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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9610]

RIN 1545-BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons.

DATES: Effective date. These regulations are effective **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].**

Applicability dates. For dates of applicability, see §§1.1471-1(c); 1.1471-2(a)(1); 1.1471-2(a)(2)(i), (ii), (iii)(A); 1.1471-2(a)(4)(ii); 1.1471-3(d)(1); 1.1471-3(d)(4)(i), (ii); (iv); 1.1471-3(d)(6)(v); 1.1471-3(d)(11)(viii)(A); 1471-3(d)(12)(iii)(B); 1471-3(e)(3)(ii); 1471-3(e)(4)(vii)(B); 1.1471-4(b)(1), (4); 1.1471-4(d)(7); 1.1471-4(e)(2)(v); 1.1471-4(e)(3)(iv); 1.1471-5(f)(2)(iv); 1.1471-6(i); 1.1472-1(b); 1.1473-

1(a)(1)(ii) and 1.1473-1(a)(4)(vi); 1.1474-1(d)(4)(iii)(C) and 1.1474-1(i); 1.1474-2(c); 1.1471-3(c); 1.1474-4(b); 1.1474-5(c); 1.1474-6(f); 1.1474-7(c); 301.1474-1(e).

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains final amendments to the Income Tax Regulations (CFR parts 1 and 301) under sections 1471 through 1474 of the Code (commonly known as the Foreign Account Tax Compliance Act, or FATCA). On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 (the HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the Internal Revenue Service (IRS) regarding their United States accounts (U.S. accounts), and on certain payments to certain nonfinancial foreign entities (NFFEs) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. Since the enactment of chapter 4, the Department of the Treasury (Treasury Department) and the IRS have issued preliminary guidance on the implementation of chapter 4. See Notice 2010-60 (2010-37 I.R.B. 329), Notice 2011-34 (2011-19 I.R.B. 765), and Notice 2011-53

(2011-32 I.R.B. 124) (collectively, the FATCA Notices). The FATCA Notices are available at IRS.gov.

On February 15, 2012 (77 FR 9022), the Treasury Department and the IRS published a notice of proposed rulemaking (the proposed regulations) addressing chapter 4's due diligence, withholding, reporting, and associated requirements. On October 24, 2012, the Treasury Department and the IRS released Announcement 2012-42, which announced the intention to amend certain provisions of the proposed regulations in adopting the final regulations.

The Treasury Department and the IRS received numerous comments in response to the proposed regulations, and a public hearing on the proposed regulations was held on May 15, 2012. The comments received in writing and at the public hearing were carefully considered in developing these final regulations.

II. Chapter 4 Policy in the Context of the U.S. Federal Income Tax Laws

U.S. taxpayers' investments have become increasingly global in scope. FFIs now provide a significant proportion of the investment opportunities for, and act as intermediaries with respect to the investments of, U.S. taxpayers. Like U.S. financial institutions, FFIs are generally in the best position to identify and report with respect to their U.S. customers. Absent such reporting by FFIs, some U.S. taxpayers may attempt to evade U.S. tax by hiding money in offshore accounts. To prevent this abuse of the U.S. voluntary tax compliance system and address the use of offshore accounts to facilitate tax evasion, it is essential

in today's global investment climate that reporting be available with respect to both the onshore and offshore accounts of U.S. taxpayers. This information reporting strengthens the integrity of the U.S. voluntary tax compliance system by placing U.S. taxpayers that have access to international investment opportunities on an equal footing with U.S. taxpayers that do not have such access or otherwise choose to invest within the United States.

To this end, chapter 4 extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. Chapter 4 also imposes increased disclosure obligations on certain NFFEs that present a high risk of U.S. tax avoidance. In addition, chapter 4 provides for withholding on FFIs and NFFEs that do not comply with the reporting and other requirements of chapter 4. This withholding generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, and generally may be refunded to the extent the withholding exceeds such liability. An FFI that does not comply with the requirements of section 1471(b), however, and that beneficially owns the payment from which tax is withheld under chapter 4, may not receive a credit or refund of such tax except to the extent required by a treaty obligation of the United States.

III. Statutory Provisions

The following discussion briefly explains the statutory provisions of FATCA, which are implemented by these regulations. Section 1471(a) requires any withholding agent to withhold 30 percent of any withholdable payment to an

FFI that does not meet the requirements of section 1471(b). A withholdable payment is defined in section 1473(1) to mean, subject to certain exceptions: (i) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

An FFI meets the requirements of section 1471(b) if it either enters into an agreement (an FFI agreement) with the IRS under section 1471(b)(1) to perform certain obligations or meets requirements prescribed by the Treasury Department and the IRS to be deemed to comply with the requirements of section 1471(b). An FFI is defined as any financial institution that is a foreign entity, other than a financial institution organized under the laws of a possession of the United States (generally referred to as a U.S. territory in this preamble). For this purpose, section 1471(d)(5) defines a financial institution as, except to the extent provided by the Secretary, any entity that: (i) accepts deposits in the ordinary course of a banking or similar business; (ii) as a substantial portion of its business, holds financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Section 1471(b)(1)(A) and (B) requires an FFI that enters into an FFI agreement (a participating FFI) to identify its U.S. accounts and comply with verification and due diligence procedures prescribed by the Secretary. A U.S. account is defined under section 1471(d)(1) as any financial account held by one or more specified United States persons, as defined in section 1473(3), (specified U.S. persons) or United States owned foreign entities (U.S. owned foreign entities), subject to certain exceptions. Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. A U.S. owned foreign entity is defined in section 1471(d)(3) as any foreign entity that has one or more substantial U.S. owners (as defined in section 1473(2)).

A participating FFI is required under section 1471(b)(1)(C) and (E) to report certain information on an annual basis to the IRS with respect to each U.S. account and to comply with requests for additional information by the Secretary with respect to any U.S. account. The information that must be reported with respect to each U.S. account includes: (i) the name, address, and taxpayer identifying number (TIN) of each account holder who is a specified U.S. person (or, in the case of an account holder that is a U.S. owned foreign entity, the name, address, and TIN of each specified U.S. person that is a substantial U.S. owner of such entity); (ii) the account number; (iii) the account balance or value; and (iv) except to the extent provided by the Secretary, the gross receipts and

gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide). In lieu of reporting account balance or value and reporting gross receipts and gross withdrawals or payments, a participating FFI may, subject to conditions provided by the Secretary, elect under section 1471(c)(2) to report the information required under sections 6041, 6042, 6045, and 6049 as if such institution were a U.S. person and each holder of such U.S. account that is a specified U.S. person or U.S. owned foreign entity were a natural person and citizen of the United States. If foreign law would prevent the FFI from reporting the required information absent a waiver from the account holder, and the account holder fails to provide a waiver within a reasonable period of time, the FFI is required under section 1471(b)(1)(F) to close the account.

Section 1471(b)(1)(D)(i) requires a participating FFI to withhold 30 percent of any passthru payment to a recalcitrant account holder or to an FFI that does not meet the requirements of section 1471(b) (nonparticipating FFI). A passthru payment is defined in section 1471(d)(7) as any withholdable payment or other payment to the extent attributable to a withholdable payment. Section 1471(d)(6) defines a recalcitrant account holder as any account holder that fails to provide the information required to determine whether the account is a U.S. account, or the information required to be reported by the FFI, or that fails to provide a waiver of a foreign law that would prevent reporting. A participating FFI may, subject to such requirements as the Secretary may provide, elect under section 1471(b)(3) not to withhold on passthru payments, and instead be subject to withholding on

payments it receives, to the extent those payments are allocable to recalcitrant account holders or nonparticipating FFIs. Section 1471(b)(1)(D)(ii) requires a participating FFI that does not make such an election to withhold on passthru payments it makes to any participating FFI that makes such an election.

Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group, as defined in section 1471(e)(2).

Section 1471(f) exempts from withholding under section 1471(a) certain payments beneficially owned by certain persons, including any foreign government, international organization, foreign central bank of issue, or any other class of persons identified by the Secretary as posing a low risk of tax evasion. Section 1472(a) requires a withholding agent to withhold 30 percent of any withholdable payment to an NFFE if the payment is beneficially owned by the NFFE or another NFFE, unless the requirements of section 1472(b) are met with respect to the beneficial owner of the payment. Section 1472(d) defines an NFFE as any foreign entity that is not a financial institution as defined in section 1471(d)(5).

The requirements of section 1472(b) are met with respect to the beneficial owner of a payment if: (i) the beneficial owner or payee provides the withholding agent with either a certification that such beneficial owner does not have any substantial U.S. owners, or the name, address, and TIN of each substantial U.S. owner; (ii) the withholding agent does not know or have reason to know that any

information provided by the beneficial owner or payee is incorrect; and (iii) the withholding agent reports the information provided to the Secretary.

Section 1472(c)(1) provides that withholding under section 1472(a) does not apply to payments beneficially owned by certain classes of persons, including any class of persons identified by the Secretary. In addition, section 1472(c)(2) provides that withholding under section 1472(a) does not apply to any class of payment identified by the Secretary for purposes of section 1472(c) as posing a low risk of tax evasion.

Section 1474(a) provides that every person required to withhold and deduct any tax under chapter 4 is made liable for such tax and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of chapter 4. In general, the beneficial owner of a payment is entitled to a refund for any overpayment of tax actually due under other provisions of the Code. However, with respect to any tax properly deducted and withheld under section 1471 from a payment beneficially owned by an FFI, section 1474(b)(2) provides that the FFI is not entitled to a credit or refund, except to the extent required by a treaty obligation of the United States (and, if a credit or refund is required by a treaty obligation of the United States, no interest shall be allowed or paid with respect to such credit or refund). In addition, section 1474(b)(3) provides that no credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under chapter 4 unless the beneficial owner of the payment provides the Secretary with such information as the Secretary may require to determine whether such beneficial

owner is a U.S. owned foreign entity and the identity of any substantial U.S. owners of such entity.

Section 1474(c) provides that information provided under chapter 4 is confidential under rules similar to section 3406(f), except that the identity of an FFI that meets the requirements of section 1471(b) is not treated as return information for purposes of section 6103.

Section 1474(d) provides that the Secretary shall provide for the coordination of chapter 4 with other withholding provisions under the Code, including providing for the proper crediting of amounts deducted and withheld under chapter 4 against amounts required to be deducted and withheld under other provisions.

Section 1474(f) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, chapter 4.

IV. Balanced and Integrated Approach to Implementing Chapter 4

Chapter 4 grants the Secretary of the Treasury broad regulatory authority to prescribe rules and procedures relating to the diligence, reporting, and withholding obligations of the statute. These final regulations exercise this authority by providing specific operational guidelines for implementing FATCA in a manner consistent with its principal policy objectives. Recognizing that there are costs associated with the implementation of any new withholding and reporting regime, the Treasury Department and the IRS solicited comments and

met extensively with stakeholders to develop an implementation approach that achieves an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. This engagement resulted in hundreds of constructive comments from and numerous productive meetings with stakeholders. While the comments covered a broad range of issues relating to the implementation of FATCA, the vast majority of commenters expressed concerns regarding the costs and burdens associated with implementing FATCA and the legal impediments to compliance in a number of jurisdictions. Comments also expressed concerns regarding the procedural and systems aspects of registering and reporting.

The Treasury Department and the IRS carefully considered these comments and established three avenues for addressing the principal concerns regarding burdens, legal impediments, and technical implementation. The first avenue was to adopt a risk-based approach to implementing the statute that effectively addresses policy considerations, eliminates unnecessary burdens, and, to the extent possible, builds on existing practices and obligations. The second avenue was to collaborate with foreign governments to develop an alternative intergovernmental approach to implementing chapter 4 that removes legal impediments, allows for alignment and coordination with local law reporting practices, and achieves further burden reductions. The third avenue was to develop administrative approaches to simplify the process for registering and entering into an agreement with the IRS in order to minimize operational costs associated with collecting and reporting FATCA information.

A. Targeted Regulations

These final regulations address potential administrative burdens associated with FATCA compliance by adopting a risk-based and targeted approach to implement the statute with respect to scope, diligence, and timing. In particular, with respect to scope, consistent with the objectives of the statute, the regulations limit the institutions, obligations, and accounts subject to FATCA to more specifically target concerns and address practical considerations. For example, the final regulations refine the scope of FATCA in the following ways:

- Expansion of Grandfather Rule for Certain Obligations. To promote the orderly implementation of FATCA, the final regulations exempt from chapter 4 withholding all obligations outstanding on January 1, 2014, and any associated collateral. In addition, because evolving areas of the law may create chapter 4 withholding obligations in the future and create uncertainty and risk in the meantime, the final regulations address obligations (and associated collateral) that may give rise to withholdable payments through future regulations under section 871(m) (relating to dividend equivalent payments) or to foreign passthru payments under the chapter 4 foreign passthru payment rules. Such obligations are grandfathered if the obligations are outstanding at any point prior to six months after the implementing regulations are published.

- Scope of Covered Financial Institutions. In response to comments, the final regulations treat passive entities that are not professionally managed as NFFEs rather than as FFIs. The final regulations also provide

appropriate exemptions for financial institutions and certain passive NFFEs that are part of a nonfinancial group of companies and that support the operations of the group.

- Expansion of Deemed Compliant and Other Exempt Categories. The final regulations expand the categories of FFIs that are deemed to comply with FATCA without the need to enter into an agreement with the IRS in order to focus the application of FATCA on higher-risk financial institutions that provide services to the global investment community. In addition, the final regulations expand the scope of retirement funds that are considered exempt beneficial owners the income of which is not subject to chapter 4 withholding.

With respect to diligence, the final regulations reduce the administrative burdens associated with identifying U.S. accounts by calibrating due diligence requirements based on the value and risk profile of the account, and by permitting FFIs in many cases to rely on information they already collect. For example, the final regulations reduce the burdens associated with identifying U.S. accounts in the following ways:

- Accounts exempt from review. The final regulations exempt from review entirely all preexisting accounts held by individuals with a balance or value of $50,000 or less. This threshold is raised to $250,000 for preexisting accounts held by entities and for preexisting accounts that are cash value insurance and annuity contracts. In addition, the final regulations exempt

insurance contracts with a balance or value of $50,000 or less from treatment as financial accounts.

