

held by a taxpayer with certain specified exclusions. Section 1221(a)(1) excludes from the definition of a capital asset inventory property or property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Section 1221(a)(3) excludes from the definition of a capital asset certain property—a copyright; a literary, musical, or artistic composition; a letter or memorandum; or similar property—held by a taxpayer whose personal efforts created the property (or held by a taxpayer whose basis in the property is determined by reference to the basis of such property in the hands of the taxpayer whose personal efforts created the property).

Section 1221(b)(3) of the Code, added by section 204 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345 (2005)), and amended by section 412 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922 (2006)), provides that, at the election of a taxpayer, the section 1221(a)(1) and (a)(3) exclusions from capital asset status will not apply to a musical composition or a copyright in a musical work sold or exchanged by a taxpayer described in section 1221(a)(3). Thus, if a taxpayer who owns a musical composition or copyright in a musical work created by the taxpayer (or transferred to the taxpayer by the composition or work's creator in a transferred basis transaction) elects the application of this provision, gain or loss from the sale or exchange of the musical composition or copyright is treated as capital gain or loss.

#### Explanation of Provisions

This final regulation provides rules regarding the time and manner for electing under section 1221(b)(3) to treat gain or loss from the sale or exchange of certain musical compositions or copyrights in musical works as gain or loss from the sale or exchange of a capital asset.

#### Effective/Applicability Date

This regulation applies to elections under section 1221(b)(3) in taxable years beginning after May 17, 2006.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to this regulation, and because the regulation does not impose a collection

of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of this regulation is Jamie Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in its development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows.

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.1221–3 is added to read as follows:

#### § 1.1221–3 Time and manner for electing capital asset treatment for certain self-created musical works.

(a) *Description.* Section 1221(b)(3) allows an electing taxpayer to treat the sale or exchange of a musical composition or a copyright in a musical work created by the taxpayer's personal efforts (or having a basis determined by reference to the basis of such property in the hands of a taxpayer whose personal efforts created such property) as the sale or exchange of a capital asset. As a consequence, gain or loss from the sale or exchange is treated as capital gain or loss.

(b) *Time and manner for making the election.* An election described in this section is made separately for each musical composition (or copyright in a musical work) sold or exchanged during the taxable year. An election must be made on or before the due date (including extensions) of the income tax return for the taxable year of the sale or exchange. The election is made on Schedule D, "Capital Gains and Losses," of the appropriate income tax form (for example, Form 1040, "U.S. Individual Income Tax Return;" Form 1065, "U.S. Return of Partnership Income;" Form 1120, "U.S. Corporation Income Tax

Return") by treating the sale or exchange as the sale or exchange of a capital asset, in accordance with the form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner. To seek consent to revoke the election, a taxpayer must submit a request for a letter ruling under the applicable administrative procedures. Alternatively, an automatic extension of 6 months from the due date of the taxpayer's income tax return (excluding extensions) is granted to revoke the election, provided the taxpayer timely filed the taxpayer's income tax return and, within this 6-month extension period, the taxpayer files an amended income tax return that treats the sale or exchange as the sale or exchange of property that is not a capital asset.

(d) *Effective/applicability date.* This section applies to elections under section 1221(b)(3) in taxable years beginning after May 17, 2006.

#### § 1.1221–3T [Removed]

■ **Par. 3.** Section 1.1221–3T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 28, 2011.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

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#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#### 36 CFR Part 1254

[NARA–10–0005]

RIN 3095–AB69

#### Appeal Authority When Researcher Privileges Are Revoked

**AGENCY:** National Archives and Records Administration.

**ACTION:** Direct final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is changing the appeal authority for researchers whose privileges have been revoked for specific behaviors, from the Archivist of the United States to the Deputy Archivist of the United States. This change will align the appeal authority for researchers whose research privileges have been revoked with the appeal authority for individuals who have been banned from NARA facilities

for prohibited activities. Researchers maintain the same rights of appeal.

**DATES:** This rule is effective March 9, 2011 without further action, unless adverse comment is received by March 9, 2011. If adverse comment is received, NARA will publish a timely withdrawal of the rule in the **Federal Register**, and publish a notice of proposed rulemaking.

