

## **Treasury Decision 8049, 26 CFR, IRC Sec(s). 42**

**September 03, 1985**

### **AGENCY:**

Internal Revenue Service, Treasury.

### **ACTION:**

Final regulations.

### **SUMMARY:**

This document contains final regulations that relate to the tax exempt status of mortgage subsidy bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations affect all purchasers, beneficiaries, and governmental issuers of tax exempt mortgage subsidy bonds.

### **DATES:**

These regulations are effective with respect to mortgage subsidy bonds issued after December 31, 1984, except that the regulations relating to qualified veterans' mortgage bonds (§1.103A-2(k)(5)(iv)) are effective for obligations issued after July 18, 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*

On December 12, 1984, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103A(j) (3), (4), and (5) of the Internal Revenue Code of 1954 (49 FR 48323). The amendments were, in part, proposed to conform the regulations to section 611(b) of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 901). A public hearing was held on April 30, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. In addition, the regulations adopted by this Treasury decision supersede the temporary regulations under section 103A(j) (3), (4), and (5). Accordingly, those portions of the Temporary Regulations under Title II of the Omnibus Reconciliation Act of 1980 relating to the changes made by section 611(b) of the Tax Reform Act are removed and replaced with a cross-reference to the rules adopted by this Treasury decision.

#### *Explanation of Provisions*

Section 103(a) provides that gross income does not include interest on the obligations of a State or political subdivision thereof. Section 103A provides that any mortgage subsidy bond shall be treated as an obligation not described in section 103(a). However, qualified mortgage bonds and qualified veterans' mortgage bonds are not treated as mortgage subsidy bonds. Section 611 of the Tax Reform Act added several requirements to the definition of qualified mortgage bond and qualified veterans' mortgage bond.

#### *Public Comments*

Many commentators objected to the extent of the information required to be reported with respect to each beneficiary of the proceeds of an issue (i.e., each recipient of a mortgage loan provided with the proceeds of an issue). In response to these comments, the regulations have been revised to require the reporting of significantly less information. In addition, the regulations adopt the suggestion that information be reported on an aggregate basis, rather than with respect to each recipient of a mortgage loan. It is believed that information collected with respect to each recipient of a mortgage loan may be useful to the government in assessing the mortgage bond and mortgage credit certificate programs. Nevertheless, due to practical considerations, including the requirement of section 611(d)(7) of the Tax Reform Act of 1984, that the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, submit a report concerning these programs to Congress by January 1, 1987, it has been decided to require the reporting of data on an aggregate basis.

As revised, the regulations require information reporting with respect to the number of loans and aggregate principal amount of the loans categorized according to (1) the borrowers' income, (2) the acquisition cost of the residences acquired, (3) whether the borrowers have satisfied the 3-year requirement, and (4) whether the residences are located in targeted areas. With respect to qualified home improvement and rehabilitation loans, the only information required to be reported is the number and aggregate loan amount of such loans and whether the loans are with respect to residences located in targeted areas. Similar information is to be collected with respect to mortgage credit certificates. See §1.25-4T(e). This information is being collected in response to section 611(d)(7) of the Tax Reform Act of 1984 which requires that the Secretary of the Treasury submit a report to Congress by January 1, 1987, regarding the performance of issuers of qualified mortgage bonds and mortgage credit certificates relative to the intent of Congress described in section 103A(j)(5).

Some commentators objected to the extent of information required to be reported with respect to qualified veterans' mortgage bonds on the grounds that such information is not relevant to qualified veterans' mortgage bonds because such bonds are not subject to all of the statutory requirements imposed on qualified mortgage bonds. Although information concerning income, acquisition cost, and the 3-year requirement is not relevant to any statutory requirement imposed on qualified veterans' mortgage bonds, the collection of such information pursuant to section 103A(j)(3)(A) is relevant to an evaluation of the qualified veterans' mortgage bond program. Accordingly, the final regulations require information reporting on qualified veterans' mortgage bonds with respect to the number of loans and the aggregate principal amounts of the loans categorized according to (1) the borrowers' income,

(2) the acquisition cost of the residences acquired, and (3) whether the borrowers have satisfied the 3-year requirement.

Several commentators stated that the regulations should be amended to make clear that the information required to be reported is information as of the date such information is required to be submitted and is not affected by later events. Similarly, it was suggested that the State certification requirement of section 103A(j)(4) should not require officials to certify as to matters that could change in the future. These suggestions have been adopted.

