paragraph with respect to the issue. Except as otherwise provided in paragraph (k)(3)(iv), the requirements of this paragraph apply to qualified veterans' mortgage bonds issued after July 18, 1984, and to qualified mortgage bonds issued after December 31, 1984.

(2) Information required. (i) The issuer must, based on information and reasonable expectations determined as of the date of issue, submit on Form 8038 the information required therein, including-

(A) The name, address, and employer identification number of the issuer,

(B) The date of issue,

- (C) The face amount of each obligation which is part of the issue,
  - (D) The total purchase price of the issue,
  - (E) The amount allocated to a reasonably required reserve or replacement fund,
  - (F) The amount of lendable proceeds,
  - (G) The stated interest rate of each maturity,
  - (H) The term of each maturity,
  - (I) In the case of an issue of qualified mortgage bonds, whether the issuer has elected under §6a.103A-2(i)(4)(v) to pay arbitrage to the United States,
  - (J) In the case of an issue of qualified mortgage bonds, the issuer's market limitation (as defined in §6a.103A-2(g)), the amount of qualified mortgage bonds that the issuer has elected not to issue under section 25(c)(2) and the regulations thereunder, and the aggregate amount of qualified mortgage bonds issued by the issuer during the calendar year and prior to the date of issue of the issue for which the Form 8038 is being submitted, and
  - (K) In the case of an issue of qualified veterans' mortgage bonds, the issuer's State veterans limit (as defined in section 103A(o)(3)(B) and §6a.103A-3(g)) and the aggregate amount of qualified veterans' mortgage bonds issued by the issuer during the calendar year and prior to the date of issue of the issue for which the Form 8038 is being submitted.
- (ii) The issuer must submit a report compiled on a calendar year basis containing information on the beneficiaries of the proceeds of the issue. The report must be filed for each year in which the proceeds of the issue are used to provide mortgages. The information must be submitted in the format prescribed by the Internal Revenue Service. The information required to be submitted shall be submitted on magnetic media in accordance with applicable revenue procedures. The consent of the Commissioner (or other authorized officer or employee of the Internal Revenue Service) to the magnetic medium on which the issuer intends to submit the information shall be obtained prior to submitting such information on magnetic media. An application for consent shall be in writing and must be filed with the Magnetic Media Coordinator of the Internal Revenue Service Center at which the report is required to be filed at least 90 days before the due date of the first report for which consent is requested. If an issuer reasonably expects to submit information with respect to fewer than 50 beneficiaries for a calendar year, then the issuer may submit such information for that calendar year on machine-readable paper instead of magnetic media if the applicable revenue procedures provide a machine-readable paper form. If no such machine-readable paper form is provided, the issuer may submit such information on paper form that is not machine readable. The Commissioner may waive the requirement that information be submitted on magnetic media if hardship is shown on the issuer's application. The report must include the following information:

(A) For each issue of qualified mortgage bonds and qualified veterans' mortgage bonds-

(1) The name, address, and TIN of the issuer,

(2) The date of issue, and

(3) The face amount of the issue; and

(B) For each beneficiary of the proceeds of the issue (i.e., each recipient of a mortgage provided with the proceeds of the issue)-

(1) The name and TIN of the beneficiary,

(2) The date, amount, and term of the mortgage,

(3) The effective interest rate of the mortgage (as defined in §6a.103A-2(i)(2)(ii)),

(4) Whether the mortgage is a qualified home improvement loan or a qualified rehabilitation loan (as defined in §6a.103A-2(b) (9) and (10)),

(5) Whether the residence being financed is a previously occupied residence,

(6) Whether the residence being financed is a targeted area residence (as defined in §6a.103A-2(b)(3)),

(7) Whether the residence being financed is a one-, two-, three-, or four-family residence,

(8) The acquisition cost (as defined in §6a.103A-2(b)(8)) of the residence being financed,

(9) The average area purchase price applicable to such residence (as defined in §6a.103A-2(f)(3) without adjustments for the number of residences),