**ADDRESSES:** NARA invites interested persons to submit comments on this direct final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* Submit comments by facsimile transmission to 301-837-0319.

- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** Stuart Culy on (301) 837-0970.

**SUPPLEMENTARY INFORMATION:** NARA is authorized to revoke researchers' privileges under certain circumstances by following the procedures outlined in 36 CFR part 1254. The privileges may be revoked for the following behaviors:

Refusing to follow the rules and regulations of a NARA facility; acting or speaking in a way that may be dangerous to documents held by NARA or NARA property; acting or speaking in a way that may be dangerous to other researchers, NARA or contractor employees, or volunteers; or verbally or physically harassing or annoying other researchers, NARA or contractor employees, or volunteers. This change will align the appeal authority for researchers whose research privileges have been revoked with the appeal authority for individuals who have been banned from NARA facilities for the following prohibited activities on NARA properties: Carrying or using guns or weapons, using or in possession of alcohol or illegal drugs; gambling; soliciting; stealing NARA property; willfully damaging or destroying NARA property; creating any hazard to persons or things; throwing anything from or at a NARA building; improperly disposing of rubbish; acting in a disorderly fashion; acting in a manner that creates a loud or unusual noise or a nuisance; acting in a manner that unreasonably obstructs the usual use of NARA facilities; acting in a manner that

otherwise impedes or disrupts the performance of official duties by Government and contract employees; acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner; loitering; or threatening directly (*e.g.*, in-person communications or physical gestures) or indirectly (*e.g.*, via regular mail, electronic mail, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, or property, which is the Deputy Archivist of the United States. Researchers maintain the same rights of appeal.

Revocation actions are taken by staff at the NARA facility where an infraction takes place. In turn, researchers have the right to appeal the revocation to a higher authority than the local NARA facility director; a process which is also described in 36 CFR part 1254. The current appeal authority is the Archivist of the United States, yet the appeal authority for the more severe penalty of banning individuals from NARA facilities under 36 CFR part 1280, is the Deputy Archivist of the United States. This direct final rule will only change the appeal authority for researchers whose privileges have been revoked, from the Archivist of the United States to the Deputy Archivist of the United States, aligning the two disciplinary appeal processes. Researchers retain their full right to appeal revocation decisions.

NARA believes that a Notice of Proposed Rule Making is not necessary for "good cause" as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(B)) as this rule is a nomenclature change only, and there are no changes to the public's right to appeal revocation decisions.

This direct final rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this direct final rule will not have a significant impact on small entities.

#### List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1254 of title 36, Code of Federal Regulations, as follows:

#### PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

■ 1. The authority citation for part 1254 continues to read as follows:

**Authority:** 44 U.S.C. 2101-2118.

#### § 1254.50 [Amended]

■ 2. In § 1254.50, remove the word "Archivist" and add, in its place, the words "Deputy Archivist" wherever it appears in the section.

#### § 1254.52 [Amended]

■ 3. In § 1254.52, remove the word "Archivist" and add, in its place, the words "Deputy Archivist" wherever it appears in the section.

Dated: January 25, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011-2033 Filed 2-4-11; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 36

RIN 2900-AN78

#### Loan Guaranty Revised Loan Modification Procedures

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This document amends a Department of Veterans Affairs (VA) Loan Guaranty regulation related to modification of guaranteed housing loans in default. Specifically, changes are made to requirements related to maximum interest rates on modified loans and to items that may be capitalized in a modified loan amount. In addition, we are revising the regulation to clarify that the holder of a loan may seek VA approval for a loan modification that does not otherwise meet prescribed conditions. The amendments are intended to liberalize the requirements for modification of VA-guaranteed loans and provide holders more options for working with veterans to avoid foreclosure.

**DATES:** This interim final rule is effective February 7, 2011. Comments must be received on or before April 8, 2011.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN78—Loan Guaranty Revised Loan Modification Procedures." Copies of comments received will be available for public inspection in the Office of