Commentators suggested that the information reporting requirement should apply only to mortgages provided with the original proceeds of an issue. This suggestion has been adopted. Thus, for example, reporting would not be necessary with respect to assumptions of mortgage loans.

Many commentators objected to the requirement that information be submitted on magnetic media. Accordingly, the regulations as revised do not require reporting on magnetic media.

A number of commentators stated that the regulations did not define the term "beneficiary" and that the regulations implied that it was necessary to file more than one report where, for example, a husband and a wife jointly obtain a mortgage. In addition, commentators stated that only the income of the borrower, and not the income of all the members of the borrower's family, is the relevant information for purposes of section 103A. Accordingly, the regulations have been revised to require reporting with respect to the "borrowers" of the original proceeds.

In response to public comments, the regulations no longer require data on borrower income to be collected under the definition used for purposes of section 8 of the Housing Act of 1937, as amended. Instead, annualized gross monthly income, as reported by borrowers on standard loan documents, is to be reported. In addition, issuers are not required to check the accuracy of information collected by examining borrowers' tax returns. Similarly, in determining whether a borrower acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the borrower.

Commentators indicated that issuers should not be responsible for submitting false information provided to them by mortgagors. This suggestion has been adopted.

A number of commentators stated that the regulations require excessive and redundant information to be included in the policy statement as described in section 103A(j)(5). In response to these comments, the regulations have been revised to make clear that the provisions describing the information to be included in the policy statement are intended merely as examples of the types of information that an issuer may include in its policy statement; thus, there is no requirement that all such information be provided. In addition, in response to comments, the definitions of "low", "moderate", and "median" income for purposes of providing information in the policy statement have been revised.

Several commentators stated that there is no statutory requirement that issuers indicate in the policy statement their "goals" with respect to housing, development,

and low-income housing assistance. Accordingly, the regulations as revised do not require issuers to indicate their goals with respect to these matters.

The proposed regulations provided that issuers that did not issue qualified mortgage bonds in a particular year and did not reasonably expect to issue qualified mortgage bonds in the following year would not be precluded from issuing qualified mortgage bonds in the following year if a policy statement is filed prior to the date of issue. In response to public comments, the final regulations provide that this provision will apply if the issuer did not reasonably expect to issue qualified mortgage bonds during the following year, regardless of whether it issued bonds in the current year.

Commentators stated that the requirement that the notice of hearing summarize the policy statement is unnecessary and adds to the expense of providing such notice. In response to this comment, the regulations have been revised to require only that the notice contain a statement that the hearing will involve the issuer's policies 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.

In response to public comments, the periods covered by the reports relating to the use of proceeds and the periods for assessing compliance with the statements of policy have been modified. In general, as modified, these periods end each year on June 30.

With respect to the State certification requirement, commentators stated that the rule permitting an issuer, after a 30 day waiting period, to self-certify that an issue satisfies the requirements of section 103A(g) requires too long a period of time to elapse before the issuer may execute this certification. In response to this comment, this rule has been modified so as to permit the issuer to execute this certification after 15 days.

In response to public comments, the regulations have been revised to make clear that the State certifications must be executed on or before the date of issue.

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

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

#### *Regulatory Flexibility Analysis*

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when that notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final 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 have 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 proposed 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*

##### *26 CFR Parts 1.61-1 through 1.281-4*

Income taxes, Taxable income, Deductions, Exemptions.

##### *26 CFR Part 6a*

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

##### *26 CFR Part 602*

Reporting and recordkeeping requirements.

#### *Amendments to the Regulations*

For the reasons set out in the preamble, Part 1, Part 6a, and Part 602 of Title 26 of the Code of Federal Regulations are amended as follows:

#### **PART 1-[AMENDED]**

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

#### **Authority:**

26 U.S.C. 7805. §1.103A-2 (k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5).

Par. 2. New §1.103A-2 is added immediately following §1.103(n)-7T to read as follows:

#### **§1.103A-2 Qualified mortgage bond.**

(a)-(j) [Reserved]

(k) Information reporting requirement-(1) In general. An issue meets the requirements of this paragraph only if the issuer in good faith attempted to meet the information reporting requirements of this paragraph. Except as otherwise provided in paragraph (k)(5)(iv) of this section, 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; the issuer need not however, include the information required by Form 8038 that is relevant only to obligations described in section 103(l)(1) and the regulations thereunder. The information that must be submitted includes-

