of the debt obligations have recourse to the holder of that asset.

(c) *Portion as obligor*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), a portion of an entity is treated as the obligor of all debt obligations supported by the assets in that portion.

(2) *Example.* The following example illustrates the principles of this section:

Example. (i) Corporation Z owns $1,000,000,000 in assets including an office complex and $90,000,000 of real estate mortgages.

(ii) On November 30, 1998, Corporation Z issues eight classes of bonds, Class A through Class H. Each class is secured by a separate letter of credit and by a lien on the office complex. One group of the real estate mortgages supports Class A through Class D, another group supports Class E through Class G, and a third group supports Class H. It is anticipated that the cash flows from each group of mortgages will service its related bonds.

(iii) Each of the following constitutes a separate portion of Corporation Z: the group of mortgages supporting Class A through Class D; the group of mortgages supporting Class E through Class G; and the group of mortgages supporting Class H. No other asset is included in any of the three portions notwithstanding the lien of the bonds on the office complex and the fact that Corporation Z is the issuer of the bonds. The letters of credit are treated as incidents of the mortgages to which they relate.

(iv) For purposes of section 7701(i)(2)(A)(ii), each portion described above is treated as the obligor of the bonds of that portion, notwithstanding the fact that Corporation Z is the legal obligor with respect to the bonds.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) *Effective dates.* Except as otherwise provided, the regulations under section 7701(i) are effective and applicable September 6, 1995.

(b) *Entities in existence on December 31, 1991*—(1) *In general.* For transitional rules concerning the application of section 7701(i) to entities in existence on December 31, 1991, see section 675(c) of the Tax Reform Act of 1986.

(2) *Special rule for certain transfers.* A transfer made to an entity on or after September 6, 1995, is a substantial transfer for purposes of section 675(c)(2) of the Tax Reform Act of 1986 only if—

(i) The transfer is significant in amount; and

(ii) The transfer is connected to the entity's issuance of related debt obligations (as defined in paragraph (b)(3) of this section) that have different maturities (within the meaning of § 301.7701–1(e)).

(3) *Related debt obligation.* A related debt obligation is a debt obligation whose payments bear a relationship (within the meaning of § 301.7701–1(f)) to payments on debt obligations that the entity holds as assets.

(4) *Example.* The following example illustrates the principles of this paragraph (b):

Example. On December 31, 1991, Partnership Q holds a pool of real estate mortgages that it acquired through retail sales of single family homes. Partnership Q raises $10,000,000 on October 25, 1996, by using this pool to issue related debt obligations with multiple maturities. The transfer of the $10,000,000 to Partnership Q is a substantial transfer (within the meaning of § 301.7701(i)–3(b)(2)).

(c) *Duration of taxable mortgage pool classification*—(1) *Commencement and duration.* An entity is classified as a taxable mortgage pool on the first testing day that it meets the definition of a taxable mortgage pool. Once an entity is classified as a taxable mortgage pool, that classification continues through the day the entity retires its last related debt obligation.

(2) *Testing day defined.* A testing day is any day on or after September 6, 1995, on which an entity issues a related debt obligation (as defined in paragraph (b)(3) of this section) that is significant in amount.

§ 301.7701(i)–4 Special rules for certain entities.

(a) *States and municipalities*—(1) *In general.* Regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a taxable mortgage pool if—

(i) The entity is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (within the meaning of § 1.103–1(b) of this chapter), or is empowered to issue obligations on behalf of one of the foregoing;

(ii) The entity issues the debt obligations in the performance of a governmental purpose; and

(iii) The entity holds the remaining interests in all assets that support those debt obligations until the debt obligations issued by the entity are retired.