(10) Whether the mortgagor had a present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the mortgage is executed,

(11) The number of the mortgagor's family members that occupy the residence being financed,

(12) The adjusted income (as defined in §1.167 (k)-3 (b)(3)) of the mortgagor's family for the previous calendar year, and

(13) The adjusted income of the mortgagor's family for the previous calendar year as a percentage of the median income for the area, as determined under section 8 of the United States Housing Act of 1937, as amended, with adjustments for smaller and larger families (or, in the event programs under section 8(f) of the Housing Act of 1937, as amended, are terminated, the applicable method of determining adjusted

income and median income in effect immediately prior to the date of such termination).

(3) Time for filing. (i) The statement required by subparagraph (2)(i) of this paragraph shall be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligation is issued. The statement may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The statement need not be amended to report information learned subsequent to the date of issue.

(ii) The report required by subparagraph (2)(ii) of this paragraph (relating to use of proceeds) shall be filed by February 15th of the year following the calendar year to which the report relates.

(iii) The Commissioner may grant an extension of time for the filing of a report required by subparagraph (2) if there is reasonable cause for the failure to file such report in a timely fashion.

(iv) An issue of qualified veterans' mortgage bonds issued after July 18, 1984, and prior to January 1, 1985, will be treated as satisfying the information reporting requirement of this paragraph if a Form 8038 with respect to the issue is properly filed not later than February 15, 1985; the report described in paragraph (k)(2)(ii) need not be filed with respect to such issues.

(4) Place for filing. Form 8038 and the report required by paragraph (k)(2)(ii) are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(5) Definitions. (i) See the regulations under section 103(l) for the definitions of the terms "date of issue", "maturity", and "term of an issue".

(ii) The term "family" means two or more persons related by blood, marriage, or operation of law.

(l) Policy statement-(1) In general. (i) For obligations issued after December 31, 1984, an issue meets the requirements of this paragraph only if the applicable elected representative of the governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Commissioner on or before such last day. The Commissioner may grant an extension of time for publishing and filing the report if there is reasonable cause for the failure to publish and file such report in a timely fashion. The requirements of this paragraph will be treated as met if the issuer substantially satisfies such requirements.

(ii) With respect to reports required by paragraph (l)(1)(i) to be published and submitted to the Commissioner not later than December 31, 1984, the Commissioner has determined that there is reasonable cause for the failure to publish and file such reports in a timely fashion; such a report will be considered published and filed in a timely fashion if, not later than March 11, 1985, the report is published (after a

public hearing following reasonable public notice) and a copy is submitted to the Commissioner.

(2) Definitions and special rules. (i) In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units, a single report may be filed provided that such report is signed (A) by the applicable elected representative of each governmental unit on whose behalf obligations have been issued during any preceding calendar year or (B) by the Governor of the State in which the issuer is located.

(ii) See section 103(k)(2)(E) and the regulations thereunder for the definition of the term "applicable elected representative".

(iii) In the case of qualified mortgage bonds issued by, or on behalf of, a governmental unit that did not-

(A) Issue, or have issued on its behalf, qualified mortgage bonds during the preceding calendar year, and

(B) Reasonably expect during the preceding calendar year to issue (or have issued on its behalf) qualified mortgage bonds during the current calendar year,

**the requirements of this paragraph will be treated as met if the applicable governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (1)(3) prior to the issuance of any qualified mortgage bonds and a copy of such report has been submitted to the Commissioner prior to such issuance.**

(iv) For purposes of this paragraph a report will be considered to be "published" when the applicable elected representative of the governmental unit has made copies of the report available for distribution to the public. Reasonable public notice of the manner in which copies of the report may be obtained must be provided; such notice may be included as part of the public notice required by paragraph (1)(4).

