

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, 54 and 301

[REG–102951–16]

RIN 1545–BN36

Electronic-Filing Requirements for Specified Returns and Other Documents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations amending the rules for filing electronically and affects persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, and certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The proposed amendments reflect changes made by the Taxpayer First Act of 2019 (TFA) and are consistent with the TFA’s emphasis on increasing electronic filing. This document also withdraws proposed regulations published in the **Federal Register** on May 31, 2018, amending the rules for determining whether information returns must be filed electronically.

DATES: Written or electronic comments must be received by September 21, 2021. The public hearing is being held by teleconference on September 22, 2021 at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 21, 2021. If no outlines are received by September 21, 2021, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EST on September 20, 2021. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by September 20, 2021.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–102951–16) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The

Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–102951–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, call Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–6844; concerning submission of comments or requests for a public hearing, call Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Income Taxes (26 CFR part 1) under sections 1461 and 1474 of the Internal Revenue Code (Code), which provide that persons required to deduct and withhold tax are liable for such tax, and section 6050I of the Code, which requires persons to report information about financial transactions to the IRS; to the Regulations on Pension Excise Taxes (26 CFR part 54) under section 6011 of the Code, which requires persons to report information for certain excise taxes related to employee benefit plans; to the Regulations on Procedure and Administration (26 CFR part 301) under sections 1474, 6011, 6012, 6033, 6057, 6058, and 6059 of the Code for determining whether returns must be filed using magnetic media; and to the Regulations on Foundation and Similar Excise Taxes (26 CFR part 53) under section 6011 of the Code to remove the option—available to a person required to report certain excise taxes on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*—to designate a Form 4720 filed by a private foundation or trust as that person’s return if the foundation is reporting the same transaction. This document also withdraws proposed regulations under section 6011 that were published in the **Federal Register** on May 31, 2018 (May 2018 proposed regulations), amending the rules for determining whether information returns must be filed using magnetic media.

Section 6011(e) was added to the Code by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 610, and required the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations providing standards for

determining which returns were required to be filed on magnetic media (hereinafter references to filing “in electronic form” will be used in place of filing “on magnetic media”). A year later, the statute was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Public Law 98–67, 97 Stat. 383, to require information returns under sections 6042(a) (dividends and corporate earnings and profits), 6044(a) (patronage dividends), and 6049(a) (interest), with respect to more than 50 payees for any calendar year, to be filed electronically. The amendment also added a waiver provision from electronically filing to any person who established undue hardship.

On March 25, 1986, the Secretary first published guidance under section 6011(e) with respect to the electronic filing requirement as § 301.6011–2 (TD 8081), which specified Forms 1042–S, 1098, 1099 series, 5498, 6248, 8027, W–2G, W–2, W–2P as the information returns covered by the regulation that had to be filed electronically unless the person was granted a waiver or was a low-volume filer. The term “low-volume filers” was defined as persons not required to file, for any calendar year beginning on or after January 1, 1987, 250 or more of the specified returns (other than Forms 1099–DIV, *Dividends and Distributions*; 1099–PATR, *Taxable Distributions Received from Cooperatives*; 1099–INT, *Interest Income*; or 1099–OID, *Original Issue Discount*). For those four Forms 1099, the regulation provided a special rule that reduced the 250-return threshold to 50 and required that the four forms be aggregated for purposes of determining whether a person met the 50-return threshold. The regulation also provided that the Commissioner of Internal Revenue or his delegate (Commissioner) could prescribe by revenue procedure additional forms to be covered by the regulation.

Section 6011(e) was again amended in 1989 by section 7713, Title VII, of the Revenue Reconciliation Act of 1989 (1989 Act), Public Law 101–239, 103 Stat. 2394, to prohibit the Secretary from requiring any person to file returns electronically unless that person was required to file at least 250 returns during the calendar year. The 1989 Act also required the Secretary to consider the taxpayer’s ability to comply at reasonable costs with the regulation’s requirements.

On June 30, 1998, the Secretary promulgated amending regulations under section 6011(e), § 301.6011–2 (TD 8772), that removed the special rules related to the four Forms 1099 and

clarified that the 250-return threshold applied separately to each information return covered by § 301.6011-2. The regulation also added Forms 499R-2/W-2PR, W-2VI, W-2GU, and W-2AS as information returns covered by the regulation and removed Form 6248.

On August 5, 1997, the President signed into law the Taxpayer Relief Act of 1997, Public Law 105-34. Section 1224 of that Act amended 6011(e)(2) by adding a sentence that required the Secretary to promulgate regulations to require partnerships with over 100 partners to file returns electronically. On November 12, 1999, the Secretary promulgated regulations under section 6011(e) relating to this special rule for partnerships with more than 100 partners, § 301.6011-3 (TD 8843), requiring partnerships with more than 100 partners to file partnership returns and all information required by the applicable forms and schedules electronically.

On April 29, 2002, the Secretary promulgated regulations under section 6011(e) (TD 8992) to add Form 1098-E as an information return covered by the regulation; on February 7, 2003, the Secretary promulgated regulations under section 6011(e) (TD 9029) to add Form 1098-T as an information return covered by the regulation.

On November 13, 2007, the Secretary promulgated regulations relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 electronically under section 6011(e), § 301.6011-5, § 301.6033-4, and § 301.6037-2 (TD 9363). The regulations specify that all returns required to be filed during the calendar year, including income tax returns, employment tax returns, excise tax returns, and information returns, are counted in determining whether a corporation or organization meets the 250-return threshold. Sections 301.6011-5 and 301.6037-2 apply to large corporations and S corporations, respectively, if the corporation is required to file at least 250 returns during the calendar year and the corporation reports total assets at the end of the corporation's taxable year that equal or exceed \$10 million on Schedule L of their Form 1120 (\$10 million rule). Section 301.6033-4 applies to organizations required to file Form 990, *Return of Organization Exempt From Income Tax*, that have total assets of \$10 million or more as of the end of the taxable year, and that are required to file at least 250 returns during the calendar year; it also applies to any organization (regardless of total assets) required to file Form 990-PF,

Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, if the organization is required to file at least 250 returns during the calendar year.

Section 6011(e)(4) was added to the Code in 2010 by section 522, Title V, of the Hiring Incentives to Restore Employment (HIRE) Act, Public Law 111-147, 124 Stat. 71, to authorize the Secretary to require financial institutions that file returns with respect to withholding on foreign transfers to file those returns electronically regardless of the number. On January 28, 2013, the Secretary promulgated regulations under section 1474(f), § 301.1474-1 (TD 9610), to require financial institutions defined in section 1471(d)(5) to electronically file Form 1042-S, *Foreign Persons' U.S. Source Income Subject to Withholding*, regardless of the number of returns filed for the calendar year, but did not include in those regulations a requirement to electronically file Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

On March 10, 2014, the Secretary promulgated regulations under section 6011(e), § 301.6011-2 (TD 9660), to add the Forms 1094 series and 1095 series as information returns covered by the regulation. And on December 19, 2016, the Secretary promulgated regulations under section 6011(e), § 301.6011-2 (TD 9804), to remove the Form 1095 series and add Form 1095-B and Form 1095-C as information returns covered by the regulation.

On March 23, 2018, the President signed into law the Tax Technical Corrections Act of 2018 (TTCA), Public Law 115-141. Section 301, div. U, title III, of the TTCA added a new paragraph (5), Special rule for partnerships, to section 6011(e). Section 6011(e)(5)(A), Partnerships permitted to be required to file on magnetic media, authorized the Secretary to lower the electronic-filing threshold to 200 returns and statements for all partnerships filing returns and statements relating to calendar year 2018, reducing that number by 50 each year until 2023, when partnerships filing more than 20 returns and statements relating to 2022 or any subsequent calendar year could be required to file electronically. The TTCA also moved the rule authorizing the Secretary to require partnerships with more than 100 partners to file their returns electronically from section 6011(e)(2) to new section 6011(e)(5)(B), Partnerships required to file on magnetic media. The Secretary did not promulgate regulations under section

6011(e) relating to the lower electronic-filing thresholds for partnerships.

On May 31, 2018, the Secretary proposed regulations under section 6011(e) (83 FR 24948) amending § 301.6011-2. The proposed regulations would have required that all information returns covered under that regulation, regardless of type, be included in determining whether the returns a person must file meet the 250-return threshold and the person must file the information returns electronically. The May 2018 proposed regulations also provided that corrected information returns would be required to be filed electronically if the corresponding original return was required to be filed electronically.

On July 1, 2019, the President signed into law the Taxpayer First Act of 2019 (TFA), Public Law 116-25. Section 2301 of the TFA amended section 6011(e) by adding new paragraph 5 that authorizes the Secretary to prescribe regulations that decrease, in accordance with the TFA, the number of returns a taxpayer may file without being required to file electronically. These amendments included changes to the special rule for partnerships. Section 2301 of the TFA moved the rule requiring partnerships with more than 100 partners to file returns electronically from section 6011(e)(5), titled "Partnerships required to file on magnetic media", to new section 6011(e)(6). Section 3101 of the TFA amended section 6011 to require any charitable or other organization required to file an annual return that relates to any tax imposed by section 511 on unrelated business taxable income to file those returns in electronic form. Section 3101 of the TFA also amended section 6033 to require any organization required to file a return under section 6033 to file those returns in electronic form.

On November 19, 2020, the Secretary promulgated regulations under section 529A of the Code, which amended a regulation under section 6011(e) of the Code, § 301.6011-2 (TD 9923), to add the Forms 5498-ESA, *Coverdell ESA Contribution Information*, 5498-QA, *ABLE Account Contribution Information*, and 5498-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*, as information returns covered by the regulation.

On December 20, 2019, the President signed into law the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as part of the Further Consolidated Appropriations Act, 2020, Public Law 116-94, div. O. Section 202 of the SECURE Act allows a group of plans to file a single aggregated annual

return or report for plan years beginning after December 31, 2021. Section 202(d) of the SECURE Act clarifies the electronic-filing requirements for these deferred compensation plans. Section 202 of the SECURE Act also added to section 6011 a second paragraph (e)(6), although the headings of the two paragraphs (e)(6) differ. The one moved to paragraph (e)(6) by the TFA is titled "Partnerships required to file on magnetic media." The one added by the SECURE Act is titled "Application of numerical limitation to returns related to deferred compensation plans" and treats information regarding each plan for which information is provided on a return required to be filed under section 6058 of the Code as a separate return for purposes of determining the number of returns a taxpayer may file without being required to file electronically. These proposed regulations do not address amendments made by section 202(d) of the SECURE Act.

Explanation of Provisions

1. Scope of the Proposed Regulations for Filing Returns Electronically

These proposed regulations would impose electronic-filing requirements on persons required to file certain returns as authorized by the TFA by amending the following regulations:

- (1) § 301.6011–2, Required use of electronic form, which prescribes standards for determining whether certain information returns must be filed electronically;
- (2) § 1.6045–2, Furnishing statement required with respect to certain substitute payments, which requires persons to report certain substitute payments;
- (3) § 1.6045–4, Information reporting on real estate transactions with dates of closing on or after January 1, 1991, which requires persons to report on real estate transactions;
- (4) § 1.6050I–0, Table of contents, which lists the major captions that appear in §§ 1.6050I–1 and 1.6050I–2;
- (5) § 1.6050I–1, Returns relating to cash in excess of \$10,000 received in a trade or business, which requires persons to report information about these financial transactions to the IRS;
- (6) § 1.6050I–2, Returns relating to cash in excess of \$10,000 received as bail by court clerks, which requires persons to report information about these financial transactions to the IRS;
- (7) § 1.6050M–1, Information returns relating to persons receiving contracts from certain Federal executive agencies, which requires certain Federal executive agencies to report information with respect to each contract entered into by that agency;

(8) § 301.6721–1, Failure to file correct information returns, which provides the penalty for failure to file correct information returns;

(9) § 301.6011–3, Required use of electronic form for partnership returns, which prescribes standards for determining whether a partnership must file its partnership return electronically;

(10) § 301.6011–5, Required use of electronic form for corporate income tax returns, which prescribes standards for determining whether a corporation must file its corporate income tax returns electronically;

(11) § 1.6037–2, Required use of electronic form for income tax returns of electing small business corporations, which prescribes standards for determining whether an electing small-business corporation (S corporation) must file its S corporation return electronically;

(12) § 301.6037–2, Required use of electronic form for returns of electing small business corporations, which prescribes standards for determining whether an electing small-business corporation (S corporation) must file its S corporation return electronically;

(13) § 1.6033–4, Required filing in electronic form for returns by organizations required to file returns under section 6033, which prescribes standards for filing returns required to be filed electronically under § 301.6033–4;

(14) § 301.6033–4, Required filing in electronic form for returns by organizations required to file returns under section 6033, which prescribes standards for determining whether returns by organizations required to file a return under section 6033 must be filed electronically;

(15) § 53.6011–1, General requirement of return, statement or list, which requires persons subject to certain enumerated excise taxes under Chapter 42 of the Code to file a Form 4720 to accompany payment of those excise taxes;

(16) § 301.6057–3, Required use of electronic form for filing requirements relating to deferred vested retirement benefit, which prescribes standards for determining whether a registration statement required to be filed under section 6057(a) or a notification required to be filed under section 6057(b) must be filed electronically;

(17) § 301.6058–2, Required use of electronic form for filing requirements relating to information required in connection with certain plans of deferred compensation, which prescribes standards for determining whether a return required to be filed under section 6058 with respect to an

employee benefit plan must be filed electronically; and

(18) § 301.6059–2, Required use of electronic form for filing requirements relating to periodic report of actuary, which prescribes standards for determining whether an actuarial report required to be filed under section 6059 with respect to an employee benefit plan must be filed electronically.

