

certain allowances received by members of the Armed Forces in connection with a change of permanent duty station.

**DATES:** The public hearing originally scheduled for April 21, 1995, beginning at 10:00 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 61 and 217(g) of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** for Wednesday, December 21, 1994 (59 FR 65739), announced that a public hearing on the proposed regulations would be held on Friday, April 21, 1995, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

The public hearing scheduled for Friday, April 21, 1995, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit Assistant Chief Counsel (Corporate).*

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## 26 CFR Part 1

[EE-45-94]

RIN 1545-AS94

### Self-Employment Tax Treatment of Members of Certain Limited Liability Companies; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date for public hearing on proposed regulations.

**SUMMARY:** This document changes the date of the public hearing on proposed regulations concerning the treatment of members of certain limited liability companies.

**DATES:** The public hearing is changed to Friday, June 23, 1995, beginning at 10:00 a.m.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Submit requests to speak and outlines or oral comments to the Internal Revenue Service, P.O. Box 7604, Ben Franklin, Attn: CC:DOM:CORP:T:R [EE-45-94], Room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, December 29, 1994 (59 FR 67253), announced that the Service would hold a public hearing on proposed regulations concerning the treatment of members of certain limited liability companies on Thursday, June 15, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date of public hearing has changed. The hearing is scheduled for Friday, June 23, 1995, beginning at 10:00 a.m. The requests to speak and outlines or oral comments must be received by Thursday, May 25, 1995. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit Assistant Chief Counsel (Corporate).*

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## DEPARTMENT OF JUSTICE

### Parole Commission

#### 28 CFR Part 2

### Paroling, Recommitting, and Supervising Federal Prisoners: Revision of the Salient Factor Score

**AGENCY:** Parole Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Parole Commission is proposing to revise the Salient Factor Score at 28 CFR 2.20. The Salient Factor Score which is an actuarial table that the Commission uses to measure the potential risk of parole violation. This revision is designed to improve the accuracy of the Salient Factor Score with respect to older offenders. The Commission is proposing to add one point to a prisoner's total score if the current offense (or parole violation) was committed at age 41 or older, provided the prisoner does not already have the highest possible total score (10). This revision will give to the Salient Factor Score improved risk prediction accuracy. The revision is made

appropriate by the fact that the Parole Commission has jurisdiction over an aging population of prisoners and parolees whose crimes were committed prior to November 1, 1987.

**DATES:** Comments must be received by June 12, 1995.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. For further information contact: Pamela A. Posch, Office of General Counsel, Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** The Salient Factor Score at 28 CFR 2.20 is an actuarial device, based upon statistical research, that permits the U.S. Parole Commission to make a prediction as to the probability of future parole violation. It is applied to every prisoner who appears for an initial parole hearing, and to every parolee who has been returned to prison as a parole violator. The current version of the Salient Factor Score (SFS-81) was adopted in 1981, and was recently re-validated through a study of the parole records of federal prisoners released in 1987. This and other validation studies have shown that the Salient Factor Score is able to separate prisoners into categories having significantly different probabilities of recidivism, and that it continues to have a high degree of predictive accuracy.

However, with the aging of the Parole Commission's "old law" offender population, it has become apparent that the accuracy of the Salient Factor Score could be improved by accounting for the factor of "age at current offense" in the case of older offenders and parole violators. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.)

The Commission has long recognized that many criminal offenders eventually "burn out" as the aging process catches up with them. In a 1984 study by the Commission's Research Office, entitled "Burnout—Age At Release From Prison and Recidivism", it was found that recidivism rates do decline with increased age, and that it would be justifiable to improve the scores of prisoners whose current offense was committed at age 41 or older. At the present time, the average age of the "old law" prison population is 43. Thus, it has now become appropriate to consider adding this factor to the score.

In order to test the accuracy of the proposed revision, the revised score was

applied to a sample of over 1,000 federal prisoners released in 1987. Approximately 5% of those prisoners received an improved parole prognosis category placement as compared with the current version of the score (SFS-81). Moreover, the revised version of the score displayed a high degree of predictive accuracy. The Mean Cost Rating increased from .54 to .56, the highest recorded for a recidivism prediction device that has been subjected to validation.