(3) Report. (i) A report is described in this subparagraph only if it contains the following:

(A) The issuer's name, TIN, and the title "Policy Report Under Section 103A" stated on the cover page of the report;

(B) A specific statement of the policies and goals with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, including a statement as to-

(1) With respect to housing policies and goals, (i) whether the proceeds will be used to provide financing for the acquisition of residences, to provide qualified home improvement loans, or to provide qualified rehabilitation loans; (ii) whether all or a portion of the proceeds will be targeted to new, existing, or any other particular class

or type of housing; (iii) how the existence of a need or absence of a need for such targeting has been determined; (iv) the method by which the proceeds will be targeted; (v) any other pertinent information relating to the issuer's housing policies; and (vi) how the housing policies relate to the issuer's development and low-income housing assistance policies;

(2) With respect to development policies and goals, (i) whether all or a portion of the proceeds will be targeted to specific areas (including targeted areas as described in §6a.103A-2(b)(3)); (ii) a description of the areas to which the proceeds will be targeted; (iii) the reasons for selecting such areas; (iv) whether proceeds targeted to each area are to be used to finance redevelopment of existing housing or new construction; (v) any other pertinent information relating to the issuer's development policies; and (vi) how the development policies relate to the issuer's housing and low-income housing assistance policies; and

(3) With respect to low-income housing assistance policies and goals, (i) whether all or a portion of the proceeds will be targeted to low-income (i.e., 50 percent of median income), moderate-income (i.e., 80 percent of median income), and median income (i.e., 100 percent of median income), families; (ii) the method by which the proceeds will be targeted to such families; (iii) any other pertinent information relating to the issuer's low-income housing assistance policies; and (iv) how the low-income housing assistance policies relate to the issuer's housing and development policies (see §6a.103A-2(k)(5) for the definition of the term "family" and §1.167(k)-3(b)(2) for the definition of the term "median income");

(C) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report (as defined in paragraph (I)(3)(ii)) with the statement of housing, development, and low-income housing assistance policies with respect to qualified mortgage bonds and mortgage credit certificates that were set forth in the report, if any, published in the preceding year with respect to such governmental unit, including a statement as to whether the governmental unit or issuing authority successfully implemented its policies and achieved its goals and, if not, an analysis of the reasons for such failure;

(D) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report (as defined in paragraph (I)(3)(ii)) with the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families, including a description of (1) the method used by the governmental unit or issuing authority to distribute proceeds, (2) whether and how that method enabled the governmental unit or issuing authority to assist lower income families before higher income families, and (3) any income levels that have been defined and used by the governmental unit or issuing authority in connection with distribution of the proceeds (no specific definition of lower income and higher income is imposed on governmental units or issuing authorities); and

(E) A summary of the comments on the proposed report received at the public hearing required by subparagraph (4).

(ii) For purposes of the assessments of compliance required by paragraph (I)(3)(i) (C) and (D) to be included in the report, the "date of the report" means the last day of the twelve-month period for which such assessments of compliance are to be made. The date of the report must be the last day of September, October, or November; an issuer must use the same date of the report each year. The date of the report is not, for this purpose, the date that the report is published or filed.

(4) Public hearing. The public hearing required by subparagraph (1) of this paragraph means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the report that the applicable representative proposes to publish to satisfy the requirements of this paragraph (I). In general, a governmental unit may select its own procedure for the hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, it may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing so request in writing at least 24 hours before the hearing or that they limit their oral remarks to 10 minutes. For purposes of this public hearing requirement, it is not necessary that the applicable elected representative who will publish the report be present at the hearing, that a report on the hearing be submitted to that official, or that State administrative procedural requirements for public hearings in general be observed. However, compliance with such State procedural requirements (except those at variance with a specific requirement set forth in this paragraph) will generally assure that the hearing satisfies the requirements of this paragraph. The hearing may be conducted by any individual appointed or employed to perform such function by the governmental unit, its agencies, or by the issuer. Thus, for example, for a report to be issued by an issuing authority that acts on behalf of a county, the hearing may be conducted by the issuing authority, the county, or an appointee or employee of either.