(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 of the date of issue (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 to date by the issuer during the calendar year, 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 the regulations thereunder) and the aggregate amount of qualified veterans' mortgage bonds issued to date 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) With respect to issues issued after December 31, 1984, the issuer must submit a report containing information on the borrowers of the original proceeds of such issues. The report must be filed for each reporting period in which the original proceeds of any of such issues are used to provide mortgages. The issuer is not responsible for false information provided by a borrower if the issuer did not know or have reason to know that the information was false. The report must be filed on the

form prescribed by the Internal Revenue Service. If no form is prescribed, or if the form prescribed is not readily available, the issuer may use its own form provided that such form is in the format set forth in paragraph (k)(3) of this section and contains the information required by this paragraph (k)(2)(ii). The report must be titled "Qualified Mortgage Bond Information Report" or "Qualified Veterans' Mortgage Bond Information Report", and must include the name, address, and TIN of the issuer, the reporting period for which the information is provided, and the following tables containing information concerning the borrowers of the original proceeds of the issues subject to the requirements of this paragraph (k)(2)(ii) with respect to mortgages provided during the reporting period for which the report is filed:

(A) A table titled "Number of Mortgage Loans by Income and Acquisition Cost" showing the number of mortgage loans (other than those issued in connection with qualified home improvement and rehabilitation loans) made during the reporting period according to the annualized gross income of the borrowers (categorized in the following intervals of income: \$0-\$9,999; \$10,000-\$19,999; \$20,000-\$29,999; \$30,000-\$39,999; \$40,000-\$49,999; \$50,000-\$74,999; and \$75,000 or more) and according to the acquisition cost of each residence being financed (categorized in the following intervals of acquisition cost: \$0-\$19,999; \$20,000-\$39,999; \$40,000-\$59,999; \$60,000-\$79,999; \$80,000-\$99,999; \$100,000-\$119,999; \$120,000-\$149,999; \$150,000-\$199,999; and \$200,000 or more). For each interval of income and acquisition cost the table must also be categorized according to the number of borrowers that-

(1) Did not have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (i.e., satisfied the 3-year requirement) and purchased residences in targeted areas,

(2) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(3) Did have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (i.e., did not satisfy the 3-year requirement) and purchased residences in targeted areas, and

(4) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

**With respect to issues of qualified veterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the number of borrowers that satisfied the 3-year requirement and the number of borrowers that failed to satisfy the 3-year requirement.**

(B) A table titled "Volume of Mortgage Loans by Income and Acquisition Cost" showing the total principal amount of the mortgage loans (other than qualified home improvement and rehabilitation loans) provided during the reporting period according to annualized gross income (categorized in the same intervals of income as the preceding table) and according to the acquisition cost of the residences acquired (categorized in the same acquisition cost intervals as the preceding table). For each interval of income and acquisition cost the table must also be categorized according to the total principal amount of the mortgage loans of borrowers that-

- (1) Satisfied the 3-year requirement and purchased residences in targeted areas,
- (2) Satisfied the 3-year requirement and purchased residences not located in targeted areas,
- (3) Did not satisfy the 3-year requirement and purchased residences in targeted areas, and
- (4) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

**With respect to issues of qualified veterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the total principal amount of the mortgage loans of borrowers that satisfied the 3-year requirement and the total principal amount of the mortgage loans of borrowers that did not satisfy the 3-year requirement.**

(C) For issues other than qualified veterans' mortgage bonds, a table titled "Mortgage Subsidy Bonds for Qualified Home Improvement and Rehabilitation Loans" showing the number of borrowers obtaining qualified home improvement loans and qualified rehabilitation loans and the total of the principal amounts of such loans; the information contained in the table must also be categorized according to whether the residences with respect to which the loans were provided are located in targeted areas.

(3) Format. (i) With respect to the report required by paragraph (k)(2)(ii) of this section, if no form is prescribed by the Internal Revenue Service, or if the prescribed form is not readily available, the issuer must submit the report in the format specified in this paragraph (k)(3).

(ii) With respect to issues of qualified mortgage bonds, the format of the report specified in this paragraph (k)(3) is the following:

*Qualified Mortgage Bond Information Report*

**Name of issuer:**

**ADDRESS OF ISSUER:**

TIN of issuer:

Reporting period: [Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.]

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 \*\*\*\*\* This is piece 1. -- It begins at character 1 of table line 1.

