

temporary regulations also serves as the text of these proposed regulations (reproposed regulations).

#### Summary of Comments and Explanation of Provisions

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary and proposed regulations, a reporting corporation would file Forms 1099-CAP, "Changes in Corporate Control and Capital Structure", with respect to its shareholders of record, including brokers, under § 1.6043-4T(b) and proposed § 1.6043-4(b). Brokers who received Forms 1099-CAP would then file Forms 1099-CAP with respect to their customers pursuant to § 1.6045-3T and proposed § 1.6045-3. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary and proposed regulations, clearing organizations would receive Forms 1099-CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under § 1.6045-3T and proposed § 1.6045-3 to file Forms 1099-CAP with respect to their broker-members. Consequently, brokers (who had the requirement to file a Form 1099-CAP upon receiving one) would not receive Form 1099-CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary and proposed regulations, the actual shareholders of the reporting corporation, the broker's customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and

issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099-CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure," to an IRS Web site.

Based on the comments, revised § 1.6043-4T(a)(1)(vi) and repropoed § 1.6043-4(a)(1)(vi) provide that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations utilize existing processes for distributing information to minimize the cost of and the time required for implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The revised temporary and repropoed regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099-CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099-CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under section § 1.6045-3T and repropoed § 1.6045-3.

Under the revised regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its reporting obligations under § 1.6045-3T and repropoed § 1.6045-3 with respect to the transaction.

The revised temporary and repropoed regulations provide that a reporting corporation is not required to file Forms 1099-CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099-CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to utilize Form 1099-B for reporting under § 1.6045-3T and repropoed § 1.6045-3, rather than overhaul their systems to report on Form 1099-CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations and repropoed regulations provide that Form 1099-B should be used by brokers for reporting under § 1.6045-3T and repropoed § 1.6045-3. With respect to transactions occurring in 2003, brokers may use either Form 1099-B or 1099-CAP.

#### Proposed Effective Date

The provisions of these regulations are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** 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. Therefore, a regulatory assessment is not required. It has also been determined that section