(5) Reasonable public notice. (i) The reasonable public notice required by subparagraph (1) of this paragraph means published notice which is reasonably designed to inform residents of the geographical area within the jurisdiction of the governmental unit that will publish the report. The notice must state the time and place for the hearing and contain the information required by paragraph (I)(5)(ii) of this section. Notice is presumed reasonable if published no fewer than 14 days before the hearing. Notice is presumed reasonably designed to inform affected residents only if published in one or more newspapers of general circulation available to residents of that locality or if announced by radio or television broadcast to those residents.

(ii) The notice of hearing described in this subparagraph must state-

(A) The time and place for the hearing,

(B) Any applicable limitations regarding participation in such hearing,

(C) The manner in which affected residents may obtain copies of the proposed report prior to the hearing, and

(D) A description, in brief and summary terms, of the contents of the proposed report.

(6) Procedure for public hearings of multiple jurisdiction issuers. In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units, each governmental unit on whose behalf qualified mortgage bonds were issued during the preceding calendar year and each governmental unit on whose behalf the issuer reasonably expects to issue qualified mortgage bonds during the succeeding calendar year must hold a public hearing following reasonable public notice prior to the publication of the report required by this paragraph. A multiple jurisdiction issuer may hold a combined hearing as long as the combined hearing is a joint undertaking that provides all residents of the participating governmental units (i.e., each governmental unit on whose behalf qualified mortgage bonds were issued by the authority and each governmental unit on whose behalf the authority reasonably expects to issue qualified mortgage bonds during the succeeding calendar year) a reasonable opportunity to be heard. The location of any combined hearing is presumed to provide a reasonable opportunity for all affected residents to be heard if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(7) Place for filing. The report is to be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(m) State certification requirements- (1) In general. An issue meets the requirements of this paragraph only if the certification requirement of this paragraph is substantially satisfied. The requirements of this paragraph apply to obligations issued after December 31, 1984.

(2) Certification. (i) An issue satisfies the requirements of section 103A(j)(4) and this subparagraph only if the State official designated by law (or, if there is no State official, the Governor) certifies, following a request for such certification by the issuer, that the issue meets the requirements of section 103A(g) and §6a.103A-2(g) (relating to volume limitation). In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city.

(ii) The certifying official need not perform an independent investigation in order to determine whether the issue meets the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds issued by an issuer during a calendar year, the certifying official may rely on copies of the reports submitted by the issuer pursuant to section 103A(j)(3) for such year and copies of any elections made pursuant to section 25(c)(2) not to issue qualified mortgage bonds, together with an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that the issuer did not issue any other qualified mortgage bonds during the calendar year, the amount, if any, of the issuer's market limitation that it surrendered to other issuing authorities during the calendar year, and that it did not make any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that the issue will not exceed the issuer's market limitation for the year, the official may certify that the issue meets the requirements of section 103A(g).

(3) Special rule. If 30 days elapse after the issuer files a proper request for the certification described in paragraph (m)(2) and the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) and §6a.103A-2(g) or, in the alternative, a statement that the issue does not meet such

requirements, the issuer may, instead, submit an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that-

- (i) The issue meets the requirements of section 103A(g) and §6a.103A-2(g),
- (ii) At least 30 days before the execution of the affidavit the issuer filed a proper request for the certification described in paragraph (m)(2), and
- (iii) The State official designated by law (or, if there is no State official, the Governor) as not provided the certification described in paragraph (m)(2) of this section.

**For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (m)(2) (ii) of this section.**

(4) Filing. The certification (or affidavit) required by this paragraph shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. The certification (or affidavit) shall be submitted with the Form 8038 required to be filed by section 103A(j)(3) and paragraph (k) of this §6a.103A-2. The Commissioner may grant an extension of time for filing the certification (or affidavit) if there is a reasonable cause for the failure to file such statement in a timely fashion.

(5) Effect of certification. The fact that an issuer obtains the certification (or affidavit) described in this paragraph does not ensure that the requirements of paragraph (g) of this section are met. Obligations that do not meet the requirements of paragraph (g) of this section are not described in section 103(a).

