B. Does the proposed rule create any new burdens for FICUs?

NCUA believes that once manual filers embrace online filing, they will find it is quicker and easier than their current practices, and it will reduce their administrative burden. The proposal does not create any new regulatory burdens for FICUs, and NCUA expects that electronic filing of reports and profiles will improve a FICU's efficiency and reduce delays.

To assist FICUs making this transition, NCUA already provides instructions on how to report online and has posted a ''frequently asked questions'' section on NCUA's Web site.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[6] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[7] This rule would affect relatively few FICUs and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[8] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This proposed rule requires the same information previously required in a different format, which NCUA believes should require the same or less amount of time to produce. This proposed rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration Board on July 25, 2013.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR parts 741 and 748 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. In § 741.6, revise paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the Board, Regional Director, Director of the Office of Examination and Insurance, or Director of the Office of National Examinations and Supervision, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Insured credit unions must use NCUA's information management system, or other electronic means specified by NCUA, to submit their data online.

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 3. The authority for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 4. In § 748.1, revise paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally-insured credit union must certify compliance with the requirements of this part in its Credit Union Profile annually through NCUA's online information management system.

* * * * *

[FR Doc. 2013–18299 Filed 8–1–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114122–12]

RIN 1545–BK96

Controlled Group Regulation Examples

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes revisions to examples that illustrate the controlled group rules related to regulated investment companies (RICs). These proposed revisions resolve an issue with how the controlled group rules should be applied in connection with the RIC ''asset diversification'' test. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by October 31, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 9, 2013, at 10 a.m., must be received by October 31, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–114122–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114122–12), Courier's Desk, Internal Revenue

[6] 5 U.S.C. 603(a).

[7] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003), as amended by Interpretative Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[8] 44 U.S.C. 3507(d); 5 CFR part 1320.

Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–114122–12). The public hearing will be held in the Auditorium, beginning at 10 a.m., at the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Julanne Allen at (202) 622–3920; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the application of the ''controlled group'' rules found in section 851(c) of the Internal Revenue Code of 1986, as amended (Code).

Section 851(b)(3)(B) provides that, to qualify as a RIC, a taxpayer must meet an asset diversification test pursuant to which not more than 25 percent of the value of the taxpayer's total assets may be invested in (i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, (ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or (iii) the securities of one or more qualified publicly traded partnerships (as defined in section 851(h)).

The controlled group rules in section 851(c) provide that, when ascertaining the value of a taxpayer's investment in the securities of a particular issuer for purposes of determining whether the asset diversification test has been met, the proportion of any investment in the securities of such issuer by a member of the taxpayer's ''controlled group'' should be aggregated with the taxpayer's investment in such issuer, as determined under regulations. Section 851(c)(3) defines a controlled group as one or more chains of corporations connected through stock ownership with the taxpayer if—(i) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations; and (ii) the taxpayer owns directly at least 20 percent or more of the total combined voting power of all classes of stock entitled to vote of at least one of the other corporations. Clarification is needed regarding whether a RIC and its controlled subsidiary are a controlled group if the subsidiary does not control (within the meaning of section 851(c)(2)) at least one other corporation.

The definition of a controlled group for purposes of the RIC rules was first enacted in 1942 and appears to have been modeled on the definition of an ''affiliated group'' in the predecessor to current section 1504(a). The predecessor to current section 1504(a) used language nearly identical, save for different ownership thresholds, to the definition of controlled group for purposes of the RIC rules. *See* HR Rep. No. 2333, 77th Cong., 2nd Sess. 122 (1942), 1942–2 CB 372, 462–63; *see also* the Revenue Act of 1928, ch. 852, sec. 141(d), 45 Stat. 791, 831 (1928) (enacting the predecessor to section 1504(a)). The current regulations under section 851 include a series of examples, two of which reproduce, nearly verbatim, examples contained in the 1942 legislative history. See § 1.851–5, *Examples 3* and *4.* Some practitioners have interpreted section 851(c)(3) to require the presence of two levels of controlled entities for a controlled group to exist, and have relied on certain of the examples in the regulations, and the 1942 legislative history, to support this interpretation. The IRS and the Treasury Department believe that this interpretation is unwarranted. Accordingly, through revisions to the existing examples, these proposed regulations clarify that two corporations constitute a controlled group if the ownership requirements of section 851(c)(3) are met.