The proposed regulations would also create the following new regulations that impose an electronic-filing requirement:

(1) § 301.6011–10, Certain organizations, including trusts, required to file unrelated business income tax returns in electronic form, which requires certain organizations, including trusts, to file their unrelated business income tax returns electronically;

(2) § 301.6011–11, Required use of electronic form for certain returns for tax-advantaged bonds, which prescribes standards for determining whether a return for credit payments to issuers of qualified bonds must be filed electronically;

(3) § 301.6011–12, Required use of electronic form for returns of certain excise taxes under chapters 41 and 42 of the Internal Revenue Code, which prescribes standards for determining whether an excise tax return on Form 4720 must be filed electronically;

(4) § 301.6011–13, Required use of electronic form for split-interest trust returns, which prescribes standards for determining whether an information return on Form 5227 must be filed electronically;

(5) § 301.6011–14, Required use of electronic form or other machine-readable form for material advisor disclosure statements, which prescribes standards for determining whether a material advisor disclosure statement on Form 8918 must be filed electronically or in other machine-readable form;

(6) § 301.6012–2, Required use of electronic form for income tax returns of certain political organizations, which prescribes standards for determining whether an income tax return on Form 1120–POL must be filed electronically;

(7) § 54.6011–3, Required use of electronic form for the filing requirements for the return for certain excise taxes related to employee benefit plans, which prescribes standards for determining whether an income tax return on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, must be filed electronically; and

(8) § 301.6011–15, Required use of electronic form for withholding tax returns, which prescribes standards for determining whether an income tax

return filed by a withholding agent on Form 1042 must be filed electronically.

In addition, the proposed regulations would amend the following regulations regarding the filing requirements of withholding agents:

(1) § 1.1461–1, Payment and returns of tax withheld, which prescribes requirements for withholding agents to file returns with respect to U.S. source income of foreign persons;

(2) § 1.1471–0, Outline of regulation provisions for sections 1471 through 1474, which lists the major captions that appear in §§ 1.1471–1 through 1.1474–7 and § 301.1474–1;

(3) § 1.1474–1, Liability for withheld tax and withholding agent reporting, which provides rules for withholding agents making payments under chapters 3 or 4 of the Code; and

(4) § 301.1474–1, Required use of electronic form for financial institutions filing Form 1042–S or Form 8966, which provides rules for withholding agents making payments under chapter 4 of the Code.

The regulations proposed in this document include reordering and renumbering of paragraphs when necessary for clarification and logic. In addition, cross references have been updated, and typographical, grammatical, and punctuation corrections have been made.

As many of these regulations imposing electronic-filing requirements also provide a waiver from electronically filing to any person who establishes undue hardship, the Treasury Department and the IRS request comments on how the hardship waiver procedures should be administered, including suggestions for revising the procedures for requesting, and criteria for granting, a hardship waiver.

2. Proposed § 301.6011–2, Rules for Filing Certain Information Returns Electronically

These proposed regulations would amend § 301.6011–2 as discussed in detail in the following sections 2.A through 2.G.

A. Additional Information Returns Required To Be Filed Electronically

i. Forms 1098–C and 1098–Q

Section 301.6011–2(b)(1) provides a list of information returns required to be filed electronically in accordance with § 301.6011–2. Among those returns are three in the Form 1098 series: Form 1098, *Mortgage Interest Statement*; Form 1098–E, *Student Loan Interest Statement*; and Form 1098–T, *Tuition Statement*, added to § 301.6011–2(b)(1)

by, respectively, TD 8081 (March 25, 1986), TD 8992 (April 29, 2002), and TD 9029 (February 7, 2003). After those three forms were added to § 301.6011–2(b)(1), the IRS created additional returns in the Form 1098 series: Form 1098–C, *Contributions of Motor Vehicles, Boats, and Airplanes*; and Form 1098–Q, *Qualifying Longevity Annuity Contract Information*. These two additional 1098 series forms, as well as the three currently listed in § 301.6011–2(b), are all filed and furnished by larger organizations and institutions that generally electronically file returns even when not required to do so by § 301.6011–2. Based on the size and sophistication of the entities that file these forms and the accessibility and availability of electronic filing, the Treasury Department and the IRS have determined that filers of Forms 1098–C and 1098–Q are unlikely to incur unreasonable costs to electronically file these returns. Thus, the proposed regulations would amend § 301.6011–2(b)(1) to add Forms 1098–C and 1098–Q to the list of information returns covered by § 301.6011–2(b).

ii. Forms 3921 and 3922

The proposed regulations would also amend § 301.6011–2(b)(1) to add the Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)*, and Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)*. These forms are filed and furnished by sophisticated taxpayers that generally electronically file returns even when not required to do so by § 301.6011–2. Based on the sophistication of these filers and the accessibility and availability of electronic filing, the Treasury Department and the IRS have determined that filers of Forms 3921 and 3922 are unlikely to incur unreasonable costs to electronically file these returns.

iii. Form 1097–BTC

The proposed regulations would also amend § 301.6011–2(b)(1) to add the Form 1097–BTC, *Bond Tax Credit*. This form is filed and furnished by bond issuers with respect to certain tax credit bonds. For the reasons discussed in this preamble, the Treasury Department and the IRS have determined that filers of Form 1097–BTC should not incur any unreasonable costs to electronically file this return. See section 2.D., Aggregation of returns to determine whether the electronic-filing threshold is met. Proposed § 301.6011–2 would allow for a waiver of the electronic filing requirements for Form 1097–BTC if hardship is shown in a request for

waiver made in accordance with the regulation.

B. Form 8300 Required To Be Filed Electronically

Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, is a dual-purpose form, designed to meet both the section 6050I reporting requirement and, since January 1, 2002, a similar Bank Secrecy Act (BSA) reporting requirement found in 31 U.S.C. 5331 and 31 CFR 1010.330. Generally, any person in a trade or business who receives more than \$10,000 in cash in a single transaction or related transactions must file Form 8300. The IRS uses the information on the Form 8300 for civil and criminal tax administration and compliance. The Financial Crimes Enforcement Network (FinCEN) relies on up-to-date Form 8300 filings for law enforcement, reporting, and statistical purposes. The instructions on Form 8300 state that filers can file the form either on paper with the IRS or electronically through FinCEN's BSA E-Filing System.

Approximately 250,000 of the 300,000 Forms 8300 filed during each calendar year from 2015 to 2018 were filed on paper with the IRS. IRS employees manually input data from the paper-filed Forms 8300 into FinCEN's BSA E-Filing System. This procedure requires significant resources to be spent on processing and data entry. Manual data entry can cause delays in the input and retrieval of data, affecting the timeliness of information available for law enforcement and other users to detect potential money laundering, terrorist financing, and other tax and financial fraud.

These proposed regulations would require filers who are required to file at least the applicable number of returns identified in paragraphs (b)(1) and (b)(2) of proposed § 301.6011–2 during the calendar year to also file their Forms 8300 electronically, as directed by the form's instructions. This requirement would increase the timeliness and accuracy of data entry, reduce postage costs, promote IT modernization efforts, reallocate IRS staff for priority assignments, and provide IRS criminal and civil investigators and other agencies with access to the data with up-to-date and accurate information. Electronic filing would also protect against possible future disruption and delays in processing paper-filed Forms 8300. It is anticipated that the form will direct filers to use FinCEN's BSA E-Filing system (<https://bsaefiling.fincen.treas.gov/main.html>), which is an internet-based secure system with no cost to the user. The only technical

requirement of the BSA E-Filing System is to have an internet connection for access to the system. Nonetheless, the proposed regulations would continue to allow the Commissioner to waive the requirement to file information returns electronically if the request for waiver demonstrates hardship. The principal factor in determining hardship will be the extent, if any, to which the cost of electronically filing Form 8300 exceeds the cost of filing Form 8300 on paper. The proposed regulations would also edit the example in § 1.6050I-1(d)(2)(iv) to provide additional clarity for the rule illustrated in that example.

C. Amending the Electronic-Filing Threshold

Under section 6011(e)(1), the Secretary must prescribe regulations providing standards for determining which returns must be filed electronically. Section 6011(e)(2)(A), however, until it was amended by the TFA, prevented the Secretary from requiring any person to file returns electronically unless the person was required to file at least 250 returns during the calendar year. Section 2301 of the TFA amended section 6011(e), changing the statutory 250-return threshold to a decreasing number over several years, as set forth in new section 6011(e)(5). In accordance with section 2301 of the TFA, these proposed regulations would amend § 301.6011-2(c)(1)(i), which currently provides that no person is required to electronically file an information return covered under § 301.6011-2(b) unless the person is required to file 250 or more returns during the calendar year. The proposed amendments would remove references to the 250-return threshold in § 301.6011-2(c)(1)(i) and add a new paragraph (c)(3)(i) to § 301.6011-2 that, in accordance with the TFA, reduces the electronic-filing threshold for information returns covered under § 301.6011-2(b) from 250 to 100, for returns required to be filed during calendar year 2022, and from 100 to 10, for returns required to be filed during calendar years after 2022.

Information returns are generally required to be filed between January and March of the year following the calendar year to which such returns relate. See sections 6071(b) and (c). If a taxpayer has, for example, 13 employees in calendar year 2022 and is required to file Forms W-2 for those employees during calendar year 2023, that taxpayer would, under these proposed regulations, be required to file those 13 Forms W-2 electronically.

The proposed incremental step-down from 250 to 100 for information returns

required to be filed during calendar year 2022, and then from 100 to 10 for information returns required to be filed after 2022, will allow the IRS time to ensure it has sufficient resources and updated programming to seamlessly handle and process the increased volume of electronically-filed information returns and the applications required to file those information returns electronically.

The Treasury Department and the IRS expect that by calendar year 2023 the IRS will be prepared to handle and process the anticipated increased volume of returns and applications, and that no further incremental step-down would be necessary if these proposed regulations are finalized and applicable to returns required to be filed during calendar year 2023. Consequently, persons required to file at least 10 information returns during the calendar year 2023 would be required to file those returns electronically. The Treasury Department and the IRS request comments on why persons required to file at least 10 information returns during the calendar year 2023 would not be able to file those returns electronically during that calendar year and whether the Treasury Department and the IRS should provide an incremental step-down to 100 for information returns required to be filed during calendar year 2023, and then from 100 to 10 for information returns required to be filed during calendar years after 2023.

D. Aggregation of Returns To Determine Whether the Electronic-Filing Threshold Is Met

Section 301.6011-2(c)(1)(iii) provides that each type of information return covered under § 301.6011-2(b) is considered separately for purposes of determining whether a person meets the 250-return electronic-filing threshold. Therefore, different types of information returns are not counted in the aggregate for purposes of determining whether a person is required to file a number of returns that equals or exceeds the 250-return electronic-filing threshold during the calendar year (non-aggregation rule).

These proposed regulations would remove the non-aggregation rule from § 301.6011-2(c)(1)(iii). Section 6011(e) does not prohibit the aggregation of information returns of different types in determining whether a person meets the electronic-filing threshold during a calendar year. When the regulations specifically providing for non-aggregation were published in 1998, electronic filing was still in the early stages of development and not as commonly used as it is today. Both the

250-return limitation that Congress had included in the 1989 amendment to section 6011(e) and the non-aggregation rule that the Secretary prescribed helped ensure that electronic-filing burdens and costs were appropriate, given the existing limits and accessibility to electronic-filing technology at that time.

Since that time, electronic filing has become more common, accessible, and economical, as evidenced by the prevalence of tax-return preparers and third-party service providers who offer return-preparation and electronic-filing services, by the availability of tax-return-preparation software, and by the numbers of returns already being filed electronically on a voluntary basis. In 2018, for example, approximately 98.5 percent of information returns were filed electronically. Moreover, electronic filing increases the IRS's timeliness and accuracy in processing return information, which, in turn, provides faster and better customer service to taxpayers with respect to those returns.

In light of the prevalence of electronic filing and Congress's enactment of the TFA, which significantly expanded the Secretary's authority to prescribe regulations requiring persons to file returns electronically, the Treasury Department and the IRS have determined that the non-aggregation rule is no longer necessary and propose to remove it from § 301.6011-2(c). The proposed regulations would add a new paragraph (c)(4)(i) to § 301.6011-2 to provide that a person required to file original information returns of any type covered by § 301.6011-2(b)(1) and (b)(2) must count all those returns together to determine whether the person meets or exceeds the electronic-filing threshold for the relevant calendar year.

The proposed regulations do not include Forms 8300 in the aggregation rule, and no Form 8300 would be included in determining whether a person is required to file the applicable number of information returns. A Form 8300 generally must be filed within 15 days after a reportable payment of more than \$10,000 is received. A filer may not know the number of Forms 8300 it will file in a calendar year until after the year is over, because the filer will not know how many cash transactions over \$10,000 will occur during the year. On the other hand, other information returns described in § 301.6011-2(b)(1) and (2) do not need to be filed until after the calendar year of the event being reported. A filer of those other information returns will therefore know at the beginning of the calendar year whether the filer is required to file at

least the applicable number of those other information returns because those returns relate to the preceding calendar year. Thus, the Treasury Department and the IRS propose to require electronic filing of Forms 8300 only if the filer is required to file other information returns electronically.

Under these proposed regulations, filers would generally understand early in the calendar year their electronic-filing obligations for Forms 8300 without an unduly complex aggregation rule. In addition, these proposed regulations are consistent with the TFA's emphasis on development, improvement, and expansion of modern technology (see, for example, "An Act To amend the Internal Revenue Code of 1986 to modernize and improve the Internal Revenue Service, and for other purposes" and "Subtitle B—Development of Information Technology" under "Title II—21st Century IRS"), and are within the Secretary's expanded authority under the TFA to prescribe regulations requiring persons to file returns electronically.

E. Corrected Returns Must Be Filed in the Same Manner as the Original Return

Section 301.6011-2 provides that the non-aggregation rule applies separately to each type of corrected information return covered by § 301.6011-2(b) such that, for purposes of determining whether a person meets the 250-return electronic-filing threshold, corrected information returns are counted separately from original information returns, and each type of corrected information return is counted separately.

The Treasury Department and the IRS have determined that, to increase the IRS's timeliness and accuracy in processing information returns, if persons are required to file original information returns electronically, they must file any corresponding corrected information returns electronically. Likewise, if persons permitted to file information returns on paper file those information returns on paper, they must also file any corresponding corrected information returns on paper. As discussed in the next three paragraphs, this will increase the IRS's efficiency in processing returns and should not cause taxpayers to incur unreasonable costs.

Paper information returns are generally filed at one of three different IRS Submission Processing Centers, depending on the filer's legal residence (for individuals) or principal place of business (for entities). When the IRS receives paper returns, it must convert the return to an electronic-data record

before it can use the information effectively. Electronic information returns, on the other hand, do not go through Submission Processing Centers; they are generally filed through the IRS's Filing Information Returns Electronically (FIRE) system or Affordable Care Act Information Returns (AIR) system, depending on the type of return.