**(Approved by the Office of Management and Budget under OMB Control Number 1545-0720)**

Par. 2. Section 6a.103A-3 is amended by revising paragraphs (b) and (c) and by adding new paragraphs (g) and (h). These revised and added provisions read as follows:

**§6a.103A-3 Qualified veterans' mortgage bonds.**

(b) Qualified veterans' mortgage bond. (1) With respect to obligations issued prior to July 19, 1984, the term "qualified veterans' mortgage bond" means any issue of obligations-

- (i) Which meets the requirements of §6a.103A-1, §6a.103A-2(j) (1) and (2), and this section;
- (ii) Substantially all of the proceeds of which are to be used to provide financing for single-family, owner-occupied residences (which meet the requirements of §6a.103A-1(b)(6) and §6a.103A-2(d)) for veterans; and
- (iii) Payment of the principal and interest on which is secured by a pledge of the full faith and credit of the issuing State.

**A qualified veterans' mortgage bond does not include any bond that is an industrial development bond under section 103(b).**

(2) With respect to obligations issued after July 18, 1984, the term "qualified veterans' mortgage bond" means any issue of obligations-

(i) Which meets the requirements of §6.103A-1, §6a.103A-2(d) (relating to residence requirements), (j) (1) and (2) (relating to new mortgage requirement), and (k) (relating to information reporting requirement), and this section;

(ii) Substantially all of the proceeds of which are to be used to provide financing for qualified veterans; and

(iii) Payment of the principal and interest on which is secured by a pledge of the full faith and credit of the issuing State.

**A qualified veterans' mortgage bond does not include any bond that is an industrial development bond under section 103(b).**

(c) Qualified veteran. (1) An issue meets the requirements of this paragraph only if each of the mortgagors to whom owner financing is provided is a qualified veteran.

(2) With respect to obligations issued prior to July 19, 1984, the term "qualified veteran" means any veteran.

(3) With respect to obligations issued after July 18, 1984, the term "qualified veteran" means any veteran who-

(i) Served on active duty at some time before January 1, 1977, and

(ii) Applied for financing before the later of-

(A) The date 30 years after the date on which such veteran left active service, or

(B) January 1, 1985.

(4) The term "veteran" shall have the same meaning as in 38 U.S.C. 101(2) , that is, a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(g) Volume limitation-(1) In general. In the case of obligations issued after June 22, 1984, an issue meets the requirements of this paragraph only if the aggregate amount of obligations issued pursuant thereto, when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year, does not exceed the State veterans limit for such calendar year. In determining the aggregate amount of qualified veterans' mortgage bonds issued in calendar year 1984, obligations issued prior to June 23, 1984, shall not be taken into account.

(2) State veterans limit. (i) The State veterans limit for any State is the amount equal to-

(A) The aggregate amount of qualified veterans' mortgage bonds issued by the State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans' mortgage bonds actually issued during the calendar year, or the applicable portion of 1984, in such period for which the amount of such bonds was the lowest), divided by

(B) The number (not to exceed 5) of calendar years after 1978 and before 1985 during which the State issued qualified veterans' mortgage bonds.

**In determining the number of calendar years after 1978 and before 1985 during which the State issued qualified veterans' mortgage bonds, any qualified veterans' mortgage bonds issued after June 22, 1984, shall not be taken into account. A State that did not issue qualified veterans' mortgage bonds during the period beginning on January 1, 1979, and ending on June 22, 1984, may not issue qualified veterans' mortgage bonds after June 22, 1984.**

(ii) In the case of any obligation which has a term of 1 year or less and which was issued to provide financing for property taxes, the amount taken into account under this paragraph with respect to such obligation shall be 1/15 of its principal amount.