The IRS and the Treasury Department believe that the interpretation of the controlled group rules reflected in these proposed regulations is consistent both with the statutory language of section 851(c)(3) and the interpretation of analogous Code provisions. For example, for purposes of the consolidated return rules, the IRS has consistently treated a parent and its directly owned subsidiary as ''affiliated'' within the meaning of section 1504(a)(1) regardless of whether the subsidiary controlled another subsidiary. Likewise, in limiting certain tax benefits for affiliated corporations, the IRS treats a parent and its subsidiary as a ''controlled group'' under section 1563, which uses language similar to section 1504(a), regardless of whether the subsidiary controls another entity. *See* section 1563(a)(1) and § 1.1563–1(a)(2)(ii), Example 1. The interpretation reflected in these proposed regulations is also consistent with the purpose of section 851(c)(3), which is to aggregate the investments of related corporations for purposes of the asset diversification test.

The IRS and the Treasury Department believe that the language in the examples in the existing regulations and in the 1942 legislative history was intended merely to simplify the description of certain fact patterns, and not to articulate a legal interpretation that is inconsistent with the construction of substantially similar language elsewhere in the Code and that is unsupported by practical or policy considerations grounded in the statutory scheme.

Explanation of Provisions

The proposed regulations update examples in existing § 1.851–5. The controlled group rules of section 851(c) prevent a RIC from exceeding the limitations set forth in section 851(b)(3) by indirectly investing in the securities of an issuer through a subsidiary. This update clarifies the controlled group rules and confirms that they are applied in a manner consistent with sections 1504 and 1563.

First, the proposed changes to the regulations clarify the two examples that have caused confusion. In Example 1, additional language would clarify which entities in the example are members of a controlled group. Currently, the example states that none of the subsidiaries of the RIC in the example is a member of a controlled group. The IRS and the Treasury Department believe that this statement was intended merely to indicate that none of the wholly owned subsidiaries in the example controlled another subsidiary. Consistent with the statutory language of section 851(c)(3), the proposed regulations would clarify that each of the RIC's wholly owned subsidiaries is a member of a controlled group with the RIC.

Example 4, which is derived from the legislative history of section 851(c)(3), is revised to remove references to ownership by controlled group members of greater than 20 percent interests in an issuer. The existing language has sometimes been misinterpreted to mean that in order for a subsidiary's holdings in an issuer to be aggregated with the holdings of the parent RIC, the subsidiary must have a controlling interest in the issuer. The proposed revision to Example 4 would ensure that Example 4 is applied in a manner

consistent with the statutory language of section 851(c)(3).

Second, the proposed changes would add a new example to illustrate both the mechanics of the controlled group rules as applied to wholly owned subsidiaries and the application of section 851(b)(3)(B)(iii)'s rule with respect to securities of qualified publicly traded partnerships.

Third, the proposed changes would update the dates used in the examples (1955) to the current year (2013 or 2014, where appropriate) and would update references from section 851(b)(4) to refer instead to section 851(b)(3). Section 1271(b)(1) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 1063 (1997)), redesignated section 851(b)(4) as section 851(b)(3).

Finally, for additional clarity, these proposed regulations would add citations to section 851(d)(1) in *Examples 5* and *6.*

Proposed Effective Date

The proposed changes apply to quarters that begin at least 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these rules as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed examples. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 9, 2013, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by October 31, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 31, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice is Julanne Allen of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Julanne Allen at (202) 622–3920 (not a toll-free call).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.851–5 also issued under 26 U.S.C. 851(c).

■ **Par. 2.** Section 1.851–5 is revised to read as follows:

§ 1.851–5 Examples.—The provisions of section 851 may be illustrated by the following examples:

(a) *Example 1.* Investment Company W at the close of its first quarter of its taxable year has its assets invested as follows:

	Percent
Cash	5
Government securities	10
Securities of regulated investment companies	20
Securities of Corporation A	10
Securities of Corporation B	15
Securities of Corporation C	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	20
Total	100

Investment Company W owns all of the voting stock of Corporations A and B, 15 percent of the voting stock of Corporation C, and less than 10 percent of the voting stock of regulated investment companies and various other corporations. Neither Corporation A nor Corporation B owns (i) 20 percent or more of the voting stock of any other corporation, (ii) securities issued by Corporation C, or (iii) securities issued by any of the regulated investment companies or various corporations whose securities are owned by Investment Company W. Except for Corporation A and Corporation B, none of the corporations (including the regulated investment companies) is a member of a controlled group with Investment Company W.

Investment Company W meets the requirements under section 851(b)(3) at the end of its first quarter. It complies with subparagraph (A) of section 851(b)(3) because it has 55 percent of its assets invested as provided in that subparagraph. It complies with subparagraph (B) of section 851(b)(3) because it does not have more than 25 percent of its assets invested in the securities of any one issuer, of two or more issuers that it controls, or of one or more qualified publicly traded partnerships (as defined in section 851(h)).