Accordingly, the Commission has decided that the Salient Factor Score should be revised, in order to ensure that the Commission's decisions are based upon the most accurate available risk-prediction device. This decision accords with the intent of Congress that the Parole Commission should "continue to refine both the criteria which are used (to judge the probability that an offender will commit a new offense) and the means for obtaining the information used therein." 2 U.S. Code Cong. and Admin. News at 359 (1976).

#### Implementation

The revised Salient Factor Score (SFS-95) would be applied at every initial parole hearing and revocation hearing held on or after the effective date of the final regulation, and retroactively to federal prisoners who have already been heard for parole or reparable, at the next scheduled statutory interim hearing under 28 CFR 2.14 and any hearing under § 2.28 or § 2.34.

#### Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

#### List of Subjects in 28 C.F.R. Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR part 2.

#### The Proposed Amendment

(1) The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2 § 2.20 is proposed to be amended by adding an instruction to the Salient Factor Scoring Manual under a new Item G as follows:

ITEM G. IF CURRENT OFFENSE WAS COMMITTED AT AGE 41 OR OLDER, ADD 1 POINT IF THE TOTAL SCORE DETERMINED ABOVE IS 9 OR LESS.

This instruction would add a seventh item to the current six-item score, without changing its current structure as a prediction device with possible scores ranging from 0 to 10 points. (A point would not be added if the total score is already 10, placing the offender at the top of the "very good" parole prognosis category.) As in any case, the Commission will exercise authority to override the prediction made by the revised score if case-specific factors indicate undiminished risk despite advancing age, eg, the career criminal offender who has played a leadership role in organized crime.

Dated: March 31, 1995.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

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#### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars In Losses

**AGENCY:** Parole Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Parole Commission is proposing to establish a dollar amount range of \$1 million to \$5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over \$5 million would be rated Category Seven. At the present time, the Category Six offense severity rating is reserved for all frauds exceeding \$1 million. The proposed guideline revision is necessary because of the increased frequency of frauds involving losses in multiples of the \$1 million threshold for Category Six, and the need for an appropriate benchmark to determine the point at which dollar amount losses are so excessive as to warrant a decision above the Category Six guidelines. The figure of \$5 million will provide that benchmark.

**DATES:** Comments must be received by June 12, 1995.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd.,

Chevy Chase, Maryland 20815. For further information contact: Pamela A. Posch, Office of General Counsel. Telephone (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** As a result of the widespread criminal investigations into unlawful practices in the banking and savings and loan industries during the 1980's, the U.S. Parole Commission has seen a significant increase in prisoners serving sentences for frauds greatly exceeding the \$1 million threshold established by the Commission in 1987 for Category Six offenses. (The guidelines at 28 CFR 2.20 do not currently provide a fraud guideline higher than Category Six.) The Commission has typically responded to such cases by determining that, if the dollar loss caused by the fraud exceeded the \$1 million threshold by significant multiples (e.g., a \$15 million fraud), a decision above the Category Six guidelines is warranted.

However, the guidelines have not provided a way for the Commission consistently to determine at what point a large-scale fraud is significant enough to warrant such a decision. Some frauds involving multiples of the \$1 million threshold are deemed to be within the guidelines, and some are not. The situation has been complicated by the fact that plea agreements in large-scale fraud offenses often produce a sentence of five years (the maximum for one count of mail fraud), which requires release (with good time credits) at 39 months. Such sentences preclude the Commission from determining where a parole decision should be made in relation to the guideline range of 40-52 months that is applicable to the typical first offender who has committed a fraud offense involving more than \$1 million in losses. This makes it difficult for the Commission to achieve a consistent practice that can inform its decision-making when the sentence is longer than five years.

Accordingly, the Commission has decided to establish a dollar range of \$1 million to \$5 million for Category Six offenses, that will be followed whenever the sentence is long enough to permit such a decision. For fraud offenses exceeding \$5 million, the offense will be rated Category Seven. Under this rating system, for example, a prisoner serving an 8-year sentence for a fraudulent investment scheme that caused losses of \$2.4 million may expect the Commission to establish a release date toward the middle of the 40-52 month guideline range for Category Six offenses, if he is a first offender and there are no other aggravating or mitigating circumstances.