- Reduced diligence and documentation rules for lower value preexisting accounts. In the case of preexisting accounts with a balance or value of $1,000,000 or less, the final regulations permit a participating FFI to determine whether any of its accounts held by individuals are U.S. accounts based solely on a search of electronically searchable account information for certain U.S. indicia. In addition, for such accounts held by passive NFFEs, the final regulations allow a withholding agent to rely on its review conducted for anti-money laundering due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining a certification.
- Reliance on self-certification. In the case of accounts held by entities, the final regulations expand the ability of FFIs to rely on a self-certification from an account holder as to its chapter 4 status.

Finally, with respect to timing, the final regulations allow reasonable timeframes to review existing accounts and implement FATCA's obligations in stages to minimize burdens and costs consistent with achieving the statute's compliance objectives. For example:

- Time allowed for review of pre-existing accounts. The final regulations treat all accounts maintained by an FFI prior to January 1, 2014, as preexisting accounts. In addition, the final regulations allow participating

FFIs and withholding agents until December 31, 2015, to document account holders and payees that are not prima facie FFIs.

- Phased implementation of reporting. The final regulations modify the due date for the first information report by requiring participating FFIs to file the first information reports with respect to the 2013 and 2014 calendar years not later than March 31, 2015.

- Phased implementation of withholding on passthru payments and gross proceeds. The final regulations exempt from withholding foreign passthru payments and gross proceeds from sales or dispositions of property occurring before January 1, 2017.

B. Intergovernmental Agreements

1. In general

In many cases, foreign law would prevent an FFI from reporting directly to the IRS the information required by the FATCA statutory provisions and these regulations, thus potentially exposing the FFI to withholding. Such an outcome would be inconsistent with FATCA's objective to address offshore tax evasion through increased information reporting. To overcome these legal impediments, the Treasury Department has collaborated with foreign governments to develop two alternative model intergovernmental agreements that facilitate the effective and efficient implementation of FATCA in a manner that removes domestic legal impediments to compliance, fulfills FATCA's policy objectives, and further reduces burdens on FFIs located in partner jurisdictions.

The first model intergovernmental agreement was published on July 26, 2012. A partner jurisdiction signing an agreement with the United States based on the first model (Model 1 IGA) agrees to adopt rules to identify and report information about U.S. accounts that meet the standards set out in the Model 1 IGA. FFIs covered by a Model 1 IGA that are not otherwise excepted or exempt pursuant to the agreement must identify U.S. accounts pursuant to due diligence rules adopted by the partner jurisdiction and report specified information about the U.S. accounts to the partner jurisdiction. The partner jurisdiction then exchanges this information with the IRS on an automatic basis. These standards ensure that the IRS will receive the same quality and quantity of information about U.S. accounts from FFIs covered by a Model 1 IGA as it receives from FFIs applying these final regulations.

A second model intergovernmental agreement was published on November 14, 2012. A partner jurisdiction signing an agreement with the United States based on the second model (Model 2 IGA) agrees to direct and enable all FFIs that are located in the jurisdiction, and that are not otherwise excepted or exempt pursuant to the Model 2 IGA, to register with the IRS and report specified information about U.S. accounts directly to the IRS in a manner consistent with chapter 4 and these final regulations, except as expressly modified by the Model 2 IGA. In the case of certain recalcitrant account holders, the information reported to the IRS by FFIs covered by a Model 2 IGA is supplemented by government-to-government exchange of information.

Both Model 1 IGAs and Model 2 IGAs (together, IGAs) contemplate that the partner jurisdiction will require all financial institutions that are located in the jurisdiction, and that are not otherwise excepted or exempt pursuant to the agreement, to identify and report information about U.S. accounts. In consideration of the full cooperation by the partner jurisdiction, the model agreements contemplate a number of simplifications and burden reductions associated with the application of FATCA in the partner jurisdiction. The Treasury Department and the IRS believe that IGAs represent efficient and effective ways of implementing the requirements of chapter 4 and will continue to conclude bilateral agreements based on the two models with interested jurisdictions. In addition, the Treasury Department and the IRS continue to receive comments strongly supporting the approach to FATCA implementation embodied in the IGAs. The Treasury Department and the IRS remain committed to working cooperatively with foreign jurisdictions on multilateral efforts to improve transparency and information exchange on a global basis.

2. Interaction of IGAs with the Final Regulations

FFIs covered by a Model 1 IGA, and that are in compliance with local laws implemented to identify and report U.S. accounts in accordance with the terms of the Model 1 IGA, will be treated as satisfying the due diligence and reporting requirements of chapter 4. Accordingly, consistent with the terms of the Model 1 IGA, these FFIs do not need to apply the final regulations for purposes of complying with and avoiding withholding under FATCA. In certain cases prescribed in the Model 1 IGA, the laws of the partner jurisdiction may allow the

resident FFI to elect to apply provisions of these regulations instead of the rules otherwise prescribed in the Model 1 IGA.

FFIs covered by a Model 2 IGA with the United States will be required to implement FATCA in the manner prescribed by these regulations except to the extent expressly modified by the Model 2 IGA. The final regulations accommodate such variations.

C. Streamlined Registration and Technical Implementation

FFIs registering with the IRS will be able to do so through a secure online web portal, the FATCA Registration Portal (Portal), from anywhere in the world. The Portal is designed to accomplish an entirely paperless registration process. Registering FFIs will be able to use the Portal to register their chapter 4 status (such as participating FFI or reporting Model 1 FFI (both as defined in the final regulations)), manage their registration information, and, as appropriate, agree to the terms of or make the representations required for their status. The Portal will also facilitate electronic communication between the IRS and FFIs and other registrants. Registered FFIs designated as leads of an expanded affiliated group will be able to use the Portal to manage the registration status of group members. The Portal will also be used by registering FFIs that are already Qualified Intermediaries (QIs) to renew their QI status. An FFI's submission and maintenance of registration information through the Portal will maximize processing efficiencies, minimize errors, and ensure expedient issuance of a Global Intermediary Identification Number ("GIIN"). An FFI will use its GIIN to establish its chapter 4 status for withholding purposes and to identify the

institution for reporting purposes under the final regulations. The IRS currently contemplates that the GIIN may also be used by reporting Model 1 FFIs to satisfy reporting requirements under local law and is discussing this possibility with its Model 1 IGA partners. With regard to reporting, the IRS is also discussing with partner jurisdictions the possibility of adopting a single format for reporting FATCA information, whether that information is reported directly to the IRS or to the tax administration in a Model 1 IGA jurisdiction.

The IRS also anticipates that the certifications of compliance required to be made by responsible officers pursuant to §§1.1471-4(c)(7) and 1.1471-4(f)(3) will be made electronically through the Portal, resulting in similar efficiencies.

Summary of Comments and Explanation of Revisions

I. In General

The Treasury Department and the IRS received a number of general comments requesting improvements to the readability of the proposed regulations. In response, the Treasury Department and the IRS made substantial changes in the final regulations to simplify and clarify the chapter 4 rules. In addition, the Treasury Department and the IRS received numerous specific comments regarding the proposed regulations and made numerous changes to the final regulations in response to those comments.

The following discussion addresses the significant changes in the final regulations from the proposed regulations. To facilitate this discussion, the defined terms from §1.1471-1(b) are used throughout.

II. Comments and Changes to §1.1471-1 -- Scope of Chapter 4 and Definitions

The chapter 4 definitions have been revised to reflect the IGAs and other changes adopted in the final regulations. Revisions of the definitions are discussed as relevant in the succeeding sections of this preamble.

III. Comments and Changes to §1.1471-2 -- Requirement to Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

A. Grandfathered Obligations

Comments requested modifications to the scope of grandfathered obligations to facilitate market transition and allow time for adapting master agreements and collateral arrangements in light of the IGAs, the future issuance of guidance under section 871(m), and other systems developments. In response, the final regulations provide that grandfathered obligations consist of: (1) any obligation outstanding on January 1, 2014; (2) any obligation that produces withholdable payments solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder and that is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; and (3) any agreement requiring a secured party to

make payments with respect to collateral securing one or more grandfathered obligations (even if the collateral is not itself a grandfathered obligation). If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating (pro rata by value) the collateral (or, in the case of a pool of collateral, each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral).

In addition, the final regulations provide that an obligation will not give rise to a foreign passthru payment if it is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the Federal Register. Comments also requested clarification of the outstanding date of a debt instrument that is reopened in a qualified reopening under §1.1275-2(k). For debt obligations, the final regulations determine the date the obligation is outstanding based on the issue date of the debt. Thus, whether debt issued in a qualified reopening will be treated as a grandfathered obligation depends on the issue date of the original debt, which is the issue date of the debt issued in the qualified reopening.

The final regulations also provide that the date a non-debt obligation is outstanding is the date a legally binding agreement is executed. Thus, a line of credit or a revolving credit facility for a fixed term may qualify as an obligation provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided.

In response to comments regarding insurance contracts, the final regulations provide that: (1) a life insurance contract payable no later than upon the death of the insured individual(s) is an obligation that may qualify as a grandfathered obligation; and (2) premiums paid for an insurance contract or annuity contract that is treated as a grandfathered obligation are treated as payments made under a grandfathered obligation.

Finally, comments requested provisions to simplify a withholding agent's determination of whether an obligation is grandfathered. Accordingly, the final regulations provide that: (1) a withholding agent, other than the issuer of the obligation (or an agent of the issuer) may, absent actual knowledge, rely on a written statement by the issuer of the obligation to determine whether such obligation meets the requirements for grandfathered treatment; (2) a withholding agent is required to treat a modification as material only if the withholding agent knows or has reason to know that such modification was material; and (3) a withholding agent, other than the issuer of the obligation (or an agent of the issuer), absent actual knowledge, will have reason to know of a material modification if it receives a disclosure thereof from the issuer of the obligation (or from such issuer's agent).

B. Other Changes to the Withholding Provisions

Comments requested that the withholding provisions under chapter 4 conform with certain withholding provisions of chapter 3. In addition, comments requested that the election to be withheld upon under section 1471(b)(3) and provided in the proposed regulations be available on an account-by-account

basis. In response to these comments, the final regulations: (1) clarify the exception to withholding when a withholding agent lacks control, custody, or knowledge of a payment; (2) treat a payment as a withholdable payment in the absence of knowledge of its source or character, or allow for up to a one-year escrow of 30 percent of the payment pending a determination of the relevant facts; and (3) permit the election to be withheld upon pursuant to §1.1471-2(a)(2)(iii) to be made on an account-by-account basis, provided other applicable requirements are satisfied.

IV. Comments and Changes to §1.1471-3 -- Identification of Payee

A. Documentation Alternatives

1. In General

Comments requested that the final regulations generally permit a withholding agent to rely upon a withholding certificate to establish the chapter 4 status of a payee without obtaining additional documentary evidence, unless such documentary evidence is required under chapter 3. This comment was adopted. The final regulations further expand the types of documentary evidence upon which a withholding agent may rely with respect to offshore obligations, including government websites and reports from government agencies. For preexisting obligations, the final regulations permit a withholding agent to rely on information previously recorded in the withholding agent's files, in addition to standardized industry codes, in determining the chapter 4 status of the payee.

For these purposes, a standardized industry code may be any coding system employed by the withholding agent.

2. Written Statements

Comments requested that the final regulations permit reliance on written statements without additional documentation for offshore obligations that do not generate payments of U.S. source FDAP income (such as a depository account maintained outside of the United States by an FFI) and enumerate the elements they must contain. This comment was adopted. A written statement may also be relied upon with respect to an offshore obligation that generates payments of U.S. source FDAP income if it is accompanied by documentary evidence establishing the foreign status of the person named on the written statement.

Comments noted that signed documentation outside of the United States generally does not require signature under penalties of perjury, and that such a requirement would depart from current AML due diligence procedures. The final regulations remove the penalties of perjury requirement for written statements used as documentation for payments made outside of the United States on offshore obligations, other than for payments of U.S. source FDAP income.

3. Substitute and Non-IRS Forms

Comments requested the ability to use substitute forms, including forms prepared or filled out in a foreign language. In response, the final regulations provide that substitute forms may be both prepared in and filled out in a foreign language, provided the withholding agent furnishes the IRS with a translated

version upon request. Such substitute forms must contain the same certifications as the official IRS form to the extent relevant. For this purpose, a substitute form for individuals is acceptable, provided that the form contains the required information, including the individual's permanent residence address, all relevant tax identification numbers, and, if not signed under penalties of perjury, the withholding agent has obtained applicable documentary evidence that supports the person's claim of foreign status. Qualifying non-IRS forms may be used within the United States as well as for offshore obligations, and also may be used for purposes of chapter 3 to the extent provided in §1.1441-1(e)(4)(vi).

4. Reliance on Pre-FATCA Form W-8

In response to comments that FFIs would have difficulty obtaining new documentation on all preexisting account holders in a compressed time frame, the final regulations provide that a withholding agent may rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate in certain circumstances.

5. Curing Inconsequential Errors

Comments requested that a minor error in a withholding certificate not invalidate the certificate if the error can be cured with supplemental information already on file for the payee. In response, the final regulations provide that a withholding agent may treat a withholding certificate as valid, notwithstanding an inconsequential error, if it otherwise has sufficient documentation to cure the error that does not contradict the information on the withholding certificate. A

failure to make a required certification, or to provide a country of residence (or country under which treaty benefits are sought), is not an inconsequential error.

B. Continuing Validity of Documentation

Comments requested relief from the general requirement to refresh documentation every three years. In response, the final regulations permit documentation to remain valid indefinitely, subject to a change in circumstances, if the chapter 4 status claimed is a specified low-risk category. The Treasury Department and the IRS are considering extending the final regulations' validity rule to chapter 3 in appropriate circumstances (for example, when the payee does not make a claim that withholding under chapter 3 is reduced pursuant to a treaty).

C. Owner-Documented FFIs

In response to comments requesting reduced documentation requirements for the owner-documented FFI provisions, the final regulations make several modifications that also take into account the policy considerations presented by owner-documented FFIs. These modifications include: (1) permitting transitional reliance, subject to certain requirements, on documentation collected for AML due diligence purposes for payments made prior to January 1, 2017, on preexisting obligations; (2) allowing such entities to issue debt interests to an expanded group of holders, provided such debt holders are reported in the same manner as equity holders; (3) simplifying the withholding statement provided for an owner-documented FFI; and (4) providing for indefinite validity for withholding certificates and withholding statements

submitted with respect to obligations having an aggregate value equal to or less than $1,000,000.