(3) Examples. The following examples illustrate the provisions of this paragraph:

Example (1). State R issued the following issues of qualified veterans' mortgage bonds: a \$200 million issue on March 31, 1979, a \$150 million issue on May 1, 1980, a \$75 million issue on September 1, 1981, a \$200 million issue on June 5, 1982, a \$125 million issue on March 1, 1983, a \$60 million issue on April 1, 1984, and a \$100 million issue on September 1, 1984. R issued no other issues of qualified veterans' mortgage bonds during the period beginning January 1, 1979, and ending on December 31, 1984. The aggregate amount of qualified veterans' mortgage bonds issued during the period January 1, 1984, through June 22, 1984 (\$60 million), is not taken into account in determining R's State veterans limit because that is the lowest aggregate amount of qualified veterans' mortgage bonds issued during the calendar year or the applicable portion of 1984, in the period beginning on January 1, 1979, and ending on June 22, 1984. Thus, R's State veterans limit is \$150 million (\$750 million (which is the sum of \$200 million, \$150 million, \$75 million, \$200 million, and \$125 million) divided by 5). The September 1, 1984, issue is not included in determining the State veterans limit because that issue was issued after June 22, 1984. The September 1, 1984, issue of qualified veterans' mortgage bonds meets the requirements of §6a. 103A-3 (g) since the aggregate amount of qualified veterans' mortgage bonds issued in calendar year 1984 (not including obligations issued prior to June 23, 1984), does not exceed the State veterans limit.

Example (2). State S issued a \$100 million issue of qualified veterans' mortgage bonds on March 31, 1984. S issued no other issues of qualified veterans' mortgage bonds during the period beginning on January 1, 1979, and ending on June 22, 1984. The aggregate amount of qualified veterans' mortgage bonds issued in the calendar year, or the applicable portion of 1984, in the period January 1, 1979, through June 22, 1984, for which the amount of bonds was the lowest is zero. Thus, the State veterans limit for S is \$100 million ((\$100 million minus \$0) divided by 1).

(h) Good faith compliance efforts-(1) Mortgage eligibility requirements. An issue of qualified veterans' mortgage bonds issued after July 18, 1984, which fails to meet the requirements of section 103A(o)(1), §6a.103A-2(d) relating to residence requirements), and §6a.103A-2(j) (1) and (2) (relating to new mortgage requirements) shall be treated as meeting such requirements if each of the following provisions is complied with:

(i) The issuer in good faith attempted to meet all such requirements before the mortgages were executed. Good faith requires that the trust indenture, participation agreements with loan originators, and other relevant instruments contain restrictions that permit the financing of residences only in accordance with such requirements. In addition, the issuer must establish reasonable procedures to ensure compliance with such requirements. Such procedures include reasonable investigations by the issuer to satisfy such requirements.

(ii) Ninety-five percent or more of the lendable proceeds (as defined in §6a.103A-2(b)(1)) that were devoted to owner-financing were devoted to residences with respect to which, at the time the mortgages were executed, all such requirements were met. In determining whether a person is a qualified veteran the issuer may rely on copies of the mortgagor's certificate of discharge indicating that the mortgagor served on active duty at some time before January 1, 1977, and stating the date on which the mortgagor left active service provided that neither the issuer nor its agent knows or has reason to believe that such affidavit is false. Where a particular mortgage fails to meet more than one of these requirements, the amount of the mortgage will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in the mortgage must be corrected pursuant to subdivision (iii).

(iii) Any failure to meet such requirements is corrected within a reasonable period after such failure is discovered. For example, failures can be corrected by calling the nonqualifying mortgage or by replacing the nonqualifying mortgage with a qualifying mortgage.

(2) Nonmortgage eligibility requirements. An issue of qualified veterans' mortgage bonds issued after July 18, 1984, which fails to meet the requirements of paragraph (g) of this section shall be treated as meeting such requirements if each of the requirements of §6a.103A-2(c)(2) (i) and (ii) is met.

**(Approved by the Office of Management and Budget under OMB Control Number 1545-0720)**

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 103A(j) (3) and (4) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 901, 26 U.S.C. 103A(j) (3) and (4); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commission of Internal Revenue.

Approved: December 4, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.