\*\*\*\*\*  
 \*\*\*\*\*  
 \*\*\*\*\* -----  
 3-year Satisfied Not Satisfied requirement: Annualized gross monthly income of  
 borrowers -----  
 Nontargeted area Targeted area Nontargeted area Targeted -----  
 ----- Number of Mortgage Loans by Income  
 and Acquisition Cost \$0 to \$9,999 \$10,000 to \$19,999 \$20,000 to \$29,999 \$30,000  
 to \$39,999 \$40,000 to \$49,999 \$50,000 to \$74,999 \$75,000 or more Total  
 Acquisition Cost \$0 to \$19,999 \$20,000 to \$39,999 \$40,000 to \$59,999 \$60,000 to  
 \$79,999 \$80,000 to \$99,999 \$100,000 to \$119,999 \$120,000 to \$149,999 \$150,000  
 to \$199,999 \$200,000 or more Total -----  
 -----

1...+...10...+...20...+...30...+...40...+...50...+...60...+...70...+  
 \*\*\*\*\*  
 \*\*\*\*\* This is piece 2. -- It begins at character 76 of table line 1.  
 \*\*\*\*\*

\*\*\*\*\*  
 \*\*\*\*\* ----- Totals ----- area -----  
 -- 76.....+...90.[Note: The following TABLE/FORM is too wide to be displayed on  
 one screen. You must print it for a meaningful review of its contents. The table has  
 been divided into multiple pieces with each piece containing information to help you  
 assemble a printout of the table. The information for each piece includes: (1) a three  
 line message preceding the tabular data showing by line # and character # the  
 position of the upper left-hand corner of the piece and the position of the piece  
 within the entire table; and (2) a numeric scale following the tabular data displaying  
 the character positions.]

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 \*\*\*\*\* This is piece 1. -- It begins at character 1 of table line 1.  
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3-year Satisfied Not Satisfied requirement: Annualized gross monthly income of  
 borrowers -----  
 Nontargeted area Targeted area Nontargeted area Targeted -----  
 ----- Volume of Mortgage Loans by Income  
 and Acquisition Cost \$0 to \$9,999 \$10,000 to \$19,999 \$20,000 to \$29,999 \$30,000  
 to \$39,999 \$40,000 to \$49,999 \$50,000 to \$74,999 \$75,000 or more Total  
 Acquisition Cost \$0 to \$19,999 \$20,000 to \$39,999 \$40,000 to \$59,999 \$60,000 to  
 \$79,999 \$80,000 to \$99,999 \$100,000 to \$119,999 \$120,000 to \$149,999 \$150,000  
 to \$199,999 \$200,000 or more Total -----  
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1...+...10...+...20...+...30...+...40...+...50...+...60...+...70...+  
 \*\*\*\*\*  
 \*\*\*\*\* This is piece 2. -- It begins at character 76 of table line 1.  
 \*\*\*\*\*

\*\*\*\*\*  
 \*\*\*\*\* ----- Totals ----- area -----  
 -- 76.....+...90.Mortgage Subsidy Bonds for Qualified Home Improvement and  
 Rehabilitation Loans -----  
 ----- Nontargeted area Targeted area Totals -----  
 ----- Number of qualified home improvement loans  
 Volume of qualified home improvement loans Number of qualified rehabilitation loans

Volume of qualified rehabilitation loans -----  
-----

(iii) The format of the report specified in this paragraph (k)(3) for qualified veterans' mortgage bonds is the following:

*Qualified Veterans' Mortgage Bond Information Report*

**Name of issuer:**

ADDRESS OF ISSUER:

TIN of issuer:

Reporting period: -----  
----- 3-year requirement: annualized gross Satisfied Not Totals monthly income of  
borrowers satisfied -----  
----- Number of Mortgage Loans by Income and Acquisition Cost \$0 to \$9,999  
\$10,000 to \$19,999 \$20,000 to \$29,999 \$30,000 to \$39,999 \$40,000 to \$49,999  
\$50,000 to \$74,999 \$75,000 or more Total Acquisition Cost \$0 to \$19,999 \$20,000  
to \$39,999 \$40,000 to \$59,999 \$60,000 to \$79,999 \$80,000 to \$99,999 \$100,000  
to \$119,999 \$120,000 to \$149,999 \$150,000 to \$199,999 \$200,000 or more Total  
Volume of Mortgage Loans By Income and Acquisition Cost \$0 to \$9,999 \$10,000 to  
\$19,999 \$20,000 to \$29,999 \$30,000 to \$39,999 \$40,000 to \$49,999 \$50,000 to  
\$74,999 \$75,000 or more Total Acquisition Cost \$0 to \$19,999 \$20,000 to \$39,999  
\$40,000 to \$59,999 \$60,000 to \$79,999 \$80,000 to \$99,999 \$100,000 to \$119,999  
\$120,000 to \$149,999 \$150,000 to \$199,999 \$200,000 or more Total -----  
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(4) Definitions and special rules. (i) For purposes of this paragraph the term "annualized gross income" means the borrower's gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay, any additional income from investments, pensions, Veterans Administration (VA) compensation, part-time employment, bonuses, dividends, interest, current overtime pay, net rental income, etc., and other income (such as alimony and child support, if the borrower has chosen to disclose such income). Information with respect to gross monthly income may be obtained from available loan documents, e.g., the sum of lines 23D and 23E on the Application for VA or FmHA Home Loan Guaranty or for HUD/FHA Insured Mortgage (VA Form 26-1802a, HUD 92900, Jan. 1982), or the total line from the Gross Monthly Income section of FHLMC Residential Loan Application form (FHLMC 65 Rev. 8/78). With respect to obligations issued prior to October 1, 1985, issuers may submit data based on annualized gross income or, instead, based on the adjusted income (as defined in §1.167(k)-3(b)(3)) of the mortgagor's family for the previous calendar year. If data is submitted based on adjusted income, the issuer must note this fact in the report.

(ii) For purposes of this paragraph, the term "reporting period" means the following periods:

(A) The period beginning January 1, 1985, and ending on September 30, 1985,

(B) The period beginning on October 1, 1985, and ending on June 30, 1986, and

(C) After June 30, 1986, each 1-year period beginning July 1 and ending June 30.

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

(iv) For purposes of this paragraph, verification of information concerning a borrower's gross monthly income with other available information concerning the borrower's income (e.g., Federal income tax returns) is not required. In determining whether a borrower acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the borrower.

(5) Time for filing. (i) The report required by paragraph (k)(2)(i) of this section shall be filed not later than the 15th day of the second 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 or to reflect changed circumstances with respect to the issuer.

(ii) The report required by paragraph (k)(2)(ii) of this section (relating to use of proceeds) shall be filed not later than the 15th day of the second calendar month after the close of the reporting period, except that the report for the reporting period ending September 30, 1985, is due not later than February 15, 1986. The report may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date the report is filed. The report need not be amended to reflect information learned subsequent to the date the report is filed or to reflect changed circumstances with respect to any borrower.

(iii) The Commissioner may grant an extension of time for the filing of a report required by paragraph (k)(2) (i) or (ii) of this section 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) of this section need not be filed with respect to such issues.

(6) Place for filing. The reports required by paragraph (k)(2) (i) and (ii) of this section are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(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) of this section 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 or file such report in a timely fashion. The requirements of this paragraph will be treated as met if the issuer in good faith attempted to meet the policy statement requirements of this paragraph.

(ii) With respect to reports required by paragraph (l)(1)(i) of this section 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 or 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. In addition, any report submitted not later than December 31, 1984, with respect to which an issuer in good faith attempted to satisfy the requirements of section 103A(j)(5) shall be treated as substantially satisfying the requirements of this paragraph. For example, with respect to a report submitted not later than December 31, 1984, an issuer shall not be treated as failing to satisfy the requirements of section 103A(j)(5) based on the fact that (A) the notice of public hearing failed to state the manner in which affected residents may obtain copies of the proposed report prior to the hearing, or (B) the proposed report was not available prior to or at the public hearing.

(2) Definitions and special rules. (i) In the case of an issuer that issues qualified mortgage bonds on behalf of one 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 notice 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 reasonably expect during the preceding calendar year to issue (or have issued on its behalf by any other issuer) 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 (l)(3) of this section 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 (l)(4) of this section.

(3) Report. (i) A report is described in this paragraph (l)(3) if it contains the issuer's name, TIN, and the title "Policy Report Under Section 103A" stated on the cover page of the report and if it includes-

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

(B) An assessment of the compliance of such issuer during the 1-year period preceding the date of the report with-

(1) The statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of the issuer, and

(2) 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.

(ii) For example, a report described in this paragraph (l)(3) may (but is not required to) contain-

(A) A specific statement of the policies 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, for example, a statement as to-

(1) With respect to housing policies, (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, (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 low-income housing assistance policies; and

(3) With respect to low-income housing assistance policies, (i) whether all or a portion of the proceeds will be targeted to low-income (i.e., 80 percent of median income), moderate-income (i.e., 100 percent of median income), or any other class of borrowers; (ii) the method by which the proceeds will be targeted to such

borrowers; and (iii) any other pertinent information relating to the issuer's low-income housing assistance policies;

(B) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report 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, for example, a statement as to whether the governmental unit or issuing authority successfully implemented its policies and, if not, an analysis of the reasons for such failure; and

(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 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, for example, 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).