Because the procedures for processing electronic returns and paper returns are different, when an original return is filed on paper and a corrected return is filed electronically shortly thereafter, the IRS may not have finished processing the original paper return before the electronic return is received. The IRS is thus not able to reconcile differences as quickly as when the original and corrected returns are filed in the same manner. Similar processing issues arise when an original return is filed electronically and the corrected return is filed on paper.

This proposed requirement will not result in any additional costs or burdens on taxpayers with respect to electronic filing because a filer who filed the original return electronically has the software necessary to file a corrected return electronically. Thus, the proposed regulations would add new paragraphs (c)(4)(ii)(A) and (c)(4)(ii)(B) to § 301.6011-2 to provide that corrected information returns must be filed electronically if the corresponding original return was required to be filed electronically, and that corrected returns must be filed on paper if the corresponding original return was permitted to be, and was, filed on paper. In addition, the proposed regulations would amend § 301.6721-1(a)(2)(ii), as discussed under section 5, Proposed § 301.6721-1, Rules Relating to Penalties for Failure to File Correct Information Returns, to provide that a failure to file a corrected information return in the same manner as the corresponding original will be deemed a failure to correct the corresponding original information return.

F. Special Electronic-Filing Threshold for Partnerships of Any Size

Section 2301 of the TFA amended the special rule for partnerships in section 6011(e)(5) to authorize the Secretary to reduce the electronic-filing threshold for partnerships required to file returns. The amended special rule for partnerships authorized the Secretary to reduce the electronic-filing threshold at an accelerated rate when compared to the general electronic-filing threshold, phasing out this special rule for partnerships for returns required to be filed during calendar years after 2021.

These proposed regulations do not include a special electronic-filing threshold for partnerships because the final regulations are not expected to be applicable before the 2022 filing season, at which point the special rule for partnerships will be phased out. For all the reasons discussed in this preamble, the proposed regulations would reduce, for all persons, including partnerships, the electronic-filing threshold for information returns covered under § 301.6011-2(b) from 250 to 100, for returns required to be filed during calendar year 2022, and from 100 to 10, for returns required to be filed during calendar years after 2022. See section 2.C., Amending the electronic-filing threshold.

G. Special Electronic-Filing Rule for Partnerships Having More Than 100 Partners

Paragraph (6) of section 6011(e), as that section was amended by the TFA, provides, "Notwithstanding paragraph (2)(A), the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media" (100-partner rule). The statute uses the general term "returns" without specifying the type of returns that must be filed electronically. But the legislative history of the Taxpayer Relief Act of 1997, which added the 100-partner rule to section 6011(e), mentions the rule's application only with respect to partnership returns. H.R. Rep. No. 105-220, at 675 (1997) (Conf. Rep.) ("The House bill provides generally that any partnership is required to provide the tax return of the partnership (Form 1065), as well as copies of the schedule[s] sent to each partner (Form K-1), to the Internal Revenue Service on magnetic media. An exception is provided for partnerships with 100 or fewer partners.").

In accordance with this legislative history, the Secretary promulgated regulations in 1999, § 301.6011-3 (TD 8843), requiring partnerships with more than 100 partners to file partnership returns and all other information required by the applicable forms and schedules electronically.

In 2018, however, Congress enacted the TTCA and moved this 100-partner rule from section 6011(e)(2), where it appeared as flush language under the 250-threshold limitation, to a new subparagraph (B) under section 6011(e)(5), "Special rules for partnerships." There is no legislative history to the 2018 TTCA that explains why Congress moved the 100-partner rule. But after the TTCA was enacted, the Joint Committee on Taxation describes the rule with respect to "returns," rather than "tax return of the

partnership (Form 1065),” which is how the legislative history of the Taxpayer Relief Act of 1997 described it. Staff of the J. Comm. On Taxation, Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625, at 52 (JCX-6-18) (“Present law requires that . . . partnerships having more than 100 partners are required to file returns electronically.”). In 2019, a year after TTCA moved the 100-partner rule, Congress, in Title II of the TFA, under Subtitle D, “Expanded Use of Electronic Systems,” again moved the 100-partner rule to a new paragraph (6) under section 6011(e), “Partnerships required to file on magnetic media.”

In light of the Joint Committee on Taxation’s referring to “returns” in general in describing this provision of the TTCA, the TFA’s emphasis on development, improvement, and expansion of modern technology, as discussed in this preamble, the TFA’s emphasis on electronic filing (see “Subtitle D—“Expanded Use of Electronic Systems” under Title II), and the accessibility and prevalence of electronic filing, the Treasury Department and the IRS propose to add a new paragraph (c)(3)(ii)(B) to § 301.6011-2 to require partnerships with more than 100 partners to file their information returns covered by § 301.6011-2(b) electronically, regardless of the number of information returns being filed.

3. Proposed § 1.6050I-0, Table of Contents, and § 1.6050I-1, Returns Relating to Cash in Excess of \$10,000 Received in a Trade or Business

Section 1.6050I-1(e)(1) provides that Form 8300 must be filed with the IRS by the 15th day after the date cash in excess of \$10,000 is received in a trade or business. Section 1.6050I-1(e)(3) provides that Form 8300 must be filed by mailing it to the address shown in the instructions on the form. For all the reasons discussed in this preamble, the proposed regulations would remove references to mailing Form 8300 to the IRS and require that the form be filed as directed by the form’s instructions. See section 2.B., Form 8300 required to be filed electronically; section 2.C., Amending the electronic-filing threshold; and section 2.D., Aggregation of returns to determine whether the electronic-filing threshold is met. The instructions to Form 8300 will explain how to file the form electronically. The proposed regulations would also update outdated citations in § 1.6050I-0 and § 1.6050I-1 that cross-reference to the regulations under Title 31 of the CFR

and clarify the example in § 1.6050I-1(d)(2)(iv).

4. Proposed § 1.6050I-2, Returns Relating to Cash in Excess of \$10,000 Received as Bail by Court Clerks

Section 1.6050I-2(c)(1)(i) provides that Form 8300 must be filed with the IRS by the 15th day after the date cash bail in excess of \$10,000 is received. Section 1.6050I-2(c)(3)(i) provides that Form 8300 must be filed with the IRS office designated in the instructions on the form. For all the reasons discussed in this preamble, the proposed regulations would remove references to filing Form 8300 with a specific IRS office and require that the form be filed as directed by the form’s instructions. See section 2.B., Form 8300 required to be filed electronically; section 2.C., Amending the electronic-filing threshold; and section 2.D., Aggregation of returns to determine whether the electronic-filing threshold is met. The instructions to Form 8300 will explain how to file the form electronically.

5. Proposed § 301.6721-1, Rules Relating to Penalties for Failure To File Correct Information Returns

Paragraph (a)(2)(ii) of § 301.6721-1, Failure to file correct information returns, states that no penalty will be imposed solely by reason of failing to file electronically, except to the extent that a failure occurs with respect to more than 250 returns. In accordance with changes made to the 250-return threshold by section 2301 of the TFA, the proposed amendments to § 301.6721-1 would remove references to a 250-return threshold with respect to penalties for failure to file correct information returns.

Section 301.6721-1(a)(2)(ii) also states that the threshold requirements apply separately to original and corrected returns, such that a filer that files 300 returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV could file the corrected returns either on the prescribed paper form (because they fall below the 250-threshold requirement) or electronically. For the reasons discussed in this preamble, the Treasury Department and the IRS propose to remove this rule because they have determined that corrected returns should be filed electronically if the corresponding original returns were so filed. See section 2.E., Corrected returns must be filed in the same manner as the original return. These proposed regulations would thus amend § 301.6721-1(a)(2)(ii) to provide that a failure to file a corrected information return in the same manner as the corresponding original

will be deemed a failure to correct the corresponding original information return such that the filer will not receive the benefit of a reduced penalty under § 301.6721-1(b) for that corrected information return.

6. Proposed § 301.6011-3, Rules for Filing Partnership Returns Electronically

Section 301.6011-3 prescribes standards for determining whether a partnership must file its partnership return electronically. In 2018, the TTCA amended section 6011(e) to authorize the Secretary to incrementally reduce, by regulation, the electronic-filing threshold for partnerships. When section 2301 of the TFA amended that particular statute again in 2019, to further reduce the electronic-filing threshold for partnerships, the Secretary had not yet promulgated regulations to implement that reduced-threshold rule for partnerships. As discussed in this preamble, these proposed regulations do not include a special electronic-filing threshold for partnerships because the final regulations are not expected to be applicable before the 2022 filing season, at which point the special rule for partnerships will be phased out. See section 2.F., Special electronic-filing threshold for partnerships of any size. For returns required to be filed during calendar years after 2021, section 2301 of the TFA authorizes the Secretary to reduce the electronic-filing threshold to 10 for all persons, including partnerships. These proposed regulations would amend § 301.6011-3(a) to reduce the electronic-filing threshold to 10 returns for any partnership, in accordance with section 6011(e), as amended by the TFA. In addition, for all the reasons discussed in this preamble, the proposed regulations would add a new paragraph (a)(5) to § 301.6011-3 that provides that all returns of any type, including partnership returns, excise-tax returns, employment-tax returns, and information returns (but not including schedules required to be attached to or included with a partnership return), are counted in the aggregate for purposes of determining whether a partnership of any size meets the electronic-filing threshold of 10 returns in a calendar year, and thus must file its partnership return electronically. See sections 2.D., Aggregation of returns to determine whether the electronic-filing threshold is met; and 2.G., Special electronic-filing rule for partnerships having more than 100 partners. These rules relating to the requirements for determining when a partnership is required to file its partnership return electronically do not

limit the application of any other statute affecting partnership returns that must be filed electronically, such as section 6033(n), which requires a partnership return filed by a section 501(d) apostolic organization to be filed electronically.

7. Proposed § 301.6011–5, Rules for Filing Corporate Income Tax Returns Electronically

Section 301.6011–5 prescribes standards for determining whether a corporation must file its income tax returns electronically and requires large corporations to file the corporate income tax return electronically if the corporation is required to file during the calendar year at least 250 returns of any type. The regulation, however, applies only to those corporations that report total assets at the end of the corporate taxable year of \$10 million or more on Schedule L of their Form 1120. Section 2301 of the TFA amended section 6011(e) to authorize the Secretary to prescribe regulations to reduce the number of returns that a person may be required to file during a calendar year before the Secretary may impose an electronic-filing requirement. These proposed regulations would remove references to the 250-return threshold and reduce the electronic-filing threshold for corporate income tax returns to 10, for returns required to be filed during calendar years after 2021, in accordance with section 6011(e), as amended by the TFA. In addition, the Treasury Department and the IRS propose to remove the \$10 million rule, making the regulation applicable to all corporations regardless of reportable assets. The \$10 million rule was never required by the Code; rather, the Treasury Department and the IRS prescribed the rule in 2007 to help ensure that electronic-filing burdens and costs were appropriate, given the existing limits and accessibility to electronic-filing technology at that time. With the current prevalence and accessibility of electronic filing even for small businesses, as well as the benefits of quicker return processing, the \$10-million rule is no longer needed. Accordingly, the proposed regulations would require that any corporation required to file a corporate income tax return under § 1.6012–2, regardless of the corporation's reported total assets at the end of its taxable year, file that return electronically if the corporation is required to file at least 10 returns of any type during calendar years after 2021. The proposed regulations would also update the example to reflect these changes. The proposed regulations do not change the existing rule in § 301.6011–5 that all returns of any type

are counted in determining whether a corporation is required to file its income tax return electronically.

8. Proposed § 301.6037–2, Required Use of Electronic Form for Returns of Electing-Small Business Corporation

Section 301.6037–2 prescribes standards for determining whether an S corporation must file its S corporation return electronically. Section 301.6037–2 requires S corporations to file their corporate income tax return electronically if the corporation is required to file during the calendar year at least 250 returns of any type, but the regulation applies only to those S corporations that report total assets at the end of the corporation's taxable year that equal or exceed \$10 million on Schedule L of Form 1120–S.

Section 2301 of the TFA amended section 6011(e), authorizing the IRS to change the 250-return threshold to 10, for returns required to be filed during calendar years after 2021. These proposed regulations would remove references to the 250-return threshold and reduce the electronic-filing threshold for S corporations to 10 in accordance with section 6011(e), as amended by the TFA. In addition, the Treasury Department and the IRS propose to remove the \$10 million rule for the same reasons that it is eliminating the rule for corporations. See section 7, Proposed § 301.6011–5, Rules for Filing Corporate Income Tax Returns Electronically. With the current prevalence and accessibility of e-filing, as well as the benefits of quicker processing of returns, the \$10 million rule is no longer needed. Accordingly, the proposed regulations would require that any S corporation required to file an S-corporation return under § 1.6037–1, regardless of the corporation's reported total assets at the end of its taxable year, file its income tax return electronically if the corporation is required to file at least 10 returns of any type during the calendar year. The proposed regulations would also update the example illustrating this rule to reflect these changes.

9. Proposed §§ 1.6033–4 and 301.6033–4, Required Filing in Electronic Form for Returns by Organizations Required To File Returns Under Section 6033

Section 1.6033–4 provides that the return of an organization that is required to be filed electronically under § 301.6033–4 must be filed in accordance with IRS revenue procedures, publications, forms, or instructions, including those posted electronically.

Section 301.6033–4 provides that an organization required to file a return under section 6033 on Form 990 must file its Form 990 electronically if the organization is required to file during the calendar year at least 250 returns of any type and if the organization has total assets as of the end of the taxable year of \$10 million or more. It also provides that any organization (regardless of total assets) required to file Form 990–PF must file its Form 990–PF electronically if it is required to file at least 250 returns of any type during the calendar year.

In accordance with section 3101 of the TFA, these proposed regulations would amend §§ 1.6033–4 and 301.6033–4 to replace the term “magnetic media” with “in electronic form.” These proposed regulations would also amend § 301.6033–4 to remove any references to thresholds that establish a requirement to file electronically because the TFA now requires that any organization required to file a return under section 6033 must file such return in electronic form. Likewise, the proposed regulations would amend § 301.6033–4 by removing the following paragraphs: Paragraph (d)(1), which defines the term “magnetic media”; paragraph (d)(3), which defines the term “determination of 250 returns”; and paragraph (e), which illustrates by example how the 250 number is determined. In addition, the proposed regulations would remove § 301.6033–4(b), which provides that the Commissioner may grant waivers of the electronic-filing requirement.

Section 3101 of the TFA does not provide for any waiver of or alternate method to the electronic-filing requirements for returns required to be filed under section 6033. Accordingly, these proposed regulations would amend § 301.6033–4 by removing paragraph (b) that provides for a waiver of the requirements.