Example 2. Investment Company V at the close of a particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash	10
Government securities	35
Securities of Corporation A	7
Securities of Corporation B	12
Securities of Corporation C	15
Securities of Corporation D	21
Total	100

Investment Company V fails to meet the requirements of subparagraph (A) of section 851(b)(3) since its assets invested in Corporations A, B, C, and D exceed in each case 5 percent of the value of the total assets of the company at the close of the particular quarter.

Example 3. Investment Company X at the close of the particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash and Government securities	20

	Percent
Securities of Corporation A	5
Securities of Corporation B	10
Securities of Corporation C	25
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	40
Total	100

Investment Company X owns more than 20 percent of the voting power of Corporations B and C and less than 10 percent of the voting power of all of the other corporations. Corporation B manufactures radios and Corporation C acts as its distributor and also distributes radios for other companies. Investment Company X fails to meet the requirements of subparagraph (B) of section 851(b)(3) since it has 35 percent of its assets invested in the securities of two issuers which it controls and which are engaged in related trades or businesses.

Example 4. Investment Company Y at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	15
Securities of Corporation K (a regulated investment company)	30
Securities of Corporation A	10
Securities of Corporation B	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

Corporation K has 20 percent of its assets invested in Corporation L, and Corporation L has 40 percent of its assets invested in Corporation B. Corporation A also has 30 percent of its assets invested in Corporation B. Investment Company Y owns more than 20 percent of the voting power of Corporations A and K. Corporation K owns more than 20 percent of the voting power of Corporation L.

At the end of that quarter, Investment Company Y is disqualified under subparagraph (B)(i) of section 851(b)(3) because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company Y's total assets is invested in the securities of Corporation B. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in Corporation B	20.0
Percentage invested through K and L (30% × 20% × 40%) ...	2.4
Percentage invested indirectly through A (10% × 30%)	3.0
Total percentage of assets of Investment Company Y invested in Corporation B	25.4

Example 5. Investment Company Z, which keeps its books and makes its returns on the basis of the calendar year, at the close of the first quarter of 2013 meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation A. Later during the taxable year it makes distributions to its shareholders and because of such distributions, it finds at the close of the taxable year that it has more than 25 percent of its remaining assets invested in Corporation A. Investment Company Z does not lose its status as a regulated investment company for the taxable year 2013 because of such distributions, nor will it lose its status as a regulated investment company for 2014 or any subsequent year solely as a result of such distributions. See section 851(d)(1).

Example 6. Investment Company Q, which keeps its books and makes its returns on the basis of a calendar year, at the close of the first quarter of 2013, meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation P. At the close of the taxable year 2013, it finds that it has more than 25 percent of its assets invested in Corporation P. This situation results entirely from fluctuations in the market values of the securities in Investment Company Q's portfolio and is not due in whole or in part to the acquisition of any security or other property. Corporation Q does not lose its status as a regulated investment company for the taxable year 2013 because of such fluctuations in the market values of the securities in its portfolio, nor will it lose its status as a regulated investment company for 2014 or any subsequent year solely as a result of such market value fluctuations. See section 851(d)(1).

Example 7. Investment Company T at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	40
Securities of Corporation A	20
Securities of various qualified publicly traded partnerships (within the meaning of sections 851(b)(3) and 851(h)) ...	15
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

Investment Company T owns more than 20 percent of the voting power of Corporation A and less than 10 percent of the voting power of all of the other corporations. Corporation A has 80 percent of its assets invested in qualified publicly traded partnerships.

Investment Company T is disqualified under subparagraph (B)(iii) of section 851(b)(3), because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company T's total assets is invested in the securities of one or more qualified publicly traded partnerships. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in qualified publicly traded partnerships	15.0
Percentage invested in qualified publicly traded partnerships indirectly through A (20% × 80%)	16.0
Total percentage of assets of Investment Company T invested in qualified publicly traded partnerships	31.0

(b) *Effective/applicability date.* The proposed revisions apply to quarters that begin at least 90 days after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**.

Beth Tucker,

Deputy Commissioner for Operations Support.

[FR Doc. 2013–18717 Filed 8–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112815–12]

RIN 1545–BK99

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register** the Treasury Department and the IRS are issuing temporary regulations that explain how to account for unrealized gain or loss on a position held by a taxpayer prior to the time the taxpayer establishes a mixed straddle using straddle-by-straddle identification. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by October 31, 2013. Request to speak and