(iii) For purposes of the assessments of compliance required by paragraph (l)(3)(i)(B) of this section to be included in the report, the "date of the report" means June 30. For purposes of the report required to be filed prior to January 1, 1986, an issuer need not perform these assessments of compliance with respect to any period prior to January 1, 1985.

(iv) An issuer that fails to establish policies with respect to the criteria provided in paragraph (l)(3)(i) of this section will not be treated as failing to satisfy the requirements of this paragraph. Thus, for example, an issuer may state in its report that none of the proceeds of the issue will be targeted to specific areas. Similarly, an issuer that fails to successfully implement its policies will not be treated as failing to satisfy the requirements of this paragraph.

(4) Public hearing. The public hearing required by paragraph (l)(1) of this section 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 (l). A public hearing held prior to January 1, 1985, will not fail to satisfy the requirements of this paragraph (l)(4) merely because the proposed policy statement was not available prior to the public hearing. 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 paragraph (l)(1) of this section 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 (l)(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 paragraph (l) (5) must state-

(A) The time and place for the hearing,

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

(C) With respect to any notice of hearing published after December 31, 1984, the manner in which affected residents may obtain copies of the proposed report prior to the hearing, and

(D) With respect to any notice of hearing published after December 31, 1984, that the hearing will involve the issuer's policies 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.

(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 ("multiple jurisdiction issuer"), 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 issuer in good faith attempted to meet the State certification requirements of this paragraph. The requirements of this paragraph apply to obligations issued after December 31, 1984.

(2) Certification. (i) An issue satisfied the requirements of section 103A (j) (4) and this paragraph (m)(2) only if the State official designated by law (or, if there is no State official, the Governor) certifies on or before the later of the date of issue or October 3, 1985, following a request for such certification by the issuer, that, as of the date the certification is executed, the issue meets the requirements of section 103A(g) and the regulations thereunder (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. To the extent consistent with State and local law, the Governor (or the chief executive officer of any constitutional home rule city) may delegate the responsibility to execute the certification required by this paragraph.

(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 previously issued by an issuer during a calendar year, the certifying official may rely on copies of the reports submitted, to date, by the issuer pursuant to section 103A(j)(3) for other issues of qualified mortgage bonds issued during that year and copies of any elections previously 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 has not, to date during the calendar year, issued any other qualified mortgage bonds, the amount, if any, of the issuer's market limitation that it has, to date during the calendar year, surrendered to other issuing authorities, and that it has not, to date during the calendar year, made any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that, as of the date the certification is executed, 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 15 days elapse after the issuer files a proper request for the certification described in paragraph (m)(2) of this section 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 103(A)(g) and §6a.103A-2(g),

(ii) At least 15 days before the execution of the affidavit the issuer filed a proper request for the certification described in paragraph (m)(2) of this section, and

(iii) The State official designated by law (or, if there is no State official, the Governor) has not provided the certification described in paragraph (m)(2) of this section.

**In the case of obligations issued prior to October 4, 1985 the preceding sentence shall be applied by substituting "30 days" for "15 days". 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 §1.103A-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 §6a.103A-2 are met. Obligations that do not meet the requirements of paragraph (g) of §6a.103A-2 are not described in section 103 (a).

#### **PART 6a-TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980**

Par. 3. The authority for Part 6a continues to read in part:

##### **Authority:**

26 U.S.C. 7805. sec. 6a.103A-2(k), (l), and (m) also issued under 26 U.S.C. 103A(j)(3), (4), and (5).

Par. 4. Section 6a103A-2 is amended by revising paragraphs (k), (l), and (m). These revised provisions read as follows:

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

(k) Information reporting requirement. See §1.103A-2(k) for rules relating to section 103A(j)(3).

(l) Policy statement. See §1.103A-2(l) for rules relating to section 103A(j)(5).

(m) State certification. See §1.103A-2(m) for rules relating to section 103A(j)(4).

#### **PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 5. The authority citation for Part 602 continues to read as follows:

##### **Authority:**

26 U.S.C. 7805.

Par. 6. Section 602.101 (c) is amended by inserting in the appropriate places in the table "§1.103A-2 . . . . 1545-0720".

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: August 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.