Finally, these proposed regulations would amend § 301.6033–4(d)(2) to include Form 990–EZ, “Short Form Return of Organization Exempt From Income Tax,” as a return required to be filed under section 6033, clarifying that section 3101 of the TFA mandates that all returns required to be filed under section 6033 must be filed in electronic form.

10. Proposed § 53.6011–1(c) Deletion, Joint Filing of a Form 4720 Return

Section 3101(a) of the TFA amended section 6033(n) to provide that any exempt organization required to file a return under section 6033 must file such return in electronic form. Section 1.6033–2(a)(2) provides, under the

broad authority of section 6033(a)(1) (requiring every organization exempt from taxation under section 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe), that every private foundation must file Form 990–PF, *Return of Private Foundation*, as its annual information return. In the case of a private foundation liable for tax under chapter 42, such information as is required by Form 4720 is to be furnished by the private foundation as part of its annual information return. See § 1.6033–2(a)(2)(ii)(J). The preamble to the final regulations adding § 1.6033–2(a)(2)(ii)(J) specifically noted that Form 4720, when filed by a private foundation, is part of the annual information return required to be filed under section 6033 as well as a tax return required to be filed under section 6011. Accordingly, Form 4720 filed by a private foundation as part of the Form 990–PF is a return required to be filed under section 6033 and is thus required to be filed in electronic form as a return required under section 6033(n). For the electronic-filing requirement for persons not described under section 509(a) as a private foundation, see section 16 of this preamble, Proposed § 301.6011–12, *Required Use of Electronic Form for Returns of Certain Excise Taxes Under Chapters 41 And 42 of the Internal Revenue Code*.

If Form 4720 is filed by a private foundation (or by a trust described in section 4947(a)(2)) with respect to a transaction to which other persons are required to file under § 53.6011–1(b) (persons liable for excise tax imposed by Chapters 41 and 42 of the Code), and if the other persons' tax years are the same as the foundation's or trust's, § 53.6011–1(c) allows the private foundation and such other persons to file a joint Form 4720, and, to the extent applicable, that form will be considered as the other persons' return for purposes of complying with the filing requirement under § 53.6011–1(b). This current regulatory permission to jointly file Form 4720, however, is incompatible with the requirement under section 6033(n) to file the return electronically. Accordingly, because the Form 4720 cannot be filed jointly in electronic form, the proposed regulations would delete § 53.6011–1(c). Disqualified persons thus will no longer be able to meet their tax filing obligation under § 53.6011–1(b) by the joint-filing process.

Notice 2021–01, 2021–2 I.R.B. 315 (January 11, 2021), announced the IRS's intent to remove § 53.6011–1(c) because the amendments the TFA made to sections 6104 (that any annual return required to be filed electronically under section 6033(n) must be made available by the Secretary to the public as soon as practicable in a machine-readable format) and 6033 rendered unfeasible the ability for a private foundation and other persons to jointly file the same Form 4720 electronically. Notice 2021–01 was first released to the public on December 16, 2020, and substantially described the expected contents of the proposed amendments to § 53.6011–1, in accordance with section 7805(b)(1)(C). Thus, the proposed changes to § 53.6011–1 described in this section are proposed to apply retroactively as of January 1, 2021, as allowed by section 7805(b)(1)(C).

11. Proposed § 301.6057–3, Required Use of Electronic Form for Filing Requirements Relating to Deferred Vested Retirement Benefit

Section 6057(a) requires the plan administrator (within the meaning of section 414(g)) of each plan, to which the vesting standards of section 203 of the Employee Retirement Income Security Act of 1974 (ERISA) apply for a plan year, to file, within the time prescribed by regulations, a registration statement with the Secretary. The registration statement must set forth the following information relating to the plan: (1) The name of the plan; (2) the name and address of the plan administrator; (3) the name and identifying information of plan participants who separated from service covered by the plan and are entitled to deferred vested retirement benefits; and (4) the nature, amount, and form of deferred vested retirement benefits to which the plan participants are entitled. The form used to satisfy the reporting requirements under section 6057 is Form 8955–SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*.

Section 6057(b) provides that any plan administrator required to register under section 6057(a) must, within the time prescribed by regulations, also notify the Secretary of any change in the name of the plan or the name and address of the plan administrator, the termination of the plan, or the merger or consolidation of the plan with any other plan or its division into two or more plans.

Section 301.6057–3 provides that a registration statement required to be filed under section 6057(a) or a

notification required to be filed under section 6057(b) must be filed electronically if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For the reasons discussed in this preamble, and consistent with section 6011(e), as amended by the TFA, these proposed regulations would remove references to the 250-return threshold and would reduce the electronic-filing threshold to 10 for registration statements required to be filed under section 6057(a) and notifications required under section 6057(b) with respect to an employee benefit plan for any plan year that begins after December 31, 2021 (but only for filings with a filing deadline, not taking into account extensions, after July 31, 2022). See section 2.C., *Amending the electronic-filing threshold*.

12. Proposed § 301.6058–2, Required Use of Electronic Form for Filing Requirements Relating to Information Required in Connection With Certain Plans of Deferred Compensation

Section 6058(a) generally requires that every employer maintaining a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation, or the plan administrator (within the meaning of section 414(g)) of the plan, file an annual return stating such information as the Secretary may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan. The reporting requirement under section 6058(a) is satisfied by filing a return in the Form 5500 series. The Form 5500, *Annual Return/Report of Employee Benefit Plan*, the Form 5500–SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, and Form 5500–EZ, *Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan*, make up the Form 5500 series.

Section 301.6058–2(a) provides that a return required to be filed under section 6058 with respect to an employee benefit plan must be filed electronically if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For the reasons discussed in this preamble, and in accordance with section 6011(e), as amended by the TFA, these proposed regulations would remove references to the 250-return threshold and reduce the electronic-filing threshold to 10 for returns required to be filed under section 6058 with respect to an employee benefit plan for any plan year that begins after December 31, 2021 (but

only for filings with a filing deadline, not taking into account extensions, after July 31, 2022). See section 2.C., Amending the electronic-filing threshold. In addition, these proposed regulations would provide a cross reference, under § 301.6058–2(d)(3), Calculating the number of returns, to new section 6011(e)(6) to alert taxpayers that information regarding each plan for which information is provided on a combined annual return to satisfy the requirements under section 6058 is treated as a separate return for purposes of determining the electronic-filing threshold.

Under section 104 of ERISA, the plan administrator of a plan described in section 6058(a) of the Code that is also an employee pension benefit plan within the meaning of section 3(2) of ERISA must file an annual report on Form 5500, *Annual Return/Report of Employee Benefit Plan*, or Form 5500–SF, *Short Form Annual Return/Report of Small Employee Benefit Plan* (and all attachments to those forms, including Schedules SB and MB) electronically using the Department of Labor’s EFAST2 system, without regard to the number of returns the filer is required to file under the Code. The Department of Labor has advised the Treasury Department and the IRS that this proposed regulation does not affect the obligations of any person required to file an annual report electronically under 29 CFR 2520.104a–2 and section 104 of ERISA. An electronic filing on Form 5500 or Form 5500–SF also satisfies any obligation to file such forms using electronic form under section 6011 of the Code. An employer that maintains a one-participant or foreign plan (which is not subject to section 104 of ERISA) or the plan administrator of the plan may satisfy the annual return filing requirements under section 6058(a) of the Code by filing a Form 5500–EZ, *Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan*, which is required to be filed electronically using the Department of Labor’s EFAST2 system only if the employer or plan administrator is otherwise required to file using electronic form under section 6011.

13. Proposed § 301.6059–2, Required Use of Electronic Form for Filing Requirements Relating to Periodic Report of Actuary

Section 6059(a) generally requires that a plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies file the actuarial report described in section 6059(b) for the first plan year for which

section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary determines that more frequent reports are necessary). The reporting requirements under section 6059(a) and (b) are satisfied by filing Schedule SB (Form 5500), *Single Employer Defined Benefit Plan Actuarial Information* and Schedule MB (Form 5500), *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*. Section 301.6059–2 provides that an actuarial report required to be filed under section 6059 with respect to an employee benefit plan must be filed electronically if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For the reasons discussed in this preamble, and in accordance with section 6011(e), as amended by the TFA, these proposed regulations would remove references to the 250-return threshold and would reduce the electronic-filing threshold to 10, for actuarial reports required to be filed under section 6059 with respect to an employee benefit plan for any plan year that begins after December 31, 2021 (but only for filings with a filing deadline, not taking into account extensions, after July 31, 2022). See section 2.C., Amending the electronic-filing threshold. The Department of Labor has advised the Treasury Department and the IRS that the electronic-filing threshold under section 6011(e) does not affect the obligation of a plan administrator or plan sponsor to file electronically with the Department of Labor a Schedule SB or Schedule MB as an attachment to the Form 5500, as required by 29 CFR 2520.104a–2 and section 104 of ERISA.

14. Proposed § 301.6011–10, Certain Organizations, Including Trusts, Required To File Unrelated Business Income Tax Returns in Electronic Form

Section 3101(b)(2) of the TFA amended section 6011 to redesignate paragraph (h) as paragraph (i) and add new paragraph (h) that requires any organization required to file an annual return under section 6011 that relates to any tax imposed by section 511 to file such return in electronic form, effective for taxable years beginning after July 1, 2019. Section 3101 of the TFA does not provide for any waiver of or alternative method to the electronic-filing requirement for returns required to be filed under section 6011(h). The proposed regulations would add a new regulation under section 6011(h), § 301.6011–10, in accordance with the TFA, to require any organization

described in section 511(a)(2) subject to the tax under section 511(a)(1) or any trust described in section 511(b)(2) subject to the tax under section 511(b)(1) on their respective unrelated business taxable income to file their unrelated business income tax returns electronically.

15. Proposed § 301.6011–11, Required Use of Electronic Form for Returns for Certain Tax-Advantaged Bonds

Under former sections 54AA and 6431(f) of the Code, issuers of qualified taxable bonds that provide a refundable federal tax credit payable directly to the issuer of the bond, such as build-America bonds, recovery zone economic development bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds, can elect to receive a direct payment from the federal government based upon a percentage of the interest payments on these bonds. Section 3.1 of Notice 2009–26, 2009–16 I.R.B. 833, 836 (April 20, 2009), and section 3 of Notice 2010–35, 2010–19 I.R.B. 660, 662 (May 10, 2010), provide that issuers of qualified bonds must submit a Form 8038–CP, *Return for Credit Payments to Issuers of Qualified Bonds*, to request payment of the amount of the credit within a prescribed time before or after each applicable interest payment date, depending on whether the bonds are fixed rate or variable rate. During 2013 to 2018, the IRS processed an average of \$5 billion in direct payment requests; amounts paid on each return varied from less than \$1,000 to more than \$65 million. During 2019, state and local governments filed approximately 10,000 Forms 8038–CP in paper form. The IRS expects that it will continue to receive Forms 8038–CP from these issuers during the entire term of the bonds, which may be more than 20 years.

The proposed regulations would require filers who are required to file at least 10 returns of any type during the calendar year to file their Forms 8038–CP electronically, as directed by the form’s instructions. This requirement would increase the timeliness and accuracy of processing these forms and promote IT modernization efforts. Proposed § 301.6011–11 would also provide that the Commissioner may grant individual waivers of the e-filing requirement of this section in cases of undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for filing Form 8038–CP electronically.

16. Proposed § 301.6011–12, Required Use of Electronic Form for Returns of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code

Section 2301 of the TFA amended section 6011(e), changing the 250-return threshold to a 10-return threshold for returns required to be filed in calendar years after 2021. The proposed regulations would add a new regulation under section 6011(e), § 301.6011–12, that would require the electronic filing of Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*. The proposed regulations would require a person to file the Form 4720 electronically if that person is required to file at least 10 returns of any type during the calendar year. Proposed § 301.6011–12 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for filing Form 4720 electronically. The proposed regulations relating to the requirements for determining whether a person must file its Form 4720 electronically would not limit the application of any other statute affecting Form 4720, such as section 6033(n), which requires a Form 4720 filed by organizations recognized as tax exempt under section 501(c)(3) and classified as private foundations under section 509(a) to be filed electronically, as discussed under section 10, Proposed § 53.6011–1(c) Deletion, Joint Filing of a Form 4720 Return.

17. Proposed § 301.6011–13, Required Use of Electronic Form for Split-Interest Trust Returns

Section 2301 of the TFA amended section 6011(e), changing the 250-return threshold to a 10-return threshold for returns required to be filed in calendar years after 2021. The proposed regulations would add a new regulation under section 6011(e), § 301.6011–13, that would require the filing of Form 5227, *Split-Interest Trust Information Return*, electronically. Forms 5227 are filed by split-interest trusts to report the trust's financial activities, including distributions to the beneficiaries. The proposed regulations would require a trust to file the Form 5227 electronically if the trust is required to file at least 10 returns of any type during the calendar year. Proposed § 301.6011–13 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of

undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for filing Form 5227 electronically.

18. Proposed § 301.6011–14, Required Use of Electronic Form or Other Machine-Readable Form for Material Advisor Disclosure Statements

The proposed regulations would add a new regulation under section 6011(e), § 301.6011–14, that would require the filing of Form 8918, *Material Advisor Disclosure Statement*, electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Section 6111 requires each material advisor with respect to any reportable transaction to make a return setting forth certain information with respect to the reportable transaction. Section 301.6111–3(d) clarifies that the return required to be filed under section 6111(a) is the Form 8918. Form 8918 is currently filed on paper and must be mailed to the Office of Tax Shelter Analysis in Ogden, Utah. The proposed regulations would require a material advisor to file the Form 8918 electronically or in other machine-readable form if the material advisor is required to file at least 10 returns of any type during the calendar year, in accordance with section 6011(e), as amended by section 2301 of the TFA. This requirement would increase the timeliness and accuracy of processing the data on Form 8918, reduce postage costs, and promote IT modernization efforts. Proposed § 301.6011–14 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver from filing Form 8918 electronically.