D. “Eyeball Test” and Effectively Connected Income Presumption

Comments requested that chapter 4 incorporate the so-called “eyeball test” under chapters 3 and 61 that treats payments inside the United States to certain entities that have “incorporated,” “corporation,” or an indication of status as a financial institution in their names as made to U.S exempt recipients. Moreover, comments noted that withholding agents often already obtain documentary evidence for these entities to satisfy AML due diligence requirements. In response to these comments, the final regulations permit a withholding agent to rely upon documentary evidence obtained with respect to the payee, in lieu of a Form W-9, in order to establish the entity’s status as a U.S. person and rely on the “eyeball test” to determine (to the extent applicable) the payee’s status as other than a specified U.S. person under chapter 4.

Comments also requested that the final regulations incorporate the chapter 3 rules under which withholding agents are permitted to presume that payments made to U.S. branches of certain banks and insurance companies are payments of income that is effectively connected with the conduct of a trade or business within the United States. In response, the regulations permit a withholding agent to presume that a payment made to a U.S. branch of certain banks and insurance companies is a payment of income that is effectively connected with a trade or business within the United States (and thus not a withholdable payment) if the withholding agent obtains a GIIN that enables the

withholding agent to confirm that the FFI is a participating FFI or registered deemed-compliant FFI, as well as an EIN for the U.S. branch that enables the withholding agent to properly report the payment. Conforming changes are anticipated to be made to the presumption rule in chapter 3 to provide consistency with the rule set forth in these regulations.

E. Rules for Offshore Obligations of Funds and New Accounts of Preexisting Customers

Comments requested additional clarity regarding when an interest in an investment fund should be treated as an offshore obligation. Comments also stated that, in general, an investment fund's office is not separate from that of its manager or administrator, and shares issued by investment funds are not "maintained and executed" at a particular office. In response to these comments, the definition of an offshore obligation has been amended to clarify that an offshore obligation also includes an equity interest in a foreign entity if the owner of the interest purchased the interest outside the United States either directly from the foreign entity or from another entity located outside the United States.

Comments also requested that a new account of a preexisting customer be treated as a preexisting obligation. Comments stated that in such cases, withholding agents and FFIs generally do not get additional documentation from the customer because they are not required to do so for AML due diligence purposes. In response to these comments, the final regulations permit a new account of a customer that has a preexisting obligation to be treated as a preexisting obligation, provided that the withholding agent or FFI maintaining the

account also treats the new obligation and the prior obligation as one obligation for purposes of applying AML due diligence, aggregating balances, and applying the standards of knowledge for purposes of chapter 4. The final regulations also permit this treatment to apply on a group basis for expanded affiliated groups and sponsored FFI groups.

F. Standards of Knowledge

Under the final regulations, the standards of knowledge provisions have been modified to allow withholding agents to rely on a claim of status as a participating or registered-deemed compliant FFI based on checking the payee's GIIN against the published IRS FFI list. Prior to January 1, 2015, a withholding agent is not required to confirm GIINs regarding an FFI's claim of status as a reporting Model 1 FFI. However, an FFI will have reason to know that such claim is unreliable if the withholding agent does not have a permanent residence address for the FFI (or address of the relevant branch) in the relevant country that has in effect a Model 1 IGA.

The final regulations further provide: (1) limits, generally conformed with the chapter 3 limits, on a withholding agent's reason to know regarding a payee's claim of status as a foreign person; (2) limits on the review that must be conducted with respect to particular types of documentation, and in particular on the scope of review with respect to preexisting obligations; and (3) further guidance regarding when a payee has made a reasonable explanation regarding the presence of U.S. indicia. The Treasury Department and the IRS intend to

issue guidance under chapter 3 that is consistent with the rules in these regulations regarding such reasonable explanations.

G. Reliance on Presumptions in Lieu of Documentation

Under the final regulations, a withholding agent may choose to rely on presumption rules in lieu of accepting and reviewing documentation of payees. This accommodates withholding agents that are unsure whether the documentation they have obtained is reliable or that do not wish to accept the responsibility associated with the acceptance of the documentation.

H. Consolidation and Sharing of Documentation, and Third-Party Reliance

Comments requested reduction of duplicative documentation requirements, facilitation of documentation sharing, and more detailed rules regarding reliance on agents or third-party service providers. In response, the final regulations adopt the following provisions.

1. Multiple Accounts of the Same Payee

The final regulations provide rules (consistent with chapter 3 in §1.1441-1(e)(4)(ix)(A)) for a withholding agent to rely on documentation for multiple accounts of the same payee if the withholding agent aggregates the balance or value of those accounts (when relevant) and shares information across those accounts for purposes of determining when the withholding agent has actual knowledge or reason to know that the chapter 4 status claimed is inaccurate.

2. Mergers or Bulk Acquisitions

The final regulations provide a temporary six month period during which withholding agents that acquire accounts in a merger or bulk acquisition for value may rely, in the absence of contrary knowledge or a change in circumstances, upon the chapter 4 statuses assigned by a predecessor that is a U.S. withholding agent, a participating FFI, or a reporting Model 1 FFI that has completed all due diligence required under its agreement or pursuant to the applicable Model 1 IGA, provided that the predecessor is not a member of the withholding agent's expanded affiliated group prior to a merger or bulk acquisition, or after a bulk acquisition. At the end of the temporary period, the acquirer may continue to so rely only if the documentation it has, including the acquired documentation, supports the chapter 4 statuses claimed.

3. Common Agents

The final regulations provide rules (consistent with §1.1441-1(e)(4)(ix)(A)(4) and (B)) with respect to sharing and relying upon documentation that has been provided by a common agent for multiple parties, including a fund advisor or principal underwriter that collects documentation for a family of mutual funds. This reliance is made contingent upon the agent also sharing any knowledge regarding inaccuracy or unreliability of the chapter 4 status claims across all the withholding agents with which the agent shares the documentation.

4. Third-Party Data Providers

The final regulations provide rules permitting a withholding agent to rely upon documentation collected with respect to an entity by a third-party data provider, subject to conditions including: (1) the third-party data provider is in the

business of collecting information regarding entities and providing business reports or credit reports to unrelated customers and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity; (2) the third-party data provider collects documentation sufficient to meet the applicable documentation requirements; and (3) the third-party data provider provides notice of changes in circumstances. This provision permits withholding agents to rely upon documentation collected by a third-party data provider, but does not relieve the withholding agent of the obligation to determine whether that documentation is reliable based on the information contained in the documentation and other information in the withholding agent's files.

5. Introducing Brokers

Comments requested that for purposes of chapter 4 a withholding agent be permitted to rely upon certifications regarding a payee's chapter 4 status provided by an introducing broker that is a QI or participating FFI (in addition to introducing brokers who are U.S. persons, as provided under the proposed regulations). In response to these comments, the final regulations permit reliance upon a certification provided by a participating FFI (which includes a QI that is a financial institution) if the participating FFI is acting as an agent of the payee with respect to an obligation and receiving all payments made by the withholding agent with respect to that obligation on behalf of the payee, provided that certain requirements are met and the withholding agent does not know or have reason to know that the broker has not obtained valid documentation as

represented or the information contained in the certification is otherwise inaccurate.

6. Transfer Agents

Comments requested that a transfer agent's obligations as a withholding agent be limited to the obligations of the principal on behalf of which the transfer agent acts in order to avoid duplicative efforts or conflicts between the standards applicable to the transfer agent and the principal. In response, the final regulations provide that merely acting as an agent with respect to a financial account belonging to the principal will not cause the agent to also have a financial account for that customer unless the agent would be treated as having the financial account independent of its actions as an agent. An agent that makes a payment on behalf of a principal is a withholding agent with respect to the payment and, accordingly (as under chapter 3) has a responsibility to determine the chapter 4 status of the payee and withhold, if required. However, because the obligation belongs to the principal, the level of due diligence that must be completed with respect to the obligation is determined by the obligation's status with respect to the principal. In order to minimize any duplicative responsibilities, the final regulations permit the agent to rely (absent contrary knowledge or reason to know) upon documentation collected by the principal or a certification by the principal that appropriate documentation has been collected.

I. Electronic Transmission of Documentation

Comments requested that a withholding agent be permitted to rely upon withholding certificates that are signed with a handwritten signature, scanned into

an electronic device, and then e-mailed to the withholding agent. The final regulations adopt the rule of the proposed regulations, which permits the electronic transmission of a withholding certificate that has been signed with a handwritten signature and then scanned and e-mailed to the withholding agent if the requirements of §1.1441-1(e)(4)(iv) are met. Further, the Treasury Department and the IRS continue to consider whether to retain the confirmation requirements in chapters 3 and 4. In addition, in response to comments, the final regulations do not require that documentary evidence that has been transmitted electronically be a certified or notarized copy.

J. Other Changes Made to Payee Identification Rules

Consistent with a risk-based approach to compliance under chapter 4, the final regulations adopt in whole or part several modifications requested by comments, including modifications to:

(1) Permit documentary evidence that does not contain an address, provided that the documentary evidence contains the person's country of residence or citizenship, and the withholding agent has obtained a permanent residence address for the person.

(2) Include a director, any foreign equivalent of an officer in the United States, and any other person granted written authority as a person authorized to sign a withholding certificate or written statement.

(3) Permit, in lieu of retention of copies of documentation, the retention of notations regarding documentation reviewed and (for obligations that

are not preexisting obligations) any U.S. indicia identified, in the course of AML due diligence.

(4) Treat registered deemed-compliant FFIs as payees under the same circumstances in which participating FFIs are treated as payees.

(5) Treat all excepted NFFEs in the same manner, and provide that any excepted NFFE is the payee, unless it is acting as an agent or intermediary (other than a QI accepting primary withholding responsibility).

(6) Permit the submission of a withholding certificate within 30 days of payment (rather than the 15 days permitted in the proposed regulations) without an affidavit of accuracy as of the time of payment.

(7) Provide a definition for the term standing instructions to pay amounts to include current payment instructions that will repeat without further instructions being provided by the account holder.

(8) Clarify that a withholding statement submitted by a participating FFI or registered deemed-compliant FFI can include pooled information with respect to each class of payees unless payee-specific information is provided for purposes of chapter 3, in which case a chapter 4 status must be provided for each payee that is identified on the withholding statement.

V. Comments and Changes to §1.1471-4 -- FFI Agreement

A. In General

1. FFI Agreement

The Treasury Department and the IRS received comments requesting additional guidance on the requirements of the FFI agreement. In response to these comments, the final regulations set forth all of the substantive requirements applicable to an FFI under the FFI agreement. The final regulations provide the requirements for verifying compliance with the FFI agreement, define an event of default and procedures for remediating of an event of default, allow participating FFIs to file collective refund claims on behalf of certain account holders and payees for amounts overwithheld, and provide procedural requirements if a participating FFI is legally prohibited from reporting or withholding as required under the FFI agreement. In addition, the final regulations do not restrict a participating FFI's ability to terminate an FFI agreement. This responds to comments concerning future withholding requirements for foreign passthru payments, and allows an FFI the flexibility to reconsider its status as further guidance is promulgated.

The Treasury Department and the IRS expect to publish a revenue procedure setting out the terms of an FFI agreement, consistent with these final regulations, coordinating an FFI's obligations under the FFI agreement with chapter 3 obligations and with the provisions of any applicable IGA, and including administrative provisions such as those relating to termination, renewal, and modification of the agreement.

2. Effective Date of the FFI Agreement

Many comments were received regarding the effective date provided in the proposed regulations for implementing the chapter 4 rules. Comments

requested a delay of the effective date of the FFI agreement to allow FFIs sufficient time to modify systems and to implement the required account opening procedures. In response to comments, the final regulations delay the effective date of the FFI agreement until December 31, 2013, for all participating FFIs that receive a GIIN prior to January 1, 2014. This change aligns the effective date of, and due diligence periods under, the FFI agreement with the timelines provided under the IGAs.

3. U.S. Branches of Participating FFIs

Comments requested further clarifications on the application of the chapter 4 rules to U.S. branches of participating FFIs. In response to these comments, the final regulations provide comprehensive rules for U.S. branches of participating FFIs. A U.S. branch of a participating FFI that is treated as a U.S. person, as provided in §1.1441-1(b)(2)(iv), is subject to special requirements to fulfill the withholding, due diligence, and reporting requirements of a U.S. financial institution to the extent provided under chapters 4 and 61 and section 3406(a). Additionally, such a U.S. branch is required to file a separate Form 1042 to report amounts subject to reporting under chapter 4 and any taxes withheld.

A U.S. branch of a participating FFI that is not treated as a U.S. person is required to fulfill the general requirements set forth in §1.1471-4 for withholding, due diligence, and reporting.

B. Withholding by FFIs

The final regulations provide that an FFI is not required to withhold on foreign passthru payments until the later of January 1, 2017, or six months after the date of publication in the Federal Register of final regulations defining the term foreign passthru payments.

Comments requested more comprehensive rules concerning the withholding requirements of a participating FFI under the FFI agreement. In response to these comments, the final regulations provide that a participating FFI may apply the exceptions from withholding provided in §1.1471-2, including the exception for grandfathered obligations and the transitional withholding requirements for payments made to prima facie FFIs. In addition, the proposed regulations did not provide detail on the coordination of withholding under sections 1471(a) and 1472 with withholding under section 1471(b). The final regulations provide that a participating FFI that satisfies its obligations under §1.1471-4(b) to withhold on withholdable payments made to payees that are nonparticipating FFIs and recalcitrant account holders will be deemed to satisfy its obligations under sections 1471(a) and 1472 with respect to such payees and account holders.

C. Due Diligence

The final regulations adopt numerous comments intended to assist participating FFIs in complying with their obligations to perform due diligence to identify and document account holders.

1. General Requirements for Due Diligence

In response to comments, the final regulations modify the general requirements for identifying and documenting account holders in a number of ways. For example, the final regulations modify the record retention requirements for offshore obligations to allow an FFI to retain a notation in its files regarding the documentary evidence examined, rather than retaining a copy of the documentary evidence itself, unless the FFI is required pursuant to its AML due diligence to retain copies of documentation reviewed. In such cases, the final regulations no longer require a notation of the name of the person who reviewed the documentary evidence.