(2) *Governmental purpose.* The term governmental purpose means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for re-sale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations*—(1) *In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 17, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19285 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

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

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising the salient factor score at 28 CFR 2.20. The salient factor score is an actuarial device which the Commission uses to measure the risk that a prisoner will violate parole. The revised Salient Factor Score will improve the accuracy of the Commission's recidivism predictions in the case of older prisoners. Under the revised score (to be known as SFS–95), the Commission will add one point to the prisoner's total score if the prisoner was 41 years of age or more at the commencement of the current offense (or parole violation), provided the prisoner does not already have the highest possible total score (10). 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.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase,

Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking appeared in the **Federal Register** for Tuesday, April 11, 1995 (60 FR 18378). Public comment received with regard to the proposal was generally favorable. The comment pointed out that the Commission was properly attempting to capture the results of the agency's own research on recidivism and ''burnout'' among criminal offenders. In response to a comment that suggested that the proposal was ambiguous concerning the date the current offense was ''committed'', the Commission has revised the final rule by specifying that the relevant date is the commencement of the offense. Thus, a parolee who initiates an illegal narcotics distribution conspiracy at age 39, and who continues that offense behavior after reaching 41 years of age, is not to be given the additional point required by the revised salient factor score. However, a parolee who committed his original offense at age 35, and who is returned to prison for a parole violation commenced after age 41, receives the additional point when his score is recalculated at his revocation hearing under 28 CFR 2.21(b).

The public comment also pointed out that the Commission's original research focused on age at release as opposed to the age at which the offense was committed, and suggested that the age of release should be used in the revised score. This suggestion is not practical. Using age at last release from prison would be too restrictive, and ''age at release'' on the current period of imprisonment is the result of applying the guidelines in the first instance.

Moreover, the Bureau of Prisons recently validated SFS–95 on a 1987 releasee sample (n=1205), using age at commencement of the instant offense. Using this criterion, the revised salient factor score was consistent with the original research, and displayed a high degree of predictive accuracy. (The original research was done in 1984 with research samples from 1970–72 (n=3,954) and 1978 (n=2,333).) The Mean Cost Rating in the new study increased from .54 to .56 (the highest recorded for a recidivism prediction device that has been subjected to validation) and the point biserial correlation coefficient increased from .47 to .48. Approximately 5% of the prisoners in this sample received an improved parole prognosis category placement as compared with the existing version of the salient factor score (SFS–81). The Commission expects that these results will be reflected in future parole decisionmaking.

Moreover, the revised salient factor score improves upon the existing score by giving the Commission the equivalent of a ''rate'' of criminality over a prisoner's entire career. This permits an assessment of the current momentum of the prisoner's criminal career, leading to a better prediction of the prisoner's future behavior if released on parole. For example, the Parole Commission is enabled to determine that a 50 year old defendant with 3 prior convictions and commitments over a 26-year career may be a better parole risk than a 25 year old defendant who has 2 prior convictions and commitments over a 6-year career. Both age and the rate of criminal conduct (over the length of his career) are factors that work in the older offender's favor, despite his more serious record. The Commission thus avoids the waste of taxpayer dollars that can result when imprisonment decisions fail to account for the probability that the current offense will turn out to be the last in an aging offender's lifetime.

In sum, the revised salient factor score permits the Commission to account for the affect of the aging process on each prisoner's prospects for committing further crimes after release from prison. At the present time, the average age of prisoners under the Commission's jurisdiction is 43, a reflection of the fact that the 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.) Thus, it is increasingly appropriate for the Commission to revise the salient factor score at this time. 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. & Admin. News at 359 (1976).

Implementation

The revised salient factor score (SFS–95) will be applied at initial parole hearings and revocation hearings held on or after October 2, 1995. It will be applied retroactively to prisoners who have already been considered for parole, or reparole, at the next scheduled statutory interim hearing under 28 CFR 2.14. If the prisoner's guideline range is reduced through application of SFS–95, the Commission will render a new parole decision. In some cases, individual factors may warrant a decision to depart upward from the reduced guideline range on the ground that the prisoner is a poorer parole risk than SFS–95 indicates. For example, certain types of organized crime members may be expected to continue their criminal careers despite advancing age. The Commission will also apply SFS–95 in any other type of hearing wherein the length of the prisoner's incarceration is a function of the prisoner's current parole prognosis. This would not be the case, for example, at a hearing under 28 CFR 2.34, wherein the length of the prisoner's incarceration is determined by the need to sanction institutional misconduct.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule 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 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

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

PART 2—[AMENDED]

The 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 amended by adding a new Item G to the Salient Factor Scoring Manual, to read as follows:

§ 2.20 Paroling Policy Guidelines: Statement of general policy.

* * * * *

Salient Factor Scoring Manual

* * * * *

Item G. Older Offenders

G.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A–F is 9 or less.

G.2 Score 0 if the offender was less than 41 years of age at the commencement of the

current offense or if the total score from Items A–F is 10.

* * * * *

Special Instructions—Federal Probation Violators

Item G Use the age at commencement of the probation violation, not the original offense.

* * * * *

Special Instructions—Federal Parole Violators

* * * * *

Item G Use the age at commencement of the new criminal/parole violation behavior.

* * * * *

Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

* * * * *

Item G Use the age at commencement of the confinement/escape status violation.

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19312 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

---

28 CFR Part 2

Designation of a Commissioner To Act as a Hearing Examiner

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending 28 CFR § 2.59 by replacing it with a regulation which allows the Chairman of the Parole Commission to designate any Commissioner to serve as a hearing examiner. The deleted regulation concerned the authority of a Regional Commissioner to exercise the functions of a hearing examiner in the absence of a hearing examiner. Designation of a Commissioner to serve as a hearing examiner will be made with the Commissioner's consent for specified hearing dockets. A Commissioner who serves as a hearing examiner will not vote in the same proceeding as a Commissioner. This amendment replaces an obsolete rule with a regulation that permits the agency to use more of its resources to accomplish its mission.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: This new rule provides explicit authority in the Commission's regulations for the Parole Commission's Chairman to designate a Parole Commissioner to act as a hearing examiner and thereby assist the Commission in balancing its workload as the Commission nears the end of its existence on November 1, 1997. See 18 U.S.C. 4204(a)(3) (authorizing the Chairman to assign duties among agency staff and Commissioners so as to balance the workload and provide for orderly administration). Such designations will be made for specified hearing dockets, and only with the designated Commissioner's consent.

If a Commissioner acts as a hearing examiner in a parole proceeding, the rule provides that the Commissioner will be disqualified from voting in the case as a Commissioner during the course of the same proceeding. This includes voting on an appeal filed by the prisoner or parolee to the National Appeals Board under 28 CFR 2.26, or the full Commission under 28 CFR 2.27. This important limitation preserves the distinction in function between the hearing examiner and the Parole Commissioner in making release and revocation decisions, and ensures that appropriate checks and balances are maintained in the agency's decisionmaking.

The Commission has decided to place this regulation at 28 CFR 2.59, which has been occupied by a rule which allows a Regional Commissioner to exercise the authority of a hearing examiner only in the absence of an examiner. This regulation has been rarely used by the Commission, and the agency determined that it should be removed as obsolete.

Implementation

This rule may be utilized for any hearings scheduled on or after October 2, 1995.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, and the rule, has, accordingly, not been reviewed by the Office of Management and Budget. The rule 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 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

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

PART 2—[AMENDED]

(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, § 2.59 is revised to read as follows:

§ 2.59 Designation of a Commissioner to act as a hearing examiner.

The Chairman may designate a Commissioner, with the Commissioner's consent, to serve as a hearing examiner on specified hearing dockets. The Commissioner who serves as a hearing examiner may not vote in the same proceeding as a Commissioner.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95–19313 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

---

28 CFR Part 2

Parole Date Advancements for Substance Abuse Treatment Program Completion

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending 28 CFR 2.60 to permit a prisoner to be considered for a special advancement of his presumptive release date, by up to twelve months, if the prisoner is a non-violent offender who has completed a treatment program for a recognized problem of substance abuse. Although 28 CFR 2.60 already sets forth a schedule of permissible advancements for superior program achievement, the Commission is adding the above-described provision in order to provide to parole-eligible prisoners an incentive to complete the treatment program that is comparable to the incentive under 18 U.S.C. 3621(e)(2) that will be available from the Bureau of Prisons for federal prisoners serving sentences for crimes committed after November 1, 1987.

DATES: *Effective Date:* October 2, 1995. Comments must be submitted by October 31, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.