19. Proposed § 301.6011–15, Required Use of Electronic Form for Withholding Tax Returns

The proposed regulations would add a new regulation under section 6011(e), § 301.6011–15, that would require the filing of Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, electronically in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Sections 1441 and 1442 require

withholding agents to withhold tax from payments made to foreign persons with respect to certain U.S. source income and to report those payments and the tax withheld for each recipient. Section 1.1461–1(c) specifies that the reporting be on Form 1042–S, *Foreign Persons' U.S. Source Income Subject to Withholding*. In addition, § 1.1461–1(b) requires withholding agents to make an annual income tax return on Form 1042 that reports the aggregate income paid and taxes withheld for the preceding calendar year.

The IRS verifies the amount of withholding reported on Form 1042 and deposited with the IRS against amounts reported as withheld on Forms 1042–S. Form 1042–S is already required to be electronically filed to the extent provided under § 301.6011–2 for a withholding agent that is not a financial institution. But the Form 1042 is not required to be electronically filed. To increase the timeliness and accuracy of processing refunds and credits claimed by foreign persons that have amounts withheld and reported on Form 1042–S, proposed § 301.6011–15 would require Form 1042 filers—except for individuals, estates, or trusts—to file Form 1042 electronically if they are required to file 10 or more returns of any type during the calendar year, in accordance with section 6011(e), as amended by section 2301 of the TFA. Proposed § 301.6011–15 would also require partnerships with more than 100 partners to file their Forms 1042 electronically, regardless of the number of returns the partnership is required to file during the calendar year. Proposed § 301.6011–15 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship.

20. Proposed § 301.6012–2, Required Use of Electronic Form for Income Tax Returns of Certain Political Organizations

Section 2301 of the TFA amended section 6011(e), changing the 250-return threshold to a 10-return threshold for returns required to be filed in calendar years after 2021. The proposed regulations would add a new regulation under sections 6011(e) and 6012(a), § 301.6012–2, to require the filing of Form 1120–POL, *U.S. Income Tax Return for Certain Political Organizations* electronically. The Form 1120–POL is filed by political organizations, described in section 527 of the Code, to report income not specifically excluded from tax under section 527 and by exempt organizations subject to tax under section 527(f)(1) of the Code. The

proposed regulations would require an organization to file the Form 1120-POL electronically if the organization is required to file at least 10 returns of any type during the calendar year. Proposed § 301.6012-2 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for filing Form 1120-POL electronically.

21. Proposed § 54.6011-3, Required Use of Electronic Form for the Filing Requirements for the Return for Certain Excise Taxes Related to Employee Benefit Plans

The proposed regulations would add a new regulation under section 6011(e), § 54.6011-3, to require the filing of Forms 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, electronically. Section 2301 of the TFA amended section 6011(e), changing the 250-return threshold to a 10-return threshold for returns required to be filed during calendar years after 2021. The proposed regulations would require a filer to file the Form 5330 electronically if the filer is required to file at least 10 returns of any type during the calendar year. Proposed § 54.6011-3 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship. The Treasury Department and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver for filing Form 5330 electronically.

22. Proposed § 1.1461-1, Payment and Returns of Tax Withheld

Section 1.1461-1 prescribes requirements for withholding agents to file information returns with respect to U.S. source income of foreign persons. Section 1.1461-1(c)(5) provides that a withholding agent that makes 250 or more Form 1042-S information returns for a taxable year must file those forms electronically as required under § 301.6011-2(b). The proposed regulations would amend § 1.1461-1 to remove paragraph (c)(5) because the electronic-filing requirement for Form 1042-S is contained in § 301.6011-2(b) and the 250-return threshold would no longer apply if the proposed amendments to § 301.6011-2 are finalized in a Treasury decision.

23. Proposed § 1.1474-1, Liability for Withheld Tax and Withholding Agent Reporting

Section 1.1474-1 provides rules for withholding agents making payments under chapter 4 of the Code. The first sentence in § 1.1474-1(e) provides that withholding agents that are not financial institutions and that are required to file 250 or more Forms 1042-S for a taxable year must file those forms electronically, referencing § 301.6011-2(b). The proposed regulations would amend § 1.1474-1 to remove the first sentence in § 1.1474-1(e) because the electronic-filing requirement for Form 1042-S is contained in § 301.6011-2(b) and the 250-return threshold would no longer apply if the proposed amendments to § 301.6011-2 are finalized in a Treasury decision.

24. Proposed § 301.1474-1, Required Use of Electronic Form for Financial Institutions Filing Form 1042, Form 1042-S, or Form 8966

These proposed regulations would amend § 301.1474-1 to add a requirement that a financial institution must file its Form 1042 electronically, without regard to the number of returns required to be filed during the calendar year, in accordance with section 6011(e)(4). The existing provision in § 301.1474-1(b), which provides that the Commissioner may grant individual waivers of the requirements of § 301.1474-1 in cases of undue hardship, would also apply to the proposed electronic-filing requirement relating to Form 1042.

25. Proposed § 1.6050M-1, Information Returns Relating to Persons Receiving Contracts From Certain Federal Executive Agencies

Section 1.6050M-1 requires federal executive agencies who enter into certain contracts, as defined under § 1.6050M-1(b)(2), to file information returns with respect to those contracts. Under § 1.6050M-1(d), the information returns must be filed on a quarterly basis; in addition, if the federal executive agency, on any October 1, expects to enter into 250 or more contracts during the one-year period beginning on October 1, it must file the information returns electronically.

Section 2301 of the TFA amended section 6011(e), authorizing the IRS to change the 250-return threshold to 10, for returns required to be filed during calendar years after 2021. For the reasons discussed in this preamble, and consistent with section 6011(e), as amended by the TFA, these proposed regulations would remove references to

the 250-return threshold under § 1.6050M-1 and would reduce the electronic-filing threshold from 250 to 100, for information returns required to be filed during calendar year 2022, and from 100 to 10, for information returns required to be filed during calendar years after 2022.

Proposed § 1.6050M-1 would also provide that the Commissioner may grant individual waivers of the requirements of this section in cases of undue hardship.

26. Proposed § 1.6045-4, Information Returns Relating to Persons Receiving Contracts From Certain Federal Executive Agencies

Section 1.6045-4 requires a real estate reporting person to file information returns with respect to real-estate transactions. Section 1.6045-4(k) provides rules for filing these returns electronically. The form used to report these transactions is a form covered under § 301.6011-2(b)(1). Section 301.6011-2 provides the rules for electronically filing the forms listed in § 301.6011-2(b)(1). These proposed regulations would thus remove paragraph (k) from § 1.6045-4 because the electronic-filing requirement is contained in § 301.6011-2.

27. Withdrawal of May 2018 Proposed Regulations

In light of the TFA, the Treasury Department and the IRS withdraw the May 2018 proposed regulations under section 6011(e) because those proposed regulations interpret a provision of the Code that has been amended. The Treasury Department and the IRS have determined that the amendments made to section 6011(e) by the TFA require guidance to be issued by regulations. Withdrawing the proposed regulations and reissuing new proposed regulations ensure that all persons affected by the proposed regulations will have a meaningful opportunity to publicly comment.

Special Analyses

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

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities. Although these rules may affect a substantial

number of small entities, for the reasons discussed in the following paragraphs, the economic impact is not significant.

Under section 6011(e) of the Code and §§ 1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and 301.6059-2, filers are already required to file returns and statements electronically if, during a calendar year, they are required to file 250 or more returns. The eight proposed rules—§§ 1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and 301.6059-2—would lower the 250-return threshold as authorized by section 6011(e), as amended by section 2301 of the TFA. A filer may request that the IRS waive the electronic-filing requirement if the filer's cost to comply with the rule would cause a financial hardship. The IRS routinely grants meritorious hardship waiver requests. Accordingly, the economic burden on the limited number of small entities that are not currently filing electronically will be slight; and small entities that would experience a hardship because of these seven proposed rules may seek a waiver.

Under section 6050I of the Code and §§ 1.6050I-1 and 1.6050I-2, filers are required to file Forms 8300 if, in the course of their trade or business, they receive more than \$10,000 in cash in one transaction or in two or more related transactions. The proposed rule under § 301.6011-2(b)(3) would require filers of Forms 8300 to file those forms electronically if such filers are also required to file returns electronically under paragraphs (b)(1) and (b)(2) of § 301.6011-2. The Treasury Department and the IRS expect filers of Form 8300 to use FinCEN's BSA E-Filing System, which is free, requiring only an internet connection. The economic impact on small entities should thus not be significant. Nonetheless, small entities that would experience a hardship because of this proposed rule may seek a hardship waiver.

Under section 6011(e)(4) of the Code and § 301.1474-1, financial institutions defined in section 1471(d)(5) of the Code already are required to electronically file Forms 1042-S. The proposed rule under § 301.1474-1(a) would extend this filing requirement to Forms 1042 filed by the same financial institutions. The economic impact on small entities should thus not be significant. Nonetheless, small entities that would experience a hardship because of this proposed rule may seek a hardship waiver.

Under section 6011(h) of the Code, as amended by section 3101 of the TFA, organizations required to file annual

returns relating to any tax imposed by section 511 must file those returns in electronic form. The proposed regulation § 301.6011-10 implements this statutory requirement. The economic impact of the proposed regulation should thus be insignificant.

Under section 6033(n), as amended by section 3101 of the TFA, organizations required to file returns under section 6033 must file those returns in electronic form. The proposed regulations under §§ 1.6033-4, 53.6011-1, and 301.6033-4 implement this statutory requirement. The economic impact of these proposed regulations should thus be insignificant.

The seven proposed regulations under §§ 54.6011-3, 301.6011-11, 301.6011-12, 301.6011-13, 301.6011-14, 301.6011-15, and 301.6012-2 would require electronic filing for certain returns not currently required to be filed electronically. Because electronic filing has become more common, accessible, and economical, the economic impact of these proposed rules on small entities should be insignificant. But if the cost to comply with these electronic-filing requirements would cause a financial hardship, an entity may request a waiver. The IRS routinely grants meritorious hardship waiver requests. Accordingly, the burden on small entities affected by these rules will be slight.

Accordingly, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

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

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

implications and does not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive Order.

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

Comments and Public Hearing

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

The public hearing is being held by teleconference on September 22, 2021 at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 21, 2021. If no outlines are received by September 21, 2021, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EST on September 20, 2021. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by September 20, 2021.

Drafting Information

The principal author of these proposed regulations is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Statement of Availability of IRS Documents

IRS revenue procedures, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, § 301.6011-2 and § 301.6721-1 of the notice of proposed rulemaking (REG-102951-16) that was published in the

Federal Register on Thursday, May 31, 2018 (83 FR 24948) is withdrawn.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, 54 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entries in numerical order:

Authority: 26 U.S.C. 7805 * * *
Section 1.6033–4 also issued under 26 U.S.C. 6033.
Section 1.6037–2 also issued under 26 U.S.C. 6037.

* * * * *

■ **Par. 2.** Section 1.1461–1 is amended by removing paragraph (c)(5) and revising paragraph (i) to read as follows:

§ 1.1461–1. Payment and returns of tax withheld.

* * * * *

(i) *Applicability date.* Except as provided in paragraph (c)(2)(iii) of this section, this section applies to returns required for payments made on or after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. (For payments made before [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] and on or after January 1, 2022, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2021. For payments made before January 1, 2022, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.)

■ **Par. 3.** Section 1.1471–0 is amended by revising the entries in the table of contents for § 1.1474–1(e) and (j) and § 301.1474–1(d)(1) and (e) to read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1474–1 *Liability for withheld tax and withholding agent reporting.*

* * * * *

(e) Reporting in electronic form.

* * * * *

(j) Applicability date.

* * * * *

§ 301.1474–1 *Required use of electronic form for financial institutions filing Form 1042, Form 1042–S, or Form 8966.*

* * * * *

(d) * * *

(1) Magnetic media or electronic form.

* * * * *

(e) Applicability date.

■ **Par. 4.** Section 1.1474–1 is amended by revising paragraphs (e) and (j) to read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(e) *Reporting in electronic form.* See § 301.6011–2(b) of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042–S in electronic form. See § 301.1474–1(a) of this chapter for the requirements applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042–S in electronic form.

* * * * *

(j) *Applicability date.* This section applies to returns required for payments made on or after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. (For the rules that apply before [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] and on or after January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2021.)

■ **Par. 5.** Section 1.6033–4 is revised to read as follows:

§ 1.6033–4 Required filing in electronic form for returns by organizations required to file returns under section 6033.

(a) *In general.* The return of an organization that is required to be filed in electronic form under § 301.6033–4 of this chapter must be filed in accordance with revenue procedures, publications, forms, instructions, or other guidance.

(b) *Applicability date.* The rules of this section apply for returns required to be filed for taxable years ending on or after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 6.** Section 1.6037–2 is revised to read as follows:

§ 1.6037–2 Required use of electronic form for income tax returns of electing small business corporations.

(a) *In general.* The return of an electing small business corporation that is required to be filed electronically under § 301.6037–2 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically.

(b) *Applicability date.* The rules of this section apply for returns required to be filed for taxable years ending on or after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 7.** Section 1.6045–2 is amended by revising paragraphs (g)(2) and (i) to read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(g) * * *

(2) *Reporting in electronic form.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter for rules relating to filing information returns in electronic form and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 electronically, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

(i) *Applicability date.* This section applies to substitute payments received by a broker after December 31, 1984. The amendments to paragraph (c) of this section apply to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, § 1.6045–2(c) (as contained in 26 CFR part 1, revised April 2013) shall apply. The amendments to paragraph (g)(2) of this section apply to information returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 8.** Section 1.6045–4 is amended by removing and reserving paragraph (k) and revising paragraph (s) to read as follows:

§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(s) *Applicability date.* This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that

occur on or after January 1, 1991. The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of this section apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009. The amendments to paragraph (m)(1) of this section apply to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, § 1.6045-4(m)(1) (as contained in 26 CFR part 1, revised April 2013) shall apply. The removal of paragraph (k) of this section applies for information returns required to be filed during calendar years beginning after [Date of publication of the Treasury Decision adopting these rules as final regulations in the Federal Register].

■ **Par. 9.** Section 1.6050I-0 is amended by revising the entry in the table of contents for § 1.6050I-1(d)(2)(ii) as follows:

§ 1.6050I-0 Table of contents.

* * * * *
(d) * * *
(2) * * *
(ii) Casinos exempt under 31 CFR 1010.970(c).
* * * * *

■ **Par. 10.** Section 1.6050I-1 is amended by:

- 1. Revising paragraphs (a)(3)(ii), (c)(1)(iv), (d)(2)(i), (d)(2)(ii);
■ 2. In paragraph (d)(2)(iv), designating the example as paragraph (d)(2)(iv)(A);
■ 3. Revising newly designated paragraph (d)(2)(iv)(A) and adding paragraph (d)(2)(iv)(B);
■ 4. Revising paragraphs (e)(1) and (e)(3)(i); and
■ 5. Adding paragraph (h).