The final regulations also provide special procedures to identify and document accounts acquired in mergers or bulk acquisitions for value from another financial institution. For accounts acquired from nonparticipating FFIs or deemed-compliant FFIs that do not apply the final regulations' due diligence procedures, the final regulations allow a participating FFI to apply preexisting account identification and documentation procedures. For accounts acquired from another participating FFI, certain deemed-compliant FFIs, or U.S. financial institutions, the final regulations allow a participating FFI to rely on the chapter 4 determinations made by such transferor financial institution, subject to certain conditions. Additionally, the final regulations in §1.1471-4 incorporate by reference the revised rules for documentation standards, validity periods of documentation, and reliance on valid documentation collected by other withholding agents provided in §1.1471-3(c).

2. Account of a Preexisting Customer and Sharing of Account Documentation

Comments requested that a new account opened at an FFI by a customer that has a preexisting account with the FFI be treated as a preexisting account rather than a new account. Comments stated that in such cases, FFIs generally do not obtain documentation from the customer for AML due diligence purposes. Recognizing the substantial burden for the FFI to separately document an existing customer, the final regulations revise the definition of a preexisting obligation to permit a new account of a customer that has a preexisting account to be treated as a preexisting account provided that the FFI maintaining the account also treats the new account and the preexisting account as one account for purposes of applying AML due diligence, aggregating balances, and applying the standards of knowledge for purposes of chapter 4 to all such accounts. The final regulations allow this treatment on a group basis for expanded affiliated groups and sponsored FFI groups that share documentation within the group. In addition, to address comments concerning the burden of documenting multiple accounts of a customer generally (regardless of whether any such accounts are preexisting accounts), the final regulations allow a participating FFI, participating FFI group, or a sponsored FFI group to apply the provisions for documentation sharing systems described in §1.1471-3(c)(8).

3. Change in Circumstances

In response to comments that the obligations of a participating FFI following a change in circumstances were unclear in the proposed regulations,

the final regulations provide that an FFI must retain a record of documentation to establish the account holder's chapter 4 status within the earlier of 90 days from the date of a change in circumstances or the date a withholdable payment or foreign passthru payment is made to the account or, if unable to do so, must treat such account as held by a recalcitrant account holder or nonparticipating FFI (as applicable).

4. Entity Accounts

Comments indicated that for certain investment entities, direct investment may be held in bearer form so that the investment entity is unable to document such account holders until the time of payment. The final regulations allow a participating FFI that is an investment entity to document an account holder of a preexisting account that is in bearer form at the time of payment.

The final regulations clarify that in addition to documenting the entity account holder, a participating FFI is also required to document the payee (if other than the account holder) to the extent necessary to determine whether withholding applies. For example, if an account is held by an NFFE that is a flow-through entity (other than a WP, WT, or excepted NFFE), the participating FFI is also required to identify and document the partners, owners, or beneficiaries of such entity to determine if withholding is required with respect to payments of U.S. source FDAP income made to such account.

5. Individual Accounts

a. New Accounts

Comments requested alternative documentation options to address difficulties in obtaining U.S. tax forms from account holders. In response to these comments, the final regulations modify the identification and documentation procedures of participating FFIs with respect to individual accounts that are new accounts to permit certain alternative forms of documentation. For example, the final regulations permit a participating FFI to rely on information provided by a third-party credit agency to establish an account holder's foreign status when certain conditions are met.

The final regulations adopt the requirement in the proposed regulations for a participating FFI to review all information collected in connection with the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes, to determine if an account holder's claim of foreign status is unreliable or incorrect. The final regulations clarify that a participating FFI is required in such reviews to apply the standards of knowledge provided in §1.1471-3(e) for offshore obligations held by individuals. If the participating FFI is not able to establish an account holder's status as a foreign person, the final regulations require the participating FFI to retain a record of a U.S. TIN and, if necessary, a valid and effective waiver described in section 1471(b)(1)(F)(i) to establish an account holder's status as a U.S. person. The final regulations allow a participating FFI to retain a record of a U.S. TIN by any means (that is, not exclusively by retaining a record of a Form W-9).

The final regulations also provide alternative identification and documentation procedures for certain cash value insurance or annuity contracts. Comments noted that when a group life insurance contract or group annuity contract is issued to an employer and individual employees are the insured/beneficiaries, the insurance company does not have a direct relationship with the employee/certificate holders at inception of the contract. In response, the final regulations do not require the insurance company to document each employee until the date on which an amount is payable to an employee/certificate holder or beneficiary if the participating FFI obtains a certification from an employer that no employee/certificate holder (account holder) is a U.S. person and certain other conditions are satisfied (for example, that the number of employees covered under the contract exceeds 25). Comments also requested relief from the requirement to identify and document beneficiaries of cash value insurance contracts. In response, the final regulations provide that a participating FFI may presume that an individual beneficiary (other than the owner) receiving a death benefit with respect to a life insurance contract that is a cash value insurance contract is a foreign person, and is therefore not required to retain a record of documentation from such person, unless the participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person. A participating FFI has reason to know that a beneficiary of a cash value insurance contract is a U.S. person if the information collected by the participating FFI and associated with the beneficiary contains U.S. indicia.

b. Preexisting Accounts

Comments requested clarification with regard to procedures for identifying and documenting preexisting accounts. In response to these comments, the final regulations provide a more detailed explanation of the application of these rules. For example, the final regulations expressly provide that a participating FFI is not required to retain a record of documentation from the account holder until there is a change in circumstances if the identification and documentation procedure specified for preexisting accounts is applied and no U.S. indicia are identified. In addition, the final regulations expressly provide that for preexisting accounts, a participating FFI may apply the identification and documentation procedure for either new accounts or preexisting accounts.

The proposed regulations did not coordinate the rules in §1.1471-3(e) (covering standards of knowledge) with the documentation requirements under §1.1471-4(c) to establish an account holder's foreign status when U.S. indicia are associated with the account. To provide such coordination, §1.1471-4(c) incorporates by reference the standards of knowledge in §1.1471-3(e).

c. Presumption of Status for Individual Accounts

Comments noted that the proposed regulations were unclear concerning the application of the presumption rules to individual account holders of participating FFIs. In response to these comments, the final regulations clarify that the presumption rules of §1.1471-3(f) do not apply to individual account holders of a participating FFI. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within

the time period provided by §1.1471-5(g)(3) (start of recalcitrant account holder status), or, if unable to do so, must treat such account as held by a recalcitrant account holder.

d. Preexisting Individual Accounts Previously Documented

With respect to the exception to the preexisting account identification procedure (other than the relationship manager inquiry) for an account documented as held by foreign individuals for purposes of chapter 61 or the QI, WP, or WT agreement, the final regulations clarify that an individual account holder's foreign status has been documented under chapter 61 if the participating FFI has retained a record of the documentation required under chapter 61 to establish the individual's foreign status and the account received a reportable payment (as defined under section 3406(b)) in any prior year. With respect to QIs, WPs, and WTs, an account holder's foreign status has been documented if the QI, WP, or WT has met the relevant documentation requirements of its agreement with respect to an account holder that received a reportable amount in any year in which the agreement was in effect.

e. Certifications of Responsible Officer

The final regulations retain the requirement in the proposed regulations for a responsible officer to certify, to the best of his/her knowledge after conducting a reasonable inquiry, that the participating FFI does not have any formal or informal practices or procedures in place to assist account holders in avoiding chapter 4, such as advising account holders to split up their accounts to avoid reporting as high-value accounts. Comments requested additional examples of

policies that violate the certification. The final regulations provide such additional examples, including: advising that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; or advising that an account holder remove U.S. indicia from its account information. In response to comments, the final regulations also provide that an e-mail requiring responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices is considered a reasonable inquiry for purposes of the certification.

Comments requested specific timing for making the certifications regarding completion of required due diligence. The final regulations respond to these comments and also simplify and consolidate the certifications. The final regulations provide that these certifications may be made concurrently and no later than 60 days following the date that is two years after the effective date of the FFI agreement. See section V.F.3 of this preamble for a discussion of a responsible officer's periodic certification requirements.

Comments also requested clarification on a responsible officer's responsibilities if he/she could not make the required certification. The final regulations provide that a responsible officer may make a qualified certification stating why the general certification cannot be made and that corrective actions will be taken by the responsible officer.

D. Account Reporting

1. In General

As in the proposed regulations, the final regulations indicate that the FFI that maintains an account is generally responsible for reporting the account in accordance with the reporting rules under §1.1471-4(d). The final regulations add in §1.1471-5 a rule to determine if an FFI is treated as maintaining an account.

The final regulations describe the reporting responsibilities of a sponsoring entity that has agreed to fulfill the reporting requirements of a sponsored FFI and generally require the sponsoring entity to report accounts of the sponsored FFI in the manner the sponsored entity would otherwise be required to report if it were a participating FFI.

2. Account Balance or Value

In response to comments generally requesting that the final regulations accommodate current business practices of FFIs, the final regulations provide that a participating FFI must report the average balance or value of the account to the extent that the FFI reports average balances or values to the account holder for a calendar year and otherwise to report the balance or value of the account as of the end of the calendar year.

3. Payments

The final regulations clarify that any distribution (including a distribution that would be considered a redemption) made to an account holder with respect to a cash value insurance contract or annuity contract must be reported under §1.1471-4(d)(4)(iv)(C) without regard to the U.S. tax treatment.

4. Section 953(d) Insurance Companies and Reporting in a Manner Similar to Section 6047(d)

Comments requested that a foreign insurance company that has made an election under section 953(d) be excluded from the definition of an FFI. The final regulations do not adopt this comment when the foreign insurance company is not licensed to do business in the United States. How a foreign insurance company and its United States shareholders are taxed is immaterial to the need for reporting with regard to insurance or annuity contracts issued by the insurance company to its customers. Therefore, the final regulations provide that the term U.S. person does not include an insurance company that has made an election under section 953(d) if the company is not licensed to do business in any State. However, a foreign insurance company that has made an election under section 953(d) and is licensed to do business in the United States would be considered, for purposes of chapter 4, a U.S. person and, therefore, would remain subject to reporting with respect to its life insurance and annuity contracts under section 6047(d), not chapter 4.

Comments also requested that a foreign insurance company be permitted to satisfy its chapter 4 reporting obligations by reporting under section 6047(d). Permitting a foreign insurance company that is not licensed to do business in the United States to report only the information required under section 6047(d) would provide insufficient reporting for FATCA purposes because section 6047(d) reporting applies only to distributions made under a contract issued by an insurance company licensed to do business under the laws of a State.

In response to the comments, however, the final regulations permit an insurance company participating FFI that is not licensed to do business in the United States to elect to report its chapter 4 account information with respect to its life insurance and annuity contracts in a manner similar to section 6047(d) reporting. Under this election, an insurance company participating FFI reports the sum of: (1) a cash value or annuity contract's account balance or value; and (2) any amount paid under the contract as a "gross distribution" in Box 1 of Form 1099-R. The participating FFI could then check box 2b to indicate the taxable amount is not determined.

5. Special Reporting for Calendar Year 2013

The final regulations incorporate the reporting requirements in Announcement 2012-42, 2012-47 I.R.B. 561 with respect to calendar year 2013. The final regulations provide that if an FFI agreement has an effective date that is on or before December 31, 2014, the participating FFI is required to report U.S. accounts that it maintained during 2013 that are outstanding on December 31, 2013. The final regulations adopt the streamlined reporting rules provided in the proposed regulations. The final regulations also eliminate the proposed regulations' requirement for reporting by September 30, 2014, and instead permit participating FFIs to report for both calendar years 2013 and 2014 on or before March 31, 2015.

E. Expanded Affiliated Group Requirements

The final regulations do not incorporate comments suggesting the sunset date for limited branches and limited FFIs be extended beyond December 31,

2015. The final regulations also do not adopt suggestions to relax the requirement that all members of an expanded affiliated group be participating FFIs, deemed-compliant FFIs, or limited FFIs. The Treasury Department and the IRS believe that IGAs are the appropriate vehicle to address these concerns.

F. Verification

1. In General

The final regulations include the verification and certification requirements for participating FFIs. These verification procedures rely on a responsible officer (or designee) to establish a compliance program that includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement. The participating FFI must subject its compliance program to periodic review. The responsible officer may be any officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in the final regulations. The responsible officer may designate others to implement and oversee the compliance with the verification requirements, but must make any required certifications to the IRS (as described below).

2. Consolidated Compliance Program

In response to comments supporting the approach set forth in Notice 2011-34 for an optional consolidated compliance program, the final regulations provide for such a program. Under the final regulations, a participating FFI,

reporting Model 1 FFI, or U.S. financial institution (compliance FI) may agree to establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of one or more FFIs in the same expanded affiliated group that elect this option (the consolidated compliance group). The consolidated compliance group is not required to include every FFI in the expanded affiliated group, and an expanded affiliated group may have multiple consolidated compliance groups organized under different or the same compliance FI. The final regulations also require a sponsoring entity to act as the compliance FI for all of the FFIs that it sponsors (including any certified deemed-compliant FFIs that it sponsors).

It is anticipated that additional guidance will be provided in either the instructions to the registration system or the FFI agreement for an electing FFI to identify itself as part of a consolidated compliance group and procedures for the responsible officer of the compliance FI to make the required certifications on behalf of the consolidated compliance group.

3. Certification of Compliance

The final regulations require the responsible officer, on behalf of the participating FFI, to periodically certify to the IRS that the FFI is in compliance with the requirements of the FFI agreement. Such certification is required once every three years. In advance of such certification, a participating FFI is required to review its compliance program and its compliance with the requirements of the FFI agreement. In consideration of the results of this review, the responsible officer is required to certify to the IRS that it maintains effective internal controls

and that there were no material failures during the certification period, or any material failures that did occur were corrected. A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement if the failure was the result of a deliberate action by the participating FFI to avoid the requirements of the FFI agreement or was an error attributable to a failure to implement sufficient internal controls. The final regulations provide that a material failure that occurs in limited circumstances will not result in an event of default. If a material failure occurring during the certification period has not been corrected, or if an event of default has occurred, the final regulations provide that a responsible officer may instead make a qualified certification.