The revisions and additions read as follows:

§ 1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.

(a) * * *
(3) * * *
(ii) *Exception.* An agent who receives cash from a principal and uses all of the cash within 15 days in a cash transaction (second cash transaction) which is reportable under section 6050I or 5312 of title 31 of the United States Code and the regulations thereunder (31 CFR Chapter X), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash under this section.

* * * * *
(c) * * *
(1) * * *
(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's

check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR Chapter X).

* * * * *
(d) * * *
(2) * * * (i) *In general.* If a casino receives cash in excess of \$10,000 and is required to report the receipt of such cash directly to the Treasury Department under 31 CFR 1021.310 or 1010.360 and is subject to the recordkeeping requirements of 31 CFR 1021.400, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and these regulations.

(ii) *Casinos exempt under 31 CFR 1010.970(c).* Under the authority of section 6050I(c)(1)(A), the Secretary may exempt from the reporting requirements of section 6050I casinos with gross annual gaming revenue in excess of \$1,000,000 that are exempt under 31 CFR 1010.970(c) from reporting certain cash transactions to the Treasury Department under 31 CFR 1021.310 or 1010.360. The determination whether a casino which is granted an exemption under 31 CFR 1010.970(c) will be required to report under section 6050I will be made on a case by case basis, concurrently with the granting of such an exemption.

* * * * *
(iv) * * *
(A) *Example.* A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in cash from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under 31 CFR 1021.310 and 1010.360. Casino B's hotel division receives \$15,000 in cash from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in cash from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under section 6050I or these regulations because the exception for certain casinos provided in paragraph (d)(2)(i) of this section (casino exception) applies. Casino B's hotel division is required to report under section 6050I and these regulations because the casino exception does not apply to the receipt of cash by a nongaming business division. Casino C is required to report under section 6050I and these

regulations because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under 31 CFR 1021.310 and 1010.360.

(B) [Reserved]
* * * * *

(e) * * * (1) *Time of reporting.* The reports required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash is received. However, in the case of multiple payments relating to a single transaction (or two or more related transactions), see paragraph (b) of this section.

* * * * *
(3) * * * (i) *Where to file.* A person making a return of information under this section must file Form 8300 in accordance with the form instructions and related publications.
* * * * *

(h) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after [Date of publication of the Treasury Decision adopting these rules as final regulations in the Federal Register].

■ **Par. 11.** Section 1.6050I-2 is amended by revising paragraphs (c)(1)(i), (c)(3)(i), and (f) to read as follows:

§ 1.6050I-2 Returns relating to cash in excess of \$10,000 received as bail by court clerks.

* * * * *
(c) * * *
(1) * * * (i) *In general.* The information return required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash bail is received.

* * * * *
(3) * * * (i) *Where to file.* Returns required by this section must be filed in accordance with the Form 8300 instructions and related publications. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

* * * * *
(f) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after [Date of publication of the Treasury Decision adopting these rules as final regulations in the Federal Register].

■ **Par. 12.** Section 1.6050M-1 is amended by revising paragraphs (d)(2), (d)(3), and (f) as follows:

§ 1.6050M–1 Information returns relating to persons receiving contracts from certain federal executive agencies.

* * * * *

(d) * * *

(2) *Form of reporting*—(i) *General rule concerning electronic filing.* The information returns required by this section with respect to contracts of a federal executive agency for each calendar quarter must be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required returns must be made in electronic form (within the meaning of § 301.6011–2(a)(1)) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Exceptions from electronic filing.* Any federal executive agency that, on October 1, has a reasonable expectation of entering into, during the one-year period beginning on that date, fewer than 100 contracts subject to the reporting requirements under this section that are to be filed during the calendar year 2022, or fewer than 10 contracts subject to the reporting requirements under this section that are to be filed during the calendar years after 2022, may make the information returns required by this section for each quarter of that one-year period on the prescribed paper Form 8596 in accordance with the instructions accompanying such form.

(iii) *Undue hardship.* The Commissioner may grant waivers of the electronic-filing requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under paragraph (a) of this section) and the period to which it applies.

(3) *Place of filing*—(i) *Returns in electronic form.* Information returns made under this section in electronic form must be filed with the Internal Revenue Service in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on paper Form 8596 must be filed

with the Internal Revenue Service at the location specified in the instructions for that form.

* * * * *

(f) *Applicability date*—(1) *Contracts required to be reported.* Except as otherwise provided in this paragraph (f), this section applies to each federal executive agency with respect to its contracts entered into on or after January 1, 1989 (including any increase in amount obligated on or after January 1, 1989, that is treated as a new contract under paragraph (e) of this section).

(2) *Contracts not required to be reported.* A federal executive agency is not required to report—

(i) Any basic or initial contract entered into before January 1, 1989,

(ii) Any increase contract action occurring before January 1, 1989, that is treated as a new contract under paragraph (e) of this section, or

(iii) Any increase contract action that is treated as a new contract under paragraph (e) of this section if the basic or initial contract to which that contract action relates was entered into before January 1, 1989, and—

(A) The increase occurs before April 1, 1990, or

(B) The amount of the increase does not exceed \$50,000.

(3) *Illustration.* (i) If federal executive agency enters into an initial contract on December 1, 1988, and the amount of money obligated under the contract is increased by \$55,000 on April 15, 1990, then (A) there is no reporting requirement with respect to the contract when entered into on December 1, 1988, and (B) the April 15, 1990, increase, which is treated as a new contract under paragraph (e) of this section, is subject to the reporting requirements of this section because it is considered to be a new contract entered into on April 15, 1990.

(ii) If the \$55,000 increase had occurred before April 1, 1990, there would have been no reporting requirement with respect to that increase.

(4) *Filing requirements for contracts required to be reported.* The amendments to paragraphs (d)(2) and (d)(3) of this section apply for information returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 13.** The authority citation for part 53 is amended by adding the following entry:

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

Section 53.6011–1 also issued under 26 U.S.C. 6011.

* * * * *

■ **Par. 14.** Section 53.6011–1 is amended by:

■ 1. Removing paragraph (c).

■ 2. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ 3. Adding a new paragraph (e).

The addition reads as follows:

§ 53.6011–1 General requirement of return, statement or list.

* * * * *

(e) *Applicability Date.* The rules of this section apply for any returns required to be filed under this section on or after January 11, 2021.

PART 54—PENSION EXCISE TAXES

■ **Par. 15.** The authority citation for part 54 is amended by adding the following entry:

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

Section 54.6011–3 also issued under 26 U.S.C. 6011.

* * * * *

■ **Par. 16.** Section 54.6011–3 is added to read as follows:

§ 54.6011–3 Required use of electronic form for the filing requirements for the return for certain excise taxes related to employee benefit plans.

(a) *Excise tax returns required in electronic form.* Any employer or individual required to file an excise tax return on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, under § 54.6011–1 of this chapter must file the excise tax return electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns of any type during the calendar year that the Form 5330 is due. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic filing requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds

the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 54.6011–1) and the period to which it applies.

(c) *Failure to file.* If a filer required to file the Form 5330 fails to file the report electronically when required to do so by this section, the filer is deemed to have failed to file the report. See generally section 6651(a)(1) for the penalty for the failure to file a tax return or to pay tax. For general rules relating to the failure to file tax return or to pay tax, see the regulations under 26 CFR 301.6651 (Regulations on Procedure and Administration).

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Calculating the number of returns a filer is required to file—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns during a calendar year if the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer.* For purposes of this section, the term *filer* means the person required to report the tax on the Form 5330. For general rules on who is required to report the tax on the Form 5330, see the Instructions to the Form 5330.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(2) of this section:

(1) In 2022, Employer A (the plan sponsor and plan administrator of Plan B) is required to file Form 5330 for its nondeductible contribution under section 4972 to Plan B. During the 2023 calendar year, Employer A is required to file 20 returns (including 19 Forms 1099–R *Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* and one Form 5500 series *Annual Return/Report of the Employee Benefit Plan*). Plan B's plan year is the calendar

year. Because Employer A is required to file at least 10 returns during the 2023 calendar year, Employer A must file the 2022 Form 5330 for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for any Form 5330 required to be filed for taxable years ending on or after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 17.** The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
 Section 301.6011–10 also issued under 26 U.S.C. 6011.
 Section 301.6011–11 also issued under 26 U.S.C. 6011.
 Section 301.6011–12 also issued under 26 U.S.C. 6011.
 Section 301.6011–13 also issued under 26 U.S.C. 6011.
 Section 301.6011–14 also issued under 26 U.S.C. 6011.
 Section 301.6011–15 also issued under 26 U.S.C. 6011.
 Section 301.6012–2 also issued under 26 U.S.C. 6012.

* * * * *
 Section 301.6057–3 also issued under 26 U.S.C. 6011 and 6057.
 Section 301.6058–2 also issued under 26 U.S.C. 6011 and 6058.
 Section 301.6059–2 also issued under 26 U.S.C. 6011 and 6059.

* * * * *
 Section 301.6721–1 also issued under 26 U.S.C. 6011 and 6721.

* * * * *
 ■ **Par. 18.** Section 301.1474–1 is amended by:

- 1. Revising the section heading.
- 2. Revising paragraphs (a) through (c).
- 3. Revising paragraph (d)(1).
- 4. Adding a sentence at the end of paragraph (e).

The revisions and addition read as follows:

§ 301.1474–1 Required use of electronic form for financial institutions filing Form 1042, Form 1042–S, or Form 8966.

(a) *Financial institutions filing certain returns.* If a financial institution is required to file a Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, (or successor form) under § 1.1474–1(c) of this chapter, the financial institution must file the return information required by the applicable forms and schedules electronically. If a financial institution is required to file a Form 1042–S, *Foreign Person's U.S. Source Income*

Subject to Withholding, (or such other form as the IRS may prescribe) under § 1.1474–1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules electronically. Additionally, if a financial institution is required to file Form 8966, “FATCA Report,” (or such other form as the IRS may prescribe) to report certain information about U.S. accounts, substantial U.S. owners of foreign entities, or owner-documented FFIs as required under this chapter, the financial institution must file the required information in electronic form. Returns filed electronically must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions, and the *IRS.gov* internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the *IRS.gov* internet site, the Commissioner may direct the type of electronic filing.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 1.1474–1(c) or (d) of this chapter, or a Form 8966) and the period to which it applies.

(c) *Failure to file.* If a financial institution fails to file a Form 1042 electronically when required to do so by this section, the financial institution is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return). In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns electronically) will apply. If a financial institution fails to file a Form 1042–S or a Form 8966 electronically when required to do so by this section, the financial institution is deemed to have failed to comply with the information reporting requirements under section 6721 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return,

§ 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(e) * * * This section applies to any Form 1042 (or successor form) filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 19.** Section 301.6011–2 is amended by:

- 1. Revising paragraphs (a)(1).
- 2. Revising paragraph (b).
- 3. Revising the heading of paragraph (c) and paragraph (c)(1).
- 4. Redesignating paragraph (c)(2) as (c)(6) and adding new paragraphs (c)(2) through (5).
- 5. Revising newly redesignated paragraphs (c)(6)(i) and (ii).
- 6. Revising paragraph (g).

The revisions and additions read as follows:

§ 301.6011–2 Required use of electronic form.

(a) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, or publications.

* * * * *

(b) *Returns required electronically.* (1) If the use of Form 1042–S, Form 1094 series, Form 1095–B, Form 1095–C, Form 1097–BTC, Form 1098, Form 1098–C, Form 1098–E, Form 1098–Q, Form 1098–T, Form 1099 series, Form 3921, Form 3922, Form 5498 series, Form 8027, Form W–2G, or other forms prescribed under paragraph (b)(4) of this section treated as forms specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an

information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(2) If the use of Form W–2 (Wage and Tax Statement), Form 499R–2/W–2PR (Withholding Statement (Puerto Rico)), Form W–2VI (U.S. Virgin Islands Wage and Tax Statement), Form W–2GU (Guam Wage and Tax Statement), Form W–2AS (American Samoa Wage and Tax Statement), or other forms prescribed under paragraph (b)(4) of this section as treated as forms specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

(3) If a person is required to make a return for the purpose of section 6050I, and such person is required to file returns described in paragraphs (b)(1) and (2) of this section electronically, then such person must also file the information required by section 6050I on Form 8300 electronically. Returns described in this paragraph (b)(3) must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(4) The Commissioner may prescribe by revenue procedure that additional forms are treated, for purposes of this section, as forms specified in paragraphs (b)(1) or (2) of this section. In addition, the Commissioner may exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(c) *Applicable number-threshold*—(1) *In general.* No person is required to file information returns electronically in a calendar year unless the person is required to file at least the applicable number of returns during that calendar year. Persons required to file fewer than the applicable number of returns during the calendar year may make the returns on the prescribed paper form or, alternatively, electronically in accordance with paragraph (b) of this section.

(2) *Machine-readable forms.* Returns made on a paper form under paragraph (c)(1) of this section must be machine-readable, as described in paragraph (a)(2) of this section, if applicable revenue procedures provide for a machine-readable paper form.

(3) *Calculating the applicable number*—(i) *In general.* For purposes of paragraph (c)(1) of this section, the applicable number is 100, for returns required to be filed during calendar year 2022, and 10, for returns required to be filed during calendar years after 2022.

(ii) *Special rule for partnerships.* Notwithstanding paragraph (c)(3)(i) of this section, a partnership with more than 100 partners is required to file its information returns covered under paragraph (b) of this section electronically.

(4) *Calculating the number of returns*—(i) *Aggregation of returns.* In calculating whether a person is required to file at least the applicable number of returns under paragraph (c)(3) of this section, all the information returns described in paragraphs (b)(1) and (b)(2) of this section required to be filed during the calendar year, are counted in the aggregate. Corrected information returns and information returns described in paragraph (b)(3) of this section are not taken into account in calculating whether a person is required to file at least the applicable number of returns.

(ii) *Corrected returns.* (A) If an original information return covered by paragraph (b) of this section is required to be filed electronically, any corrected information return corresponding to that original return must also be filed electronically.

(B) If an original information return is permitted to be filed on paper and is filed on paper, any corrected information return corresponding to that original return must be filed on paper.

(5) *Examples.* The provisions of paragraphs (c)(3) and (4) of this section are illustrated by the following examples:

(i) *Example 1.* During the 2023 calendar year, Company W, is required to file 5 Forms 1099–INT, *Interest Income*, and 5 Forms 1099–DIV, *Dividends and Distributions*, for a total of 10 returns covered by paragraph (b) of this section. The applicable number for returns required to be filed during calendar year 2023 is 10. Because Company W is required to file the applicable number of returns covered by paragraph (c)(3) of this section during the 2023 calendar year, Company W must file all its 2022 Forms 1099–INT and Forms 1099–DIV electronically.

(ii) *Example 2.* Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except after electronically filing its 10 Forms 1099–

DIV and 1099–INT, Company W files 2 corrected Forms 1099–DIV and 4 corrected Forms 1099–INT. Because Company W electronically filed its original 2022 Forms 1099–DIV and 1099–INT, Company W must electronically file its corrected 2022 Forms 1099–DIV and 1099–INT.

(iii) *Example 3.* Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except on May 16, 2023, Company W received cash in excess of \$10,000 and must file a Form 8300 by May 31, 2023. Because Company W is required to file information returns covered under paragraphs (b)(1) and (2) of this section electronically during the 2023 calendar year, Company W must also file all its Forms 8300 electronically during the 2023 calendar year.

(iv) *Example 4.* Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except Company W is not required to file any Forms 1099–INT during calendar year 2023. On December 19, 2022, Company W receives cash in excess of \$10,000 and must file a Form 8300 by January 3, 2023. Because Company W is not required to file information returns covered under paragraphs (b)(1) and (b)(2) of this section electronically during the 2023 calendar year, Company W is not required to file this Form 8300 electronically.

(v) *Example 5.* During the 2023 calendar year, Partnership P, a partnership with 15 partners, is required to file 8 Forms 1099–MISC, *Miscellaneous Income*, and 5 Forms 1099–INT. The applicable number of returns required to be filed by partnerships during calendar year 2023 is 10. Because Partnership P is required to file at least the applicable number of returns covered by paragraph (b) of this section during the 2023 calendar year, Partnership P must electronically file all its 2022 Forms 1099–MISC and 1099–INT.

(6) * * *

(i) The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W–2, Forms 499R–2/W–2PR, Forms W–2VI, Forms W–2GU, or Form W–2AS is required, the unavailability of the specifications for electronic filing will be treated as creating a hardship (see § 31.6071(a)–1(a)(3)(ii) of this chapter). A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under paragraph (b) of this section) and the period to which it applies.

(ii) The Commissioner may supplement the provisions of paragraph

(c)(6)(i) of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website.

* * * * *

(g) *Applicability date.* The rules of this section apply for information returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 20.** Section 301.6011–3 is amended by:

- 1. Revising the section heading.
- 2. Revising paragraphs (a), (b), and (d)(1).
- 3. Redesignating paragraph (d)(5) as (d)(6) and adding new paragraph (d)(5).
- 4. Revising newly redesignated paragraph (d)(6).
- 5. Revising paragraphs (e) and (f).

The revisions and addition read as follows:

§ 301.6011–3 Required use of electronic form for partnership returns.

(a) *Partnership returns required electronically.* (1) Except as otherwise provided in paragraph (b) of this section, a partnership required to file a partnership return pursuant to § 1.6031(a)–1 of this chapter, must file the information required by the applicable forms and schedules electronically, if:

(i) The partnership is required by the Internal Revenue Code or regulations to file at least 10 returns (as described in paragraph (d)(5) of this section) during the calendar year, or

(ii) the partnership has more than 100 partners during the partnership’s taxable year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms,

instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 1.6031(a)–1 of this chapter) and the period to which it applies.

* * * * *

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(5) *Calculating the number of returns.* For purposes of this section, a partnership is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the partnership, the partnership is required to file at least 10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and information returns (for example, Forms W–2 and Forms 1099, but not including schedules required to be included with a partnership return). In the case of a short-period return, a partnership is required to file at least the applicable number of returns if, during the calendar year in which the partnership’s short taxable year ends, the partnership is required to file at least the applicable number of returns of any type, including information returns (for example, Forms W–2 and Forms 1099, but not including schedules required to be included with a partnership return), income tax returns, employment tax returns, and excise tax returns.

(6) *Partnerships with more than 100 partners.* A partnership has more than 100 partners if, over the course of the partnership’s taxable year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(6), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership’s taxable year.

(e) *Examples.* The following examples illustrate the provisions of this section. In the examples, the partnerships’ taxable year is the calendar year 2023 and the partnerships had fewer than 10

returns required to be filed during calendar year 2023:

(1) *Example 1.* Partnership P had five general partners and 90 limited partners on January 1, 2023. On March 15, 2023, 10 more limited partners acquired an interest in P. On September 29, 2023, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 2023, P had the same five general partners and 90 limited partners it had on January 1, 2023. P had a total of 105 partners over the course of partnership taxable year 2023. Therefore, P must file its 2023 partnership return electronically.

(2) *Example 2.* Partnership Q is a general partnership that had 95 partners on January 1, 2023. On March 15, 2023, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 29, 2023, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 2023, Q had a total of 91 partners, and on no date in 2023 did Q have more than 100 partners. Over the course of the year, however, Q had 101 partners. Therefore, Q must file its 2023 partnership return electronically.

(3) *Example 3.* Partnership G is a general partnership with 100 partners on January 1, 2023. There are no new partners added to G in 2023. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 2023 partnership return electronically.

(4) *Example 4.* Same facts as paragraph (e)(3) of this section (*Example 3*), except partnership G is also required to file 9 Forms 1099–MISC during calendar year 2023 in addition to its 2022 partnership return. Because partnership G is required to file at least 10 returns of any type during calendar year 2023, partnership G must file its 2023 partnership return electronically.

(f) *Applicability date.* The rules of this section apply for partnership returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 21.** Section 301.6011–5 is amended by revising paragraphs (a), (b), (d)(1) and (5), (e), and (f) to read as follows:

§ 301.6011–5 Required use of electronic form for corporate income tax returns.

(a) *Corporate income tax returns required electronically.* (1) A corporation required to file a corporate income tax return on Form 1120, *U.S. Corporation Income Tax Return*, under § 1.6012–2 of this chapter must file its corporate income tax return electronically if the corporation is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the corporation.

(2) All members of a controlled group of corporations must file their corporate income tax returns electronically if the aggregate number of returns required to be filed by the controlled group of corporations is at least 10 (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the controlled group of corporations.

(3) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 1.6012–2 of this chapter) and the period to which it applies.

* * * (d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable

regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(5) *Calculating the number of returns.* For purposes of this section, a corporation or controlled group of corporations is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the corporation or the controlled group, the corporation or the controlled group is required to file at least 10 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. If the corporation is a member of a controlled group, calculating the number of returns the corporation is required to file includes all returns required to be filed by all members of the controlled group during the calendar year ending with or within the taxable year of the controlled group.

(e) *Example.* The following example illustrates the provisions of this section:

(1) The taxable year of Corporation X, a fiscal-year taxpayer, ends on September 30. During the calendar year ending December 31, 2022, X was required to file one Form 1120, *U.S. Corporation Income Tax Return*, 6 Forms W–2, *Wage and Tax Statement*, 3 Forms 1099–DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 10 returns of any type during calendar year 2022, the calendar year that ended within its taxable year ending September 30, 2023, X is required to file its Form 1120 electronically for its taxable year ending September 30, 2023.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for corporate income tax returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 22.** Section 301.6011–10 is added to read as follows:

§ 301.6011–10 Certain organizations, including trusts, required to file unrelated business income tax returns in electronic form.

(a) *Unrelated business income tax returns required in electronic form.* (1) Organizations, including trusts, subject to tax under section 511 that are required to file a return under § 1.6012–2(e) or 1.6012–3(a)(5) of this chapter to report gross income included in computing unrelated business taxable income, as defined in section 512, or that are otherwise required to file Form 990–T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, are required to file that return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file.* If an organization or trust fails to file an unrelated business income tax return in electronic form when required to do so by this section, the organization or trust is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) will apply.

(c) *Applicability date.* The rules of this section apply for unrelated business income tax returns required to be filed during calendar years beginning after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 23.** Section 301.6011–11 is added to read as follows:

§ 301.6011–11 Required use of electronic form for certain returns for tax-advantaged bonds.

(a) *Return for credit payments to issuers of qualified bonds.* (1) An issuer of a qualified bond required to file a return for credit payments on Form 8038–CP, *Return for Credit Payments to Issuers of Qualified Bonds*, must file its return electronically if the issuer is required to file at least 10 returns (as defined in paragraph (d)(4) of this section) during the calendar year.

(2) Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(3) The Commissioner may provide an exemption from the electronic requirements of paragraph (a) of this section through revenue procedures, publications, forms, instructions, or other guidance.

(b) *Other returns for tax-advantaged bonds.* The Commissioner may

prescribe by revenue procedure that additional forms for tax-advantaged bonds (as defined in § 1.150–1(b) of this chapter) required under the Internal Revenue Code, regulations, or other administrative guidance published by the Internal Revenue Service must be filed electronically if the issuer is required to file at least 10 returns during the calendar year.

(c) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return for credit payments on Form 8038–CP) and the period to which it applies.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Qualified bond.* The term *qualified bond* means a tax-advantaged bond that is a taxable bond that provides a refundable federal tax credit payable directly to the issuer of the bond under former section 6431 or any other tax-advantaged bond (as defined in § 1.150–1(b) of this chapter) that provides a tax credit payment to issuers of such bonds similar to the credit provided with respect to interest on qualified bonds.

(3) *Return for credit payments to issuers of qualified bonds.* The term *return for credit payments to issuers of qualified bonds* means a Form 8038–CP, *Return for Credit Payments to Issuers of Qualified Bonds* or such other form prescribed by the Commissioner for the purpose of filing a return for credit payment with respect to a qualified bond.

(4) *Calculating the number of returns.* For purposes of this section, an issuer of a tax-advantaged bond is required to file at least 10 returns if, during the calendar year, the issuer is required to file at least 10 returns of any type,

including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Applicability date.* The rules of this section apply for tax-advantaged bond returns required to be filed after the later of December 31, 2021 or [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 24.** Section 301.6011–12 is added to read as follows:

§ 301.6011–12 Required use of electronic form for returns of certain excise taxes under Chapters 41 and 42 of the Internal Revenue Code.

(a) *Excise tax returns required electronically.* (1) Any person required to file an excise tax return on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, under § 53.6011–1 of this chapter must file its excise tax return electronically if the person is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3) of this section) during calendar years after 2021.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(3) Paragraph (a)(1) of this section is not applicable to private foundations that are subject to the filing requirements of § 301.6033–4.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 53.6011–1 of this chapter) and the period to which it applies.

(c) *Failure to file.* If a person fails to file an excise tax return electronically when required to do so by this section, the person is deemed to have failed to

file the return. (See section 6651 for the addition to tax for failure to file a return). In determining whether there is reasonable cause for failure to file the return, § 301.6651-1(c) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Excise tax return.* The term *excise tax return* means a Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, along with all other related forms, schedules, and statements that are required to be attached to the Form 4720, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, a person is required to file at least 10 returns if, during the calendar year ending with or within the person's taxable year, the person is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a person is required to file at least 10 returns if, during the calendar year in which the person's short taxable year ends, the person is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2022, Trust X was required to file one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, which related to the 2021 taxable year, and 10 Forms W-2, *Wage and Tax Statement*, which reported wages paid to employees during the 2021 taxable year. Because X is required to file 11 returns during calendar year 2022, X is required to file the 2021 Form 4720 electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for excise tax returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 25.** Section 301.6011-13 is added to read as follows:

§ 301.6011-13 Required use of electronic form for split-interest trust returns.

(a) *Split-Interest Trust returns required electronically.* (1) Any trust required to file an information return on Form 5227, *Split-Interest Trust Information Return*, under § 53.6011-1 of this chapter must file its return electronically if the trust is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3)) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 53.6011-1 of this chapter) and the period to which it applies.

(c) *Failure to file.* If a trust fails to file an excise tax return electronically when required to do so by this section, the trust is deemed to have failed to file the return. (See section 6652 for the addition to tax for failure to file a return). In determining whether there is reasonable cause for failure to file the return, § 301.6652-1(f) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Split-Interest Trust return.* The term *split-interest trust return* means a Form 5227, *Split-Interest Trust Information Return*, along with all other related forms, schedules, and statements that are required to be attached to the Form 5227, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, a trust is required to file at least 10 returns if, during the calendar year ending with or within the trust's taxable year, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a trust is required to file at least 10 returns if, during the calendar year in which the trust's short taxable year ends, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2022, Trust X was required to file one Form 5227, *Split-Interest Trust Information Return*, one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, and 10 Forms 1099-DIV, *Dividends and Distributions*. Because X is required to file 12 returns during the calendar year 2022, X is required to file its Form 5227 electronically for its taxable year ending December 31, 2022.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for Split-Interest Trust returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 26.** Section 301.6011-14 is added to read as follows:

§ 301.6011-14 Required use of electronic form or other machine-readable form for material advisor disclosure statements.

(a) *Material advisor disclosure statements required electronically or in*

other machine-readable form. (1) Any material advisor required to file a return on Form 8918, *Material Advisor Disclosure Statement*, under § 301.6111–3(a) of this chapter must file its return electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, if the material advisor is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3)) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic or other machine-readable form through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically or in other machine-readable form must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 301.6111–3(a) of this chapter) and the period to which it applies.

(c) *Failure to file.* If a material advisor fails to file Form 8918 electronically or in other machine-readable form when required to do so by this section, the material advisor is deemed to have failed to file the return. (See section 6707 for the penalty for failure to file the return.)

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Machine-readable form.* The term *machine-readable form* means any machine-readable form specifically

permitted under applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Material advisor disclosure statement.* The term *material advisor disclosure statement* means a Form 8918, *Material Advisor Disclosure Statement*, along with all other related forms, schedules, and statements that are required to be attached to the Form 8918, including amended material advisor disclosure statements.

(4) *Calculating the number of returns.* For purposes of this section, a material advisor is required to file at least 10 returns if, during the calendar year ending with or within the material advisor's taxable year, the material advisor is required to file at least 10 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2022, Material Advisor X was required to file one Form 8918, *Material Advisor Disclosure Statement*, one Form 1040, *U.S. Individual Income Tax Return*, and 10 Forms 1099–NEC, *Nonemployee Compensation*. Because Material Advisor X is required to file 12 returns during the calendar year 2022, X is required to file its Form 8918 electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, during its calendar year ending December 31, 2022.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for Material Advisor Disclosure Statements required to be filed for taxable years ending on or after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 27.** Section 301.6011–15 is added to read as follows:

§ 301.6011–15 Required use of electronic form for withholding tax returns.

(a) *Withholding tax returns required electronically.* (1) A withholding agent required to file an income tax return on Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, under § 1.1461–1 of this chapter must file its return electronically if the withholding agent is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year in which the Form 1042 is required to be

filed. Notwithstanding the previous sentence, a withholding agent that is an individual, estate, or trust is not required to file its Form 1042 electronically.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 1.1461–1 of this chapter) and the period to which it applies.

(c) *Failure to file.* If a withholding agent fails to file a withholding agent income tax return electronically when required to do so by this section, the withholding agent is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, and diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, or instructions.

(2) *Withholding agent.* The term *withholding agent* means a withholding agent as defined in § 1.1441–7(a) of this chapter.

(3) *Withholding tax return.* The term *withholding tax return* means a Form

1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1042, including amended and superseding returns.

(4) *Special rule for partnerships.* Notwithstanding paragraph (d)(5) of this section, a withholding agent that is a partnership with more than 100 partners is required to file a return described in paragraph (a) of this section electronically.

(5) *Calculating the number of returns.* For purposes of this section, a withholding agent is required to file at least 10 returns if, during the calendar year in which the Form 1042 is required to be filed, the withholding agent is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, Forms 1042-S), income tax returns (for example, Form 1042), employment tax returns, and excise tax returns.

(e) *Special rule for returns filed by financial institutions.* For rules that require withholding agents that are financial institutions to file returns electronically, see § 301.1474-1.

(f) *Applicability date.* The rules of this section apply to withholding tax returns required to be filed for taxable years ending on or after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 28.** Section 301.6012-2 is added to read as follows:

§ 301.6012-2 Required use of electronic form for income tax returns of certain political organizations.

(a) *Income tax returns of certain political organizations required electronically.* (1) Any organization required to file an income tax return on Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, under § 1.6012-6 of this chapter must file its income tax return, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns, electronically if the organization is required by the Internal Revenue Code or regulations to file at least 10 returns of any type (as defined in paragraph (d)(2)) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on

the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under § 1.6012-6 of this chapter) and the period to which it applies.

(c) *Failure to file.* If an organization fails to file an income tax return electronically when required to do so by this section, the organization is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6651-1(c) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Income tax return for certain political organizations.* The term *income tax return for certain political organizations* means a Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, an organization is required to file at least 10 returns if, during the calendar year ending with or within the organization's taxable year, the organization is required to file at least 10 returns of any type, including information returns (for

example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, an organization is required to file at least 10 returns if, during the calendar year in which the organization's short taxable year ends, the organization is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2022, Organization X was required to file one Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, four (quarterly) Forms 8872, *Political Organization Report of Contributions and Expenditures*, two Forms W-2, *Wage and Tax Statement*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 12 returns during the calendar year, X is required to file its Form 1120-POL electronically for its taxable year ending December 31, 2022.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for income tax returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 29.** Section 301.6033-4 is revised to read as follows:

§ 301.6033-4 Required filing in electronic form for returns by organizations required to file returns under section 6033.

(a) *Returns by organizations required to file returns under section 6033 in electronic form.* (1) An organization required to file a return under section 6033 must file its return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file.* If an organization required to file a return under section 6033 fails to file an information return in electronic form when required to do so by this section, the organization is deemed to have failed to file the return. (See section 6652 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6652-2(f) will apply.

(c) *Meaning of terms.* For purposes of this section the term *return required under section 6033* means a Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, and Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, along with all other related forms, schedules, and statements that are required to be attached to the Form 990, Form 990-EZ, or Form 990-PF, and all members of the Form 990 series of returns, including amended and superseding returns. A Form 4720 filed by a private foundation is a form required to be filed under section 6033.

(d) *Applicability date.* The rules of this section apply for any returns under section 6033 required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 30.** Section 301.6037-2 is amended by revising the section heading, paragraphs (a), (b), (d)(1) and (5), (e) and (f) to read as follows:

§ 301.6037-2 Required use of electronic form for returns of electing small business corporation.

(a) *Returns of electing small business corporation required electronically.* (1) An electing small business corporation required to file an electing small business return on Form 1120-S, *U.S. Income Tax Return for an S Corporation*, under § 1.6037-1 of this chapter must file its Form 1120-S electronically if the small business corporation is required by the Internal Revenue Code and regulations to file at least 10 returns during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue

procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under section 6037) and the period to which it applies.

* * * * *

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(5) *Calculating the number of returns.* For purposes of this section, a corporation is required to file at least 10 returns if, during the calendar year ending with or within the corporation's taxable year, the corporation is required to file at least 10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return). In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section. In the example, the corporation is a calendar-year taxpayer.

(1) In 2022, Corporation S, an electing small business corporation, is required to file one 2021 Form 1120-S, *U.S. Corporation Income Tax Return*, two Forms W-2, *Wage and Tax Statement*, two Forms 1099-DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because S is required to file 10 returns during the calendar year 2022, S is required to file its 2022 Form 1120-S electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for electing small business corporation returns required to be filed

during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

■ **Par. 31.** Section 301.6057-3 is amended by:

- 1. Revising paragraphs (a), (b), and (d)(1);
- 2. Revising the heading of paragraph (d)(4);
- 3. Revising paragraph (d)(4)(i);
- 4. In paragraph (e), designating the example as paragraph (e)(1).
- 5. Revising newly designated paragraph (e)(1) and adding paragraph (e)(2); and
- 6. Revising paragraph (f).

The revisions and addition read as follows:

§ 301.6057-3 Required use of electronic form for filing requirements relating to deferred vested retirement benefit.

(a) *Electronic-filing requirements under section 6057.* A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the registration statements or notifications electronically in accordance with this section exceeds the cost of filing the registration statements or notifications on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a registration statement or notification under section 6057) and the period to which it applies.

* * * * *

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(4) *Calculating the number of returns*—(i) *In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

* * * * *

(e) * * *

(1) *Example.* In 2023, P, the plan administrator of Plan B, is required to file 12 returns (including Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*; Form 8955-SSA; Form 5500, *Annual Return/Report of Employee Benefit Plan*; and Form 945, *Annual Return of Withheld Federal Income Tax*). Plan B's plan year is the calendar year. Because P is required to file at least 10 returns during the 2023 calendar year, P must file the 2023 Form 8955-SSA for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply for registration statements and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2022, but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022.

■ **Par. 32.** Section 301.6058-2 is amended by:

- 1. Revising the section heading.
- 2. Revising paragraphs (a), (b), and (d)(1);
- 3. Revising the heading of paragraph (d)(3); and
- 4. Revising paragraphs (d)(3)(i), (d)(3)(iii), (e), and (f).

The revisions read as follows:

§ 301.6058-2 Required use of electronic form for filing requirements relating to information required in connection with certain plans of deferred compensation.

(a) *Electronic-filing requirements under section 6058.* A return required under section 6058 with respect to an employee benefit plan must be filed

electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the returns on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, a return required under section 6058) and the period to which it applies.

* * * * *

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(3) *Calculating the number of returns*—(i) *In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. See section 6011(e)(6), Application of numerical limitation to returns relating to deferred compensation plans.

* * * * *

(iii) *Special rules relating to calculating the number of returns.* For purposes of applying paragraph (d)(3)(ii) of this section, the aggregation rules of

section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series electronically if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 10 returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(3) of this section:

(1) In 2023, Employer X (the plan sponsor and plan administrator of Plan A) is required to file 12 returns. The sole shareholder of X and his spouse are the only participants in Plan A. Employer X is required to file the following: One Form 1120, *U.S. Corporation Income Tax Return*; two Forms W-2, *Wage and Tax Statement*; one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; four Forms 941, *Employer's Quarterly Federal Tax Return*; one Form 945, *Annual Return of Withheld Federal Income Tax*; and two Forms 1099-DIV, *Dividends and Distributions*. Employer X is required to file one Form 5500-EZ. Plan A's plan year is the calendar year. Because Employer X is required to file at least 10 returns during the 2023 calendar year, the 2023 Form 5500-EZ must be filed electronically.

(2) [Reserved]

(f) *Applicability date.* This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2022, but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022.

■ **Par. 33.** Section 301.6059-2 is amended by:

- 1. Revising the section heading;
- 2. Revising paragraphs (a), (b), (d)(1);
- 3. In paragraph (d)(3), revising the paragraph heading and paragraph (d)(3)(i);
- 4. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e); and
- 5. Revising newly designated paragraph (e).

The revisions read as follows:

§ 301.6059-2 Required use of electronic form for filing requirements relating to periodic report of actuary.

(a) *Electronic-filing requirements under section 6059.* An actuarial report required under section 6059 with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year.

The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Actuarial reports filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports electronically in accordance with this section exceeds the cost of filing the reports on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver will specify the type of filing (that is, an actuarial report required under section 6059) and the period to which it applies.

(d) * * * (1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Calculating the number of returns—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (or example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Applicability date.* This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1, 2022, but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022.

■ **Par. 34.** Section 301.6721-1 is amended by:

- 1. Revising paragraph (a)(2)(ii).
- 2. In paragraph (b)(5), revising the introductory text.

- 3. In paragraph (b)(5), designating *Examples 1* through *4* as paragraphs (b)(5)(i) through (iv).

- 4. Revising newly designated paragraphs (b)(5)(iii) and (b)(5)(iv).

- 5. Adding paragraphs (b)(5)(v) and (b)(5)(vi).

- 6. Adding paragraph (h).

The revisions and additions read as follows:

§ 301.6721-1 Failure to file correct information returns.

(a) * * *

(2) * * *

(ii) A failure to include all the information required to be shown on the return or including incorrect information (failure to include correct information). A failure to file timely includes a failure to file in the required manner, for example, electronically or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that the failure occurs with respect to more than the applicable number of returns (determined under regulations prescribed under section 6011(e)(5) with respect to the calendar year during which such returns are required to be filed), or with respect to a return described in section 6011(e)(4). If a partnership return under section 6031(a) is required to be filed electronically, each schedule required to be included with such return with respect to each partner will be treated as a separate information return for purposes of this section. See section 6724(e). Filers who are required to file information returns electronically and who file those information returns electronically are considered to have satisfied the electronic filing requirement. Except as provided in paragraph (c)(1) or (e)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information-reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information-reporting forms, and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on an electronic submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set

forth on the wrong field of the electronic submission, that error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure. For purposes of paragraph (b) of this section, a failure to file corrected information returns in the format required under § 301.6011-2(c)(4)(ii) will be deemed a failure to correct the corresponding original information returns.

(b) * * *

(5) *Examples.* The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, adjustments for inflation under section 6721(f), and the reasonable-cause waiver under § 301.6724-1(a):

* * * * *

(iii) *Example 3.* In calendar year 2023, Corporation U timely files on paper 12 Forms 1099-MISC for the 2022 calendar year with correct information. Under § 301.6011-2, a person required to file at least 10 returns during calendar year 2023 must file those returns electronically. Corporation U does not correct its failures to file these returns electronically by August 1, 2023. See section 6721(b)(2). Corporation U is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, under section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely electronically applies only to the extent the number of returns exceeds 10. As Corporation U was required to file 12 returns electronically, it is subject to a penalty of \$500 for 2 returns ($\$250 \times 2 = \500).

(iv) *Example 4.* In calendar year 2023, Corporation W timely electronically files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) with incorrect information. On August 1, 2023, Corporation W discovers the errors and files 25 corrected Forms 1099-B on paper. Under § 301.6011-2(c)(4)(2)(A), a person required to file an original information return covered by § 301.6011-2(b) electronically must file any corrected information return corresponding to that original return electronically. Under paragraph (a)(2)(ii) of this section, a failure to file a corrected information return electronically when required to do so is

deemed a failure to correct the corresponding original information return. As Corporation W was required to file its 25 corrected information returns electronically, it is deemed to have failed to correct the original information returns and is subject to a penalty of \$6,250 for failure to include correct information on its 25 original Forms 1099-B ($\$250 \times 25 = \$6,250$), without any reductions for correcting the information on or before August 1.

(v) *Example 5.* During the 2023 calendar year, Corporation V files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) on paper. The forms were filed on March 15, 2023, rather than on the required filing date of February 28, 2023. Under § 301.6011-2, a person required to file at least 10 returns during calendar years 2023 and after must file those returns electronically. Corporation V does not correctly file these returns electronically by August 1, 2023. See section 6721(b)(2). Corporation V is subject to a penalty of \$500 for filing 10 of the returns late, but within 30 days after the required filing date ($\$50 \times 10$).

In addition, Corporation V is subject to a penalty of \$3,750 for failing to file 15 returns electronically ($\$250 \times 15$).

(vi) *Example 6.* Partnership X has 120 partners in calendar year 2022. In calendar year 2023, it timely filed on paper its 2022 Form 1065 and 230 accompanying Schedules K-1 and Schedules K-3 (120 Schedules K-1 and 110 Schedules K-3). Partnership X filed no other returns during calendar year 2023. Under § 301.6011-3(a)(1)(B), a partnership with more than 100 partners must electronically file its partnership return, including Schedules K-1 and K-3. Under section 6724(e), Schedules K-1 and K-3 are treated as separate information returns for purposes of penalties under section 6721, even though they are not listed under § 301.6011-2(b) as information returns required to be filed electronically and are not defined as information returns under section 6724(d). Because the applicable number for information returns required to be filed during calendar year 2023 is 10, Partnership X would be subject to a penalty of \$55,000 for failing to electronically file 220

Schedules K-1 and K-3 required to be included with the partnership return: The 11th through the 230th of the required schedules ($\$250 \times 220 = \$55,000$).

* * * * *

(h) *Applicability date.* The rules of paragraph (a)(2)(ii) of this section apply for information returns required to be filed during calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For the rules that apply under paragraph (a)(2)(ii) of this section for information returns required to be filed before calendar years beginning after [Date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see 26 CFR part 301, revised as of April 1, 2021.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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