4. IRS Review of Compliance

Comments requested guidance on the standards the IRS would apply when requesting additional information from a participating FFI to determine its compliance with its FFI agreement. The final regulations provide for general inquiries under which the IRS contacts the participating FFI to request additional information regarding the information reported on the returns filed by the participating FFI, and for inquiries when the IRS determines in its discretion that there may have been substantial non-compliance with an FFI agreement. The IRS expects that inquiries regarding substantial non-compliance will not be made on a routine basis. If a determination that there may have been substantial non-compliance is made, the IRS may inquire as to the FFI's compliance with certain requirements of the FFI agreement and may request information necessary to verify the participating FFI's compliance with the FFI agreement, such as a

description of the participating FFI's procedures for conducting its periodic review. The IRS may also request the performance of specified review procedures (including an external audit). If the IRS determines, based upon its review, that the FFI has not substantially complied with the requirements of an FFI agreement, it will deliver a notice of event of default.

G. Event of Default

The final regulations define an event of default of the FFI agreement and describe procedures for a participating FFI to remediate an event of default. Comments expressed concern that any failure to comply with an FFI agreement would result in termination of that agreement. In response to these comments, the final regulations clarify that an event of default does not result in automatic termination of the FFI agreement. The final regulations provide that if the IRS becomes aware of an event of default, it will deliver a notice of default to the participating FFI and allow the participating FFI to develop a plan to remediate the event of default. If the participating FFI fails to respond to the notice of default or comply with an agreed-upon remediation plan, the IRS may terminate the FFI's participating FFI status within a reasonable period of time, subject to an FFI's request for reconsideration of termination by written request to the LB&I Director for Foreign Payments Practice.

H. Collective Refunds

The final regulations provide that a participating FFI (or a reporting Model 1 FFI) may file a collective refund claim on behalf of its account holders and

payees that were overwithheld upon under chapter 4, subject to certain conditions and procedural requirements.

I. Legal Prohibitions on Reporting U.S. Accounts and Withholding

In response to comments requesting clarification on whether an FFI can enter into an FFI agreement if foreign law imposes prohibitions on the FFI's ability to report or withhold, the final regulations clarify that an FFI may enter into an FFI agreement if it can meet the requirements of §1.1471-4(i). The final regulations require, however, that if foreign law prohibits a participating FFI from fulfilling its withholding obligations with respect to an account, the participating FFI must close the account within a reasonable time or, if local law prohibits closing the account, the participating FFI must block or transfer the account. Similarly, if a participating FFI is prohibited by foreign law, absent a waiver, from reporting information on an account that it must treat as a U.S. account, the final regulations provide that the participating FFI must request a waiver of foreign law from such account holder and if such waiver is not obtained within a reasonable period of time, the participating FFI must close or transfer such account.

VI. Comments and Changes to §1.1471-5 – Definitions Applicable to Section 1471

A. U.S. Account

Comments requested additional exceptions from the definition of U.S. account for low-value accounts other than preexisting accounts and the

depository account exception provided by section 1471(d)(1)(B). In response to these comments, the Treasury Department and the IRS have provided a $50,000 exception for cash value insurance contracts by amending the definition of financial account, discussed below.

B. Account Holder

Comments requested clarification of whether an entity that is disregarded as an entity separate from its owner under §301.7701-2(c)(2)(i) (disregarded entity) is treated as an account holder. In response to these comments, because the definition of person excludes a disregarded entity, the final regulations clarify that an account held by a disregarded entity shall be treated as held by the person owning such entity.

Comments expressed concern regarding the identification of the account holder of insurance and annuity contracts. The final regulations provide that an insurance or annuity contract that is a financial account is treated as held by each person that can access the contract value (for example, through a loan, withdrawal, or surrender) or change a beneficiary under the contract. If no person can access the contract value or change a beneficiary under the contract, then the contract is treated as held by both the person(s) named in the contract as the owner(s) of the contract and each beneficiary under the contract. When the obligation to pay any benefit under the contract becomes fixed, the person entitled to such benefit is treated as a holder of the contract.

C. Financial Accounts

1. Depository Accounts

In response to comments, the final regulations limit the scope of the term depository account in a number of ways. For example, the final regulations exclude certain escrow accounts established for commercial transactions from treatment as financial accounts. The final regulations also exclude negotiable debt instruments that are traded on a regulated market or over-the-counter market and distributed through financial institutions. In response to comments, the final regulations also clarify the meaning of “any other similar instrument” in the definition of a depository account. The final regulations limit the scope of a depository account to an account for the placing of money (as opposed to the holding of property) in the custody of an entity engaged in a banking or similar business. The final regulations also clarify that a credit balance with respect to a credit card account issued by a credit card company is a depository account.

Comments requested guidance regarding the specific circumstances in which an amount held by an insurance company would be treated as a depository account. The final regulations provide that a depository account includes an amount that an insurance company holds under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon. The final regulations also provide that a depository account does not include an advance premium or premium deposit received by an insurance company, provided the prepayment or deposit relates to an insurance contract for which the premium is payable annually and the amount of the prepayment or deposit does not exceed the annual premium for the contract. Such amounts are

also excluded from cash value for purposes of determining whether a contract is a cash value insurance contract.

2. Equity and Debt Interests

With regard to equity or debt interests in investment entities, the final regulations revise the financial account definition to correspond to the changes discussed below to the definition of FFI for investment entities. Accordingly, the final regulations generally remove from the financial account definition debt or equity interests in investment entities that are described solely in §1.1471-5(e)(4)(i)(A), which are generally investment advisors or asset managers. This treatment parallels the treatment of equity and debt interests in entities that act solely as depository institutions or custodial institutions.

Comments requested that bank holding companies should be treated like depository institutions for purposes of the financial account exclusion for non-regularly traded debt and equity interests to cover cases in which the holding company raises funds for its subsidiaries. Comments noted that these interests are often held through custodial institutions that are in a better position to document the holders and report and withhold on such instruments. The final regulations respond to these comments by generally removing from the definition of financial account debt or equity interests in holding companies and treasury centers of expanded affiliate groups whose aggregate income is derived primarily from active NFFEs, depository institutions, custodial institutions, and insurance companies.

Nevertheless, the final regulations limit the exception from financial account for a debt or equity interest in a holding company or a treasury center so that the exception does not apply in cases in which the debt or equity interest tracks the performance of one or more investment entities described in paragraph §1.1471-5(e)(4)(i)(B) or (C) (generally traders and investment vehicles) or one or more passive NFFEs that are members of entity's expanded affiliated group rather than of the group as a whole. The final regulations also provide anti-abuse rules if the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments, or the interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4.

The proposed regulations provided that an equity or debt interest in certain types of financial institutions would be treated as a financial account only if the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. Comments requested additional guidance regarding when an equity or debt interest would be considered to be determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. The final regulations provide that the value of an interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the amount payable upon redemption of the interest is either secured or determined primarily by reference to assets that give rise to withholdable payments. The value of a debt interest is determined, directly or

indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the debt is convertible into stock of a U.S. person, amounts payable as interest or upon redemption of the debt are determined primarily by reference to profits or assets of a U.S person, or the debt is secured by assets of a U.S. person.

A number of comments were received regarding the exception from financial account status for debt and equity that is regularly traded on an established securities market. The final regulations respond to comments by adopting the definitions provided in the final regulations under section 1472, including the revisions made to those regulations that provide a special rule for the initial year of public offering. The final regulations also clarify that an interest is not regularly traded if the holder of the interest (other than a financial institution acting as an intermediary) is registered on the books of the investment entity. This rule does not apply to the extent a holder's interest is registered prior to January 1, 2014, on the books of the investment entity. The proposed regulations excluded debt or equity interests in an investment entity that are regularly traded because such interests are typically held through other financial institutions, so that reporting by the issuing entity is not necessary to fulfill the purposes of chapter 4. Where that is not the case, the final regulations clarify that such interests are treated as financial accounts. See §1.1471-3(c)(9)(iii), however, for when the entity may rely upon a certification from broker acting as an agent of a payee (including receiving of payments on behalf of the payee from the entity).

3. Accounts Held by Estates

With regard to accounts held by estates, in response to comments, the final regulations conformed the chapter 4 rules with the reporting rules under section 6038D by excepting accounts held by estates from the definition of financial account.

4. Insurance Definitions and Contracts

Comments requested that the definitions of “annuity contract,” “life insurance contract,” and “insurance company” in the proposed regulation be modified to eliminate the need for foreign companies to become proficient in the specialized definitions of these terms under U.S. tax rules defining these products and to accommodate local law definitions and practices. In response to comments, the final regulations replace the references to U.S. tax law rules when defining these terms with plain language definitions and incorporate, where appropriate, references to local law definitions and practices.

Comments also requested that the final regulations clarify when an insurance company is a financial institution or a NFFE, because an insurance company’s reserve activities could cause an insurance company that is not a specified insurance company to qualify as a depository institution, custodial institution, or investment entity. In response to these comments, the final regulations clarify that: (1) an insurance company that is not a specified insurance company must independently determine whether it is a depository institution, custodial institution, or investment entity; (2) an insurance company’s reserve activities with respect to its insurance contracts and annuity contracts are

not taken into consideration in determining whether the company is a depository institution, custodial institution, or investment entity; and (3) an insurance company that is not a financial institution is a NFFE.

The final regulations also respond to comments by expanding the exclusion from financial account status for certain term life insurance contracts. Because mortality risk under an insurance contract increases as the insured ages, the final regulations permit increasing periodic premium payments. To prevent front loading premiums, however, the final regulations require that the premiums be payable at least annually during the period the contract is in existence or until the insured attains age 90, and that the premiums do not decrease over time.

In addition, the Treasury Department and the IRS did not accept comments requesting that return of premium be permitted to the extent that it did not exceed the aggregate premiums paid for the contract, without regard to mortality, morbidity, and expense charges. The Treasury Department and the IRS believe such instruments implicate the policy objectives of chapter 4. Accordingly, under the final regulations, if a policyholder at the beginning of January purchases a term life insurance contract with a $100,000 annual premium, terminates the contract on April 1st, and upon termination receives $75,000 as a return of the premium paid ($100,000 less $25,000 mortality, morbidity, and expense charges for the period the contract was in force), then the contract qualifies for the term contract exclusion from a cash value insurance contract. If, however, upon termination, the policyholder would receive an

amount exceeding $75,000, the contract would not qualify for exclusion from financial account status as a term life insurance contract.

Comments requested an exemption from financial account status for immediate pension or disability annuities that relate to exempt retirement or pension accounts. The final regulations respond to this comment by providing that a financial account does not include a non-investment linked, non-transferable, immediate annuity purchased by the accountholder in connection with an exempt retirement or pension account.

In response to comments requesting an expansion of the contracts that are exempt from financial account status, the final regulations made a number of revisions to the rules associated with cash value insurance contracts. The final regulations provide that an insurance contract is excluded from the definition of a financial account unless it has a cash value that exceeds $50,000 at any time during the calendar year, unless the participating FFI elects to report all contracts with a cash value. In addition, the final regulations exclude indemnity reinsurance contracts between two insurance companies from the definition of a cash value insurance contract and expand the exclusions from cash value to include a refund of premium upon the termination of a contract.

5. Exception for Certain Savings Accounts

Numerous comments were received requesting that the proposed regulation's exceptions from financial account status for certain savings accounts be expanded to accommodate savings vehicles commonly used in a number of jurisdictions. In response to these comments, substantial revisions were made to

the exceptions in order to accommodate more savings vehicles without significantly increasing the ability for U.S. persons to use such vehicles to avoid chapter 4 reporting. For retirement and pension accounts, the excepted category is revised to eliminate the requirements that all contributions to the account be government, employer, or employee contributions and that the contributions be limited to earned income. In addition, the limitation on contributions is liberalized to allow plans that either have an annual contribution limit of $50,000 or less or a maximum lifetime contribution limit of $1,000,000 or less. The final regulations also add the condition that the relevant tax authorities require information reporting with respect to the account. For non-retirement savings accounts, the final regulations eliminate the requirement that contributions be limited by reference to earned income and instead require that the account be tax favored. The final regulations expand the definition of "tax favored" provided in the proposed regulations for purposes of these rules.

6. Account Balance or Value

The proposed regulations did not provide express guidance on the manner in which debt interests should be valued. The final regulations revise the definition of account balance or value with respect to a debt interest to mean the principal amount of such debt.

Comments noted that certain insurance companies value insurance and annuity contracts on the contract's anniversary date under normal business practices. In response to these comments, the final regulations allow the annual reporting of account balance or value of an insurance or annuity contract to be

based upon either the account value at calendar year end or the account value at each contract anniversary date. Also, the final regulations provide that in the case of an annuity contract for which no value is reported to the account holder, the annuity is valued using the discount interest rate and mortality tables that are either (1) prescribed under section 7520 and the regulations thereunder, or (2) used by the FFI to determine the amounts payable under the contract.

7. Maintaining a Financial Account

The Treasury Department and the IRS received comments that the proposed regulations could be read to provide that a single account could be maintained by multiple entities (such as both a collective investment vehicle and its transfer agent), thereby creating multiple documentation, reporting, or withholding obligations for each entity. In response to these comments, the final regulations identify the entity that will be treated as maintaining a financial account in order to avoid requiring multiple entities to document, withhold, and report with respect to a financial account.

D. Foreign Financial Institution

In response to comments requesting conformity between IGA definitions and the chapter 4 definitions, the final regulations amend the definition of FFI to provide that IGAs determine whether a resident entity described in the applicable IGA is an FFI. A corresponding change was made to the definition of NFFE. The statutory and regulatory definitions apply for entities that are not resident in IGA jurisdictions.

E. Financial institution

1. Depository Institution

With regard to the definition of a depository institution, the Treasury Department and the IRS received a number of comments regarding whether merely accepting deposits was or should be sufficient to create depository institution status. In response to these comments, the final regulations clarify that accepting deposits is necessary but not sufficient to create depository entity status. Therefore, an entity that accepts deposits must also engage in one or more of the enumerated banking or financing activities (adapted from section 864's and section 954(f)'s active banking, financing, and similar business rules). The final regulations also provide that, to be treated as a depository institution, an entity needs to engage on a regular basis in one or more such activities. In addition, the final regulations clarify that an entity that completes money transfers by instructing agents to transmit funds is not in a banking or similar business because it does not accept deposits or other similar temporary investments of funds. The final regulations also clarify that an entity that solely accepts deposits from persons as collateral or security pursuant to a lease, loan, or similar financing arrangement is not a depository institution. This exception is intended to exclude from FFI status entities such as finance companies that do not fund their operations through deposits and entities acting as networks for credit card banks that hold cash collateral from such banks.

2. Custodial Institution

With regard to the definition of a custodial institution, the proposed regulations define custodial institutions by reference to whether over 20 percent of an entity's income is "attributable to the holding of financial assets." In response to comments, the final regulations clarify the specific types of income that will be treated as attributable to holding financial assets.

In addition, in response to comments that new institutions (starts-ups) cannot qualify as custodial institutions, the final regulations provide a special rule for start-up entities that bases custodial institution status on the expectations and purposes of the entity.

3. Investment Entity

Comments requested that the definition of "financial institution" be clarified and more narrowly defined to exclude passive, non-commercial investment vehicles, including trusts. The IGAs adopt this approach by requiring an investment entity to undertake activity on behalf of customers. The IGAs also expand the definition of an investment entity to include an entity that provides certain financial services to customers, such as individual or collective portfolio management or otherwise investing, administering, or managing funds or money on behalf of other persons, regardless of whether the entity holds financial assets.

Taking into consideration comments that the provisions of the final regulations should conform as closely as possible to the provisions of the IGAs, the final regulations generally incorporate the definition of investment entity contained in the IGAs by providing that an investment entity includes any entity

that primarily conducts as a business on behalf of customers: (1) trading in an enumerated list of financial instruments; (2) individual or collective portfolio management; or (3) otherwise investing, administering, or managing funds, money, or certain financial assets on behalf of other persons. In addition, the final regulations limit the scope of the proposed regulations' definition of investment entity by treating an entity (other than an entity that primarily conducts as a business on behalf of customers one of the activities enumerated in the preceding sentence) the gross income of which is primarily attributable to investing, reinvesting, or trading as an investment entity only if the entity is managed by a depository institution, a custodial institution, another investment entity, or an insurance company that qualifies as a financial institution. Accordingly, passive entities that are not professionally managed are generally treated as passive NFFEs rather than as FFIs. However, entities that function or hold themselves out as mutual funds, hedge funds, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets are investment entities.

Consistent with the approach of the proposed regulations, the final regulations provide that an entity primarily conducts an activity as a business if gross income attributable to such activity equals or exceeds 50 percent of the entity's gross income.

4. Insurance Companies and Holding Companies

With regard to insurance companies and holding companies of insurance companies, the final regulations provide that a holding company that is a member

of an expanded affiliated group that includes an insurance company will be treated as an FFI if it issues or is obligated to make payments with respect to a cash value insurance contract or annuity contract, regardless of whether it would otherwise be treated as an FFI.

5. Certain Holding Companies and Treasury Centers

Comments noted that under many circumstances a company within an affiliated group of companies that serves as a holding company or provides treasury services for or on behalf of group members should not be considered a financial institution under chapter 4. In response to these comments, the final regulations limit the circumstances under which a holding company or treasury center is treated as a financial institution. Under the final regulations, such entities are FFIs in two situations. First, subject to limited exceptions for nonfinancial groups, discussed below, such entities are FFIs if they are part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity described in paragraph (e)(4)(i)(B) and (C) (not exclusively a financial service provider). Second, they are FFIs regardless of whether they are a member of a nonfinancial group if they are formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets. These rules help to ensure that holding companies and treasury centers

cannot be used by financial groups with nonparticipating FFIs or limited FFIs to shelter payments from chapter 4 withholding.

6. Exceptions to FFI Status

The Treasury Department and the IRS received a number of comments requesting more comprehensive exceptions to FFI status for holding companies and similar entities. Comments noted instances in which holding companies and other financial entities were part of a nonfinancial group, the activities of these entities were in furtherance of the nonfinancial business of the group, and the entities provided no meaningful investment opportunities to third-parties. In response to these comments, the final regulations provide more comprehensive exceptions to FFI status for certain nonfinancial group entities as described below. These entities are also excepted NFFEs for purposes of section 1472.

In particular, the final regulations provide an exception to FFI status (and passive NFFE status for section 1472 purposes) for holding companies, treasury centers, and captive finance companies that are part of a nonfinancial group. In response to comments, excepted holding companies may be part of nonfinancial group structures that include tiers of holding companies. Nonfinancial groups are permitted to include FFI members to a limited extent when all such members are participating FFIs or deemed-compliant FFIs. In response to comments, the final regulations also provide that an excepted entity can provide a mixture of holding company, treasury center, and captive finance company functions so long as substantially all of its activities are such activities. The final regulations also

provide that this excepted status does not apply to entities formed in connection with or availed of by private equity funds and similar arrangements.

The final regulations also create a new exception to FFI status for excepted inter-affiliate FFIs. Comments noted that financial groups may include dormant entities, entities that were formed for a specific deal and were not subsequently liquidated, or entities formed for regulatory purposes whose activities are entirely within the financial group. In response to these comments, the final regulations provide that an entity that is a member of a PFFI group is not an FFI if it: (1) does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group); (2) does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group; (3) does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and (4) has not agreed to report under §1.1471-4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

In response to comments, the final regulations also provide an exception for an entity that is changing its line or business, provided that the entity previously qualified as an active NFFE.

With regard to entities described in section 501(c), the final regulations exclude insurance companies described in section 501(c)(15) from the section 501(c) exception from FFI status. Section 501(c)(15) insurance companies are

for-profit insurance companies that qualify for the exemption from U.S. tax because they are small companies, but are not in any way restricted from maintaining financial accounts for specified U.S. persons. Therefore, these entities are not low-risk, so as to warrant an exemption from FFI status.

F. Deemed-compliant FFIs

1. In General

The final regulations generally retain the same deemed-compliant categories that were included in the proposed regulations but have made several modifications and clarifications in response to comments received. In addition, the final regulations introduce new categories of deemed-compliant FFIs for certain credit card issuers, as described in §1.1471-5(f)(1)(i)(E), sponsored FFIs, as described in §1.1471-5(f)(2)(iii), and limited-life debt investment entities, as described in §1.1471-5(f)(2)(iv). In response to comments, the deemed compliant category for retirement funds has been combined with the exempt beneficial owner category for a retirement fund in §1.1471-6(f). Because a non-profit organization may be either an FFI or an NFFE, the category for non-profit organizations that are exempt from withholding under chapter 4 has been moved from the deemed-compliant FFI section to §1.1471-5(e)(5), which describes entities that are excepted from treatment as financial institutions and are treated instead as excepted NFFEs. The proposed regulations indicated that the Treasury Department and the IRS were considering whether an additional deemed-compliant category should be created for insurance companies. In

response to comments, the final regulations instead permit insurance companies to qualify as local FFIs and FFIs with only low-value accounts.

The Treasury Department and the IRS decline to adopt other recommendations to add to the categories of deemed-compliant FFIs to address jurisdiction-specific entities and arrangements and, instead, retain the proposed regulations' approach of using generally applicable attributes to define different categories of deemed compliant FFIs. Nevertheless, in the context of IGAs relating to the implementation of chapter 4, the Treasury Department will continue to identify entities that qualify as deemed-compliant FFIs on a jurisdiction-specific basis, and the final regulations treat those entities as deemed-compliant FFIs. In addition, the Treasury Department and the IRS have undertaken in other parts of these regulations to limit the number of entities that are subject to the chapter 4 rules. For example, as discussed herein, the category of exempt beneficial owners has been refined and expanded in response to comments and certain entities have been removed from the definition of FFI, either because they have neither customers nor assets relevant to the application of chapter 4 or because chapter 4's purposes are adequately served by treating such entities as NFFEs.

2. Registered Deemed-Compliant FFIs

a. Local FFIs

Comments requested that the final regulations expand the types of entities that qualify as local FFIs to include insurance companies, credit unions, and investment entities. The final regulations adopt these comments. The final

regulations do not adopt comments that requested specific standards for an FFI to apply when determining whether it is regulated as a financial institution under the laws of its country of organization or incorporation. This requirement is intended merely to ensure that the government of incorporation or organization exercises some form of financial regulation over the FFI and, accordingly, is intended to be applied broadly.

The final regulations have amended the requirement that a local FFI not have a fixed place of business outside its country of incorporation or organization to permit an FFI to have a location in another jurisdiction, provided that location is not publicly advertised and performs solely administrative support functions (that is, back office functions). The Treasury Department and the IRS otherwise intend for the local FFI category to be available only to FFIs whose activities are limited to a single country. Accordingly, the Treasury Department and the IRS declined to adopt other comments suggesting that the presence and activities of the local FFI and its expanded affiliated group should not be limited to one country.

Comments pointed out that an FFI that services only the local population may advertise U.S. dollar denominated accounts for legitimate business reasons. In response to such comments, the final regulations eliminate the proposed regulations' prohibition against advertising U.S. dollar denominated deposit accounts or investments, provided that the FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account

holders outside its country of incorporation or organization merely because it operates a website, provided that the website does not specifically indicate that the FFI maintains accounts for, or provides services to, nonresidents and does not otherwise target or solicit U.S. customers or account holders. Comments requested clarification as to whether an FFI would be considered to have solicited customers outside its country of incorporation or organization (the FFI's country) if it advertises through print, radio, or television that is distributed in multiple countries in addition to the FFI's country. The Treasury Department and the IRS have modified the regulations to indicate that an FFI whose print, radio, or television advertising is distributed outside the FFI's country is not considered to have solicited customers or account holder outside the FFI's country, provided the FFI's advertising is distributed or aired primarily within the FFI's country and the FFI does not advertise services or accounts for nonresidents and does not otherwise target or solicit U.S. customers or account holders.

In response to comments stating that many countries do not impose information reporting requirements on their financial institutions, the final regulations provide that an FFI may still qualify as a local FFI notwithstanding that its accounts are not subject to information reporting or withholding requirements if the AML due diligence requirements of the FFI's country require the FFI to identify whether its account holders are residents of the FFI's country.

Comments noted that many FFIs would fail to meet the 98 percent resident account holder threshold provided in §1.1471-5(f)(1)(i)(A)(5), and requested that the Treasury Department and the IRS reduce the threshold. The

local FFI exception is not intended to apply to FFIs that serve significant numbers of nonresident account holders. The 98 percent threshold is intended to provide limited flexibility in cases in which a financial institution otherwise qualifies as a local FFI but has a few nonresident account holders, for example because a prior resident has moved or taken a job in another country. Accordingly, the Treasury Department and the IRS have declined to reduce the 98 percent threshold necessary to qualify for the local FFI exception.

The final regulations have amended the resident test in §1.1471-5(f)(1)(i)(A)(5) to require the resident threshold be applied based on account value instead of the number of accounts. In addition, to accommodate territories and administrative regions that primarily service their mainland populations, the resident threshold has been modified to permit the FFI to apply the test based on residents or citizens rather than solely based on residents, as provided in the proposed regulations.

Comments have also addressed the provision in the proposed regulations that required each member of the FFI's expanded affiliated group to qualify as a local FFI in order for any member of the group to qualify as a local FFI, and have noted that this requirement did not permit the group to have members that were NFFEs or other types of FFIs. The final regulations continue to provide that in order for an FFI to qualify as a local FFI, any FFI member of the expanded affiliated group should also be a local FFI in the same country, but provide an exception for members of the expanded affiliated group that are NFFEs or retirements funds described under §1.1471-6(f).

The final regulations also add as a condition of local FFI status a requirement that the FFI not have policies or practices that discriminate against opening or maintaining accounts for U.S. individuals that are resident in the local FFI's country.

The Treasury Department and the IRS declined to adopt a number of other comments requesting changes to the local FFI registered deemed compliant criteria. The Treasury Department and the IRS believe that the final regulations strike the appropriate balance between ensuring that only entities that are low-risk or otherwise not necessary to carry out the purposes of chapter 4 are given deemed-compliant status and providing rules that have application across a number of jurisdictions and legal and regulatory systems.

b. Nonreporting Members of PFFI Groups

The final regulations retain the same requirements for a nonreporting member of a PFFI group that were provided in the proposed regulations except that the final regulations, in response to comments, conform this deemed-compliant category with other categories by allowing a nonreporting member of a PFFI group to close a U.S. account or an account of a nonparticipating FFI.

c. Qualified Collective Investment Vehicles

The final regulations retain the deemed-compliant category for qualified collective investment vehicles. The primary purpose of this deemed-compliant category is to provide relief for investment entities that are owned solely through participating FFIs or directly by large institutional investors, payments to which

would not be subject to withholding or reporting under chapter 4. For this reason, the Treasury Department and the IRS have generally declined to adopt comments that request an expansion of the types of investors permitted in a qualified collective investment vehicle except that the final regulations permit investors that are retirement plans and nonprofit organizations. An investment entity that has other types of investors may be able to qualify as a deemed-compliant FFI if it meets the requirements under §1.1471-5(f)(1)(i)(D) to be a restricted fund.

Comments suggested that an investment entity that is not regulated as an investment fund by its country of incorporation or organization should be considered regulated as an investment fund if it is regulated by the country in which it operates or if its fund manager is regulated with respect to the investment entity. The final regulations adopt this suggestion and expand the cases in which an investment entity will be considered to be regulated to include cases in which the investment entity is regulated in all of the countries in which it is registered and all countries in which it operates, or the investment entity's manager is regulated with respect to the investment entity in all countries in which the investment entity is registered and all countries in which the investment entity operates.

Comments requested that a collective investment vehicle be eligible for deemed-compliant status notwithstanding that the vehicle previously issued bearer shares which remain outstanding if the vehicle discontinues issuing such shares. In response to these comments, the final regulations permit a qualified

collective investment vehicle to have outstanding bearer obligations that were issued prior to January 1, 2013, if the qualified collective investment vehicle identifies the status of the holder prior to payment, no shares are issued in bearer form, including reissuances of surrendered shares, after December 31, 2012, and certain other conditions are met.

d. Restricted Funds

As with qualified collective investment funds, comments suggested that a fund may not always be regulated by its country of incorporation or organization but should be considered regulated if it is regulated by the country in which it operates or if its fund manager is regulated with respect to the fund. The final regulations adopt this suggestion and expand the methods under which a fund will be considered to be regulated to include cases in which the fund is regulated in all of the countries in which it is registered and all countries in which it operates, or the fund's manager is regulated with respect to the investment entity in all countries in which the investment entity is registered and all countries in which the investment entity operates.

Several comments indicated confusion regarding the requirement that all interests in the fund must be sold through identified distributors or redeemed directly by the fund. The final regulations clarify that interests in the fund may be issued by the fund directly if the investor can only dispose of those interests by having them redeemed or transferred by the fund, and not by selling them on a secondary market. Further, the regulations clarify that interests in the restricted fund can only be issued directly by the fund or by designated distributors

described in §1.1471-5(f)(1)(i)(D)(3). Finally, the regulations clarify that interests in an investment fund that are issued through a transfer agent or a distributor that does not hold the interests as a nominee of the account holder are considered issued directly by the fund.

Because the restricted fund category was created to provide relief for foreign funds that only target foreign investors, the Treasury Department and the IRS declined to adopt comments requesting that the restricted fund category be expanded to permit U.S. distributors. However, in response to requests that the restricted fund distributor provisions include foreign branches of U.S. financial institutions in the list of acceptable distributors described in §1.1471-5(f)(1)(i)(D)(3), the final regulations modify the definition of a participating FFI to include a qualified intermediary ("QI") branch of a U.S. financial institution. In addition, since a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI is a registered deemed-compliant FFI, such foreign branch will also satisfy the distributor requirements of §1.1471-5(f)(1)(i)(D)(3).

In response to comments that the renegotiation of distribution agreements will take a substantial amount of time and requests that a restricted fund be provided an additional year in order to renegotiate its distribution agreements to include the prohibitions required under §1.1471-5(f)(1)(i)(D), the Treasury Department and the IRS are providing investment funds until the later of June 30, 2014, or six months after the date the investment fund registers with the IRS as a registered deemed-compliant FFI to renegotiate its debt and equity interest distribution agreements to comply with §1.1471-5(f)(i)(i)(D)(4) and (5). The

Treasury Department and the IRS are also modifying the sales restrictions of §1.1471-5(f)(1)(i)(D)(4) to restrict sales only to specified U.S. persons, rather than all U.S. persons as was provided in the proposed regulations.

The Treasury Department and the IRS did not adopt comments requesting that the prohibition on sales to U.S. persons be limited only to sales to U.S. residents because such change would be inconsistent with the policy objectives of chapter 4. The Treasury Department and the IRS also declined to remove the requirement that a restricted fund acquire or redeem all debt and equity interests that were issued through a distributor that ceases to be a qualifying distributor within six months of the distributor's change in status, but have modified the requirement to permit such interests to be transferred to another distributor described in §1.1471-5(f)(1)(i)(D)(3).

Comments also requested that a restricted fund be permitted to have preexisting direct accounts that were issued in bearer form before January 1, 2013, if the fund performs the required account identification procedures when the bearer certificate is presented for payment. In response, the final regulations permit a restricted fund to have outstanding bearer obligations that were issued prior to January 1, 2013, if the restricted fund identifies the status of the holder prior to payment, no shares are issued in bearer form, including reissuances of surrendered shares, after December 31, 2012, and certain other conditions are met.

e. Qualified Credit Card Issuers

The Treasury Department and the IRS have received comments requesting a deemed-compliant category for credit card issuers that accept deposits associated with the credit card. In response to these comments, the Treasury Department and the IRS are adding a new category of registered deemed-compliant FFIs to the final regulations for credit card issuers that agree to prevent a customer from having a deposit with the credit card issuer in excess of $50,000.

f. Registered Deemed-Compliant Procedural Requirements

Comments requested that the qualified collective investment vehicle rules provide a cure period in the case of noncompliance that occurs following the FFI's registration with the IRS (including a change of status by the FFI's interest holders that results in disqualification as a qualified collective investment vehicle). The final regulations provide a registered deemed-compliant FFI with six months from the time it becomes ineligible for the registered deemed-compliant status to cure the default or notify the IRS of its change in status.

g. Sponsored FFIs

Comments noted that in many cases it may be preferable for a trustee or fund manager to perform the due diligence and reporting for all of the FFIs which it manages on a consolidated basis. Comments also noted that a number of U.S. financial institutions have systems in place to perform all due diligence, withholding, and reporting obligations of its controlled foreign corporation subsidiaries for U.S. tax purposes. In response to these comments, the final regulations create a registered deemed compliant FFI category for sponsored

FFIs for which a sponsoring entity agrees to perform all due diligence, withholding, reporting, and other requirements the sponsored FFI would have been required to perform if it were a participating FFI, and complies with certain other requirements.

3. Certified Deemed-Compliant FFIs

a. Nonregistering Local Banks

In response to comments requesting a simplification of the definition of a bank for purposes of the nonregistering local bank category, the final regulations do not include a cross reference to section 581 and have clarified that, in addition to banks, certain credit unions or similar organizations may also qualify as nonregistering local banks. The final regulations amend the requirements applicable to a nonregistering local bank to conform with the changes made to the local FFI registered deemed-compliant category described above.

Because the nonregistering local bank category was intended to apply only to very small FFIs, the Treasury Department and the IRS declined to adopt comments requesting that the threshold for total assets of the FFI be raised above $175 million for the FFI and $500 million for the FFI's expanded affiliated group.

b. Sponsored, Closely Held Investment Vehicles

The final regulations also create a certified deemed-compliant category for sponsored, closely held investment vehicles, which are sponsored by a

sponsoring FFI in the same manner as the registered deemed-compliant category.

c. Limited Life Debt Investment Entities

The Treasury Department and the IRS received comments stating that certain investment vehicles will be unable to comply with the registration and due diligence requirements in the regulations, thus necessitating a deemed-compliant category for such entities. In particular, comments have noted that vehicles that have a fixed lifespan and that were created for the purpose in investing in a limited type of debt obligation with the intent to hold such obligations until maturity or until the liquidation of the vehicle will often provide the trustee of the vehicle with limited authority to act in manner not specifically provided for under the agreement. In most cases, the trustee would not be permitted to register the vehicle as a participating FFI or comply with the due diligence requirements of a participating FFI unless the trust indenture requires the trustee to do so, the trustee is required to do so under a provision of law, or all of the investors in the vehicle agree to amend the trust agreement to provide the trustee with the power to act in such a manner. In order to provide time to address these limitations, the final regulations permit these entities to qualify as deemed-compliant FFIs for a limited period of time. After December 31, 2016, the deemed-compliant status of these entities terminates, and each such entity will be required to comply with the terms of any applicable IGA or otherwise register as a participating FFI.

4. Owner-Documented FFIs

Comments stated that the $50,000 debt limit on owner-documented FFIs was too restrictive for common business practices of many small FFIs and requested that such entities be allowed to have unlimited debt interests provided the FFI identify and pass up to the withholding agent the chapter 4 status of all debt holders. In response to these comments, the final regulations no longer prohibit owner-documented FFIs from issuing debt interests that constitute financial accounts in excess of $50,000 to persons other than nonparticipating FFIs, provided that the owner-documented FFI reports all individuals and specified U.S. persons that directly or indirectly hold such interests (other than persons that hold such interests through a participating FFI, registered deemed-compliant FFI, certified deemed-compliant FFI, U.S. person, exempt beneficial owner, or excepted NFFE) to the designated withholding agent.

5. Restricted Distributors

Comments requested that §1.1471-5(f)(4) be amended to permit a participating FFI to treat a distributor as a restricted distributor. The Treasury Department and the IRS agree that permitting a participating FFI that holds an interest in a restricted fund as a nominee to use a restricted distributor to distribute that interest fulfills the same purpose as permitting the restricted fund to use a restricted distributor. For this reason, the final regulations have been amended to permit a participating FFI to use a restricted distributor to distribute interests in a restricted fund that the participating FFI holds as a nominee.

G. Recalcitrant Account Holders

The final regulations expand the definition of recalcitrant account holder to include an account holder that is documented as an NFFE (other than a WP or WT) but that fails to provide the information required under §1.1471-3(d) regarding its owners.

The final regulations also revise the start of recalcitrant account holder status to coordinate with a participating FFI's withholding requirements. The final regulations require a participating FFI or deemed-compliant FFI to treat an account other than preexisting account or an account (including preexisting account) that undergoes a change in circumstances as held by a recalcitrant account holder beginning on the earlier of the date a withholdable payment or foreign passthru payment is made to the account or the date that is 90 days after account opening or the change in circumstances.

The proposed regulations did not coordinate recalcitrant account holder status under chapter 4 with the chapter 61 backup withholding procedures for cases in which a participating FFI receives a notice from the IRS regarding a name and TIN mismatch for an account holder. The final regulations clarify that an account for which the participating FFI or deemed-compliant FFI receives a notice from the IRS indicating that the name and TIN combination provided for the account holder is incorrect will be treated as a recalcitrant account holder following the date of such notice if the account holder does not provide a correct name and TIN combination within the time prescribed in §31.3406(d)-5(a). The IRS intends to provide a process similar to the "B Notice" process of chapter 61 to notify an FFI of a name/TIN mismatch for an account holder of a U.S. account

that was reported under §1.1471-4(d). Under §31.3406(d)-5(a), a payor that receives a "B Notice" for a payee is required to start backup withholding and reporting reportable payments made to such payee on or before the 30th business day after the receipt of the "B Notice." Similarly, a participating FFI or deemed-compliant FFI is required to treat an account holder for which it receives a notice indicating a name/TIN mismatch as a recalcitrant account holder (and withhold and report to the extent required) on or before the 30th business day after the FFI receives such notice.

H. Expanded Affiliated Group

Proposed §1.1471-5(i) defined an expanded affiliated group for purposes of chapter 4. The final regulations make two material changes to the proposed regulations.

First, some comments requested an exclusion from membership in an expanded affiliated group for entities formed through seed capital investments by another group member. These comments described a seed capital investment as an initial capital contribution made to an investment entity by an entity related to the manager of the investment entity for purposes of establishing a performance record before selling interests in the entity to unrelated investors or for purposes otherwise deemed appropriate by the manager. In support of this exclusion, comments noted the burden of monitoring ownership changes in the investment entity for determining when to exclude the entity as a member of such a group, including the potential updating required for purposes of the group's FFI application with the IRS. In response to these comments, the final regulations

modify the definition of expanded affiliated group to exclude from the group an investment entity owned by an FFI group member when the member's ownership exists solely to provide a seed capital investment in an entity. The final regulations describe the circumstances in which an investment qualifies for this treatment (including by defining seed capital) and prescribe a three-year period in which the investment entity is excluded from the group.

Second, the final regulations incorporate an anti-abuse rule that disregards a change in ownership, voting rights, or the form of an entity with respect to an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid withholding or reporting obligations under chapter 4.

VII. Comments and Changes to Section 1.1471-6 – Payments Beneficially Owned by Exempt Beneficial Owners

Proposed §1.1471-6 defined classes of entities that qualify as exempt beneficial owners for purposes of chapter 4. The final regulations expand the circumstances in which certain classes of entities qualify as exempt beneficial owners and modify when an entity qualifies as an exempt beneficial owner under §1.1471-6(g) (describing certain entities owned by only exempt beneficial owners). The final regulations also clarify that, except as provided in §1.1471-6(f) (regarding retirement funds), an entity cannot qualify as an exempt beneficial owner unless it is the beneficial owner of the payment.

To coordinate the final regulations' identification of specific entities as exempt beneficial owners with the IGAs, the definition of an exempt beneficial owner is expanded to include any entity identified as an exempt beneficial owner pursuant to an IGA. This change is incorporated into the definition of an exempt beneficial owner in §1.1471-1(b)(38).

Comments noted that limiting the definition of international organization to include only international organizations in which the United States participates as a member was unnecessary. In response to these comments, this definition has been expanded to allow an entity to qualify as an international organization if the entity: (1) is a supranational organization or intergovernmental organization recognized as an international organization under certain provisions of foreign law or that has in effect a headquarters agreement with a foreign government; and (2) prevents private inurement under the principles of §1.1471-6(b)(3)(ii).

In response to comments, the final regulations broaden the classes of pension funds qualifying as exempt beneficial owners under §1.1471-6(f) by including several new categories of pension funds, each of which applies without regard to whether the pension fund is the beneficial owner of income. Comments requested removal of the beneficial owner requirement because, depending on the jurisdiction, a fund may or may not be treated as the beneficial owner of income it receives under local law. Other comments were received regarding the interaction of the exemption for retirement plans in proposed §1.1471-6(f) with those retirement plans afforded deemed compliant status in proposed §1.1471-5(f)(2)(ii) (which did not require the plan to be the beneficial owner and which

included certain plans with fewer that twenty participants). In response to these comments, §1.1471-5(f)(2)(ii) was removed and the types of retirement plans that may qualify as exempt beneficial owners under §1.1471-6(f) regardless of whether they are beneficial owners was expanded, as described below.

In response to comments, the final regulations treat a fund entitled to benefits under an income tax treaty and operated principally to administer or provide pension or retirement benefits as an exempt beneficial owner regardless of whether the fund is generally exempt from taxation in the country in which it is organized.

Regarding the general requirements for retirement funds included in proposed §1.1471-6(f), comments noted that many plans would fail to qualify under the rule requiring that all contributions to the plan, except for rollover contributions from other retirement funds, come from employer or employee contributions. Comments suggested alternative requirements to prevent funds from being abused for chapter 4 purposes, including annual information reporting, strict limitations on withdrawals or distributions from the fund, or penalties for early distributions. Additionally, comments noted that certain types of mandatory government plans may also fail the requirement in proposed §1.1471-6(f) that contributions be solely from employer or employee contributions. Comments also requested that funds that provide for disability or death benefits should not disqualify a retirement fund from being an exempt beneficial owner that would otherwise qualify under §1.1471-6(f).

In response to these comments, the final regulations: (1) provide rules allowing for alternative sources of contributions apart from those from employers and employees; (2) provide anti-abuse provisions based on alternatives suggested in comments; and (3) allow, in appropriate circumstances, plans to provide disability or death benefits. In response to comments, the final regulations also broaden the treaty-qualified retirement fund category and add a new category for funds formed pursuant to pension plans that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

Comments also questioned whether the proposed regulations intended to exclude certain pension funds established by exempt beneficial owners, noting that the regulations under section 892 specifically include an exemption for certain pension funds established by foreign governments. The Treasury Department and the IRS generally intend for these types of pension funds to qualify as exempt beneficial owners. To eliminate the possibility that such plans might not so qualify in appropriate cases, the final regulations provide that pension funds meeting certain requirements (relating to retirement, disability, or death benefits) will qualify as exempt beneficial owners when established by another exempt beneficial owner for its employees, employees' beneficiaries, or other persons providing services to such funds.

With respect to the allowance in proposed §1.1471-6(g) providing exempt beneficial owner status to certain entities wholly owned by exempt beneficial owners, comments noted that this provision did not contemplate structures in

which entities are owned directly by other entities that would qualify as exempt beneficial owners under §1.1471-6(g). The final regulations are amended to clarify that exempt beneficial owner status under §1.1471-6(g) applies in such cases. The final regulations also clarify that receiving loans from depository institutions or issuing debt to other exempt beneficial owners will not prevent an entity from qualifying as an exempt beneficial owner under §1.1471-6(g).

The final regulations provide in §1.1471-6(h) an exception to exempt beneficial owner status for foreign governments, international organizations, foreign central banks of issue, and the governments of U.S. territories that engage in certain commercial activities, replacing the prohibition in the proposed regulations on commercial activities that had applied only to foreign governments. Some comments noted that an entity would fail to qualify as an exempt beneficial owner under the commercial activities exception in the proposed regulations even when the entity accepts deposits or maintains financial accounts only for exempt beneficial owners (such as the members in an entity such as a development bank organized by certain foreign governments). The final regulations respond to these comments by providing a limitation on the commercial activities exception for activities for or on behalf of other exempt beneficial owners.

VIII. Section 1.1472-1 -- Withholding on NFFEs

The regulations under section 1472 provide rules applicable to withholding agents for withholding on certain NFFEs and reporting with respect to the substantial U.S. owners of certain NFFEs.

In response to comments requesting a transition period to accommodate the creation of associated systems, the final regulations provide that withholding agents are required to withhold under section 1472 only with respect to withholdable payments made after December 31, 2013. In addition, §1.1472-1(b)(2) provides that withholding agents are not required to withhold under section 1472 on payments made before January 1, 2015, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE with one or more substantial U.S. owners.

The final regulations also clarify the interaction of section 1472 withholding with a participating FFI's withholding obligations under section 1471(b) and the associated regulations. Under the final regulations, a participating FFI that complies with its withholding obligations under §1.1471-4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. Section 1472 will continue to apply to a participating FFI that acts as a withholding agent on a withholdable payment made to an NFFE that is not an account holder (for example, a payment with respect to a contract that does not constitute a financial account). These withholding obligations will be limited, however, by §1.1473-1(a)(4)(vi), which provides a temporary exception from the definition of withholdable payment for

certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to offshore obligations.

In response to comments, §1.1472-1(c)(1)(i)(B) clarifies the application of the publicly traded rules for excepted NFFE status in the year of an initial public offering.

With regard to the exception from withholding for payments to active NFFEs, the Treasury Department and the IRS received comments requesting that passive income be defined by reference to section 954(c). This comment was not adopted. The Treasury Department and the IRS believe that providing a specific list of items constituting passive income will provide more certainty for withholding agents and NFFEs. The final regulations do, however, clarify the scope of passive income, including the rules regarding commodities. In addition, in response to comments, the final regulations expand the exceptions to passive income in a number of respects. First, the final regulations in §1.1472-1(c)(1)(iv)(B) provide that passive income will not include dividends, interest, rents, and royalties received or accrued from a related person to the extent that they are properly allocable to income of the payor that is not passive income. Second, the final regulations provide an exception from passive income for certain income earned by dealers acting in the ordinary course of their trade or business.

In addition, the final regulations provide expanded categories of excepted NFFEs to address the treatment of holding companies and similar entities that are part of and that support a group conducting an active trade or business. The

final regulations also clarify that an entity will not be an active NFFE unless less than 50 percent of its gross income is from passive income and less than 50 percent of its assets are passive assets (that is, assets that produce or are held for the production of passive income), on a weighted average basis.

Also, the requirements for reporting on substantial U.S. owners were moved to §1.1474-1(i)(2) in the final regulations to include these requirements with the other reporting requirements applicable to withholding agents.

IX. Changes and Comments to §1.1473-1 -- Section 1473 Definitions

A. Withholdable Payment

1. In General

Comments noted that U.S. mutual funds that invest in foreign securities will pay dividends that are withholdable payments and, correspondingly, that gross proceeds from the sale of interests in such U.S. funds would be withholdable payments. Those comments requested that the definition of withholdable payment be amended such that U.S. fund dividends would be characterized based on the assets held by the fund and would be subject to withholding only to the extent provided under the foreign passthru payment rules otherwise applicable to participating FFIs to avoid creating a competitive imbalance.

The final regulations provide temporary relief to U.S. stock and debt issuers, including U.S. funds, by delaying withholding on gross proceeds until

2017. Treasury and the IRS do not believe, however, that eliminating chapter 4 withholding on payments of dividends that constitute U.S. source FDAP income under chapter 3 advances the purposes of chapter 4. It is expected, however, that these issues will be alleviated in practice through the conclusion of IGAs.

Comments also requested that the rules defining withholdable payment exclude payments that are reported by the withholding agent on Form 5471 or 5472 in order to alleviate duplicative reporting. The final regulations do not adopt this comment because the chapter 4 withholding rules serve different purposes than the reporting regimes under sections 6038 and 6038A which underlie Forms 5471 and 5472.

2. Gross Proceeds

Comments noted that clearing organizations pay or credit a member's account with the net amount of sales or dispositions that occurred throughout a given period. The final regulations allow clearing organizations to determine gross proceeds based on the net amount paid or credited to a member's account under the settlement procedures of such organization.

In response to comments, the final regulations clarify that any contract that results in the payment of a dividend equivalent (as defined in section 871(m) and regulations thereunder) is treated as property of a type that can produce U.S. source FDAP income, including if such dividend equivalent is part of a termination payment.

The final regulations also modify the definition of gross proceeds to exclude proceeds from transactions not subject to recognition under section 1058.

3. Exceptions to Withholdable Payment

a. Withholding on Offshore Payments of U.S. Source FDAP Income

To coordinate the final regulations' withholding requirements with those of the Model 1 IGAs, the final regulations delay withholding on certain offshore payments of U.S. source FDAP income until January 1, 2017. Specifically, the final regulations temporarily exclude from the definition of withholdable payment a payment of U.S. source FDAP income made with regard to an offshore obligation prior to January 1, 2017, by a person that is not acting as an intermediary with regard to the payment. For purposes of this exception, the final regulations expressly include a qualified securities lender as an intermediary. The final regulations also limit the application of this rule for certain flow-through entities.

b. Excluded Nonfinancial Payments

Comments requested clarification and expansion of the proposed regulations' ordinary course of business exception to withholdable payments. In particular, comments requested that the definition of ordinary course of business payments be modified by striking the word "nonfinancial" because it creates uncertainty as to whether services provided to a financial institution that are

accounts payable type expenses are ordinary course of business payments. Comments also noted that the ordinary course of business exception imposed significant administrative burdens given the volume of cross-border payments that had to be identified and classified. In response to these comments, the final regulations replace the ordinary course of business exception with a more comprehensive exception for excluded nonfinancial payments. The revised exception provides greater certainty by explicitly describing payments that are excluded from withholdable payments and by providing a list of payments that are withholdable payments.

The proposed regulations also provided that the exclusion for ordinary course of business payments included payments for the sale of goods. Commentators pointed out that such an exception implied that the sale of goods could give rise to U.S. source FDAP income. The final regulations remove the reference to "goods" in the nonfinancial payments exclusion and define a payment of U.S. source FDAP income to expressly incorporate the exclusion under §1.1441-2(b)(2)(i) (stating that certain gains from the sale of property do not constitute FDAP income).

4. Excise Tax under Section 4371

Under the proposed regulations, withholdable payments include insurance and reinsurance premiums that are U.S. source FDAP income. Comments requested that the final regulations exclude insurance and reinsurance premiums from the definition of withholdable payment to the extent the premiums are subject to the excise tax under section 4371. Such premiums are exempt under

chapter 3, however, because the excise tax under section 4371 is an adequate substitute for tax on the business income of a foreign issuer. In contrast, withholding under chapter 4 is intended as an incentive to FFIs to become participating FFIs, rather than as a proxy for the tax on the income of the issuer. As a result, the policy reasons for the exclusion of such insurance and reinsurance premiums for purposes of chapter 3 withholding are not relevant for chapter 4 withholding. The final regulations therefore do not adopt this comment.

B. Substantial U.S. Owner

The final regulations include rules for determining whether a specified U.S. person is a substantial U.S. owner that remain substantially unchanged from the proposed regulations subject to the following modifications. The proposed regulations required that the determination of whether a person is a substantial U.S. owner be made by calculating such person's direct and indirect interest in the entity. The attribution rules under the proposed regulations required that a specified U.S person's indirect interest in an entity be determined by looking through interests held by entities that are U.S. persons. The final regulations do not require an entity to look through interests held by a U.S. person that is not a specified U.S. person when determining whether the entity has a substantial U.S. owner. The final regulations add a provision that requires an entity making a determination as to whether a specified U.S. person is a substantial U.S. owner to aggregate the interests owned by persons related to the specified U.S. person,

applying certain provisions of the regulations under section 267 to determine whether such persons are related.

In response to comments regarding the difficulty of determining whether a specified U.S. person owns a sufficient interest in an entity to be a substantial U.S. owner, the final regulations provide a safe harbor that permits an entity, or a withholding agent with respect to the entity, to treat a specified U.S. person as a substantial U.S. owner in lieu of making the calculations necessary to determine whether such person holds a sufficient interest to be a substantial U.S. owner.

Comments requested that the 10 percent ownership threshold for determining a substantial U.S. owner be changed to 25 percent to align with AML due diligence requirements. These comments were not adopted. Jurisdictions have varying approaches to enforcing AML due diligence requirements, and thus, reliance on AML due diligence to determine substantial U.S. owners is more appropriate in the context of the IGAs.

C. Specified U.S. Person

The final regulations add section 457(g) plans and exempt trusts under section 403(b) to the classes of U.S. persons that are not specified U.S. persons.

X. Comments and Changes to §1.1474-1 -- Liability for Withheld Tax and Withholding Agent Reporting

A. Use of Agents

The proposed regulations described the circumstances under which a withholding agent could appoint agents to fulfill its obligations under chapter 4 and the withholding agent's liability. Comments requested removal of the proposed regulations' restrictions on the use of sub-agents. The final regulations remove these restrictions and clarify that a withholding agent remains liable for the acts of both its agents and its agents' sub-agents. The final regulations also clarify that any agent or sub-agent that acts as a reporting agent for filing Form 1042 or making deposits and payments reportable on the form on behalf of a withholding agent must file a Form 8655, "Reporting Agent Authorization," with the IRS.

B. Information Reporting

The proposed regulations set forth the information reporting requirements of a withholding agent paying a chapter 4 reportable amount and the transitional reporting requirements of a participating FFI or registered deemed-compliant FFI making a payment of a foreign reportable amount to a nonparticipating FFI. The proposed regulations also required financial institutions to file such returns electronically on magnetic media without regard to the general annual 250 return threshold applicable to withholding agents other than financial institutions.

The final regulations modify and clarify certain provisions of the proposed regulations with respect to these reporting requirements. The final regulations modify which persons are recipients for purposes of reporting chapter 4 reportable amounts and describe categories of recipients with respect to

payments of U.S. source FDAP income. Due to the suspension of withholding on gross proceeds and foreign passthru payments until 2017, the definition of a recipient of a payment other than of U.S. source FDAP income is reserved. Information reporting is required with respect to a payment of gross proceeds only if the payment is an amount subject to withholding. In response to comments requesting clarification of the meaning of the term "subject to withholding," the final regulations in §1.1471-1(b)(118) define an amount subject to withholding as an amount withheld upon or required to be withheld upon under chapter 4. The final regulations also clarify that a chapter 4 reportable amount excludes an amount paid to a payee that the withholding agent treats as a U.S. person, but add a provision that an amount paid by a withholding agent to a participating FFI or registered deemed-compliant FFI is reportable to the extent allocable to U.S. persons identified in a pool of payees reported by the FFI (as described in paragraph (d)(4)). The final regulations also generally describe how a withholding agent reports with respect to payments made to a participating FFI or registered deemed-compliant FFI that acts as an intermediary or flow-through entity when the FFI provides pooled information to the withholding agent regarding its account holders and payees subject to withholding under chapter 4. In the case of payments that are not subject to withholding under chapter 4, the final regulations require reporting to the extent that reporting is required under §1.1461-1.

Comments sought clarification on the reporting obligations of a participating FFI or registered deemed-compliant FFI that acts as an intermediary

or is a flow-through entity. The final regulations provide that if a payment of U.S. source FDAP income is made by a U.S. withholding agent to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT that provides sufficient information to the withholding agent to withhold and report the payment, the FFI is not also required to report the payment. The final regulations clarify, however, that a participating FFI or registered deemed compliant FFI is required to complete Forms 1042-S by allocating the income and withholding paid to its recalcitrant account holder pools as described in §1.1471-4(d)(6) (requiring a participating FFI to report the number of accounts and account balance information), and that such reporting is required regardless of whether the FFI made a payment of a chapter 4 reportable amount to each such account holder.

Comments were also received regarding transitional reporting by participating FFIs and deemed-compliant FFIs for foreign reportable amounts paid to nonparticipating FFIs. Suggestions included permitting aggregate, in lieu of specific, payee reporting; modifying the definition of foreign reportable amount; and eliminating the transitional reporting altogether. Because the transitional reporting provides relevant information concerning the extent of compliance by FFIs with the requirements of chapter 4 in the absence of withholding with respect to foreign passthru payments, however, these comments are not adopted in the final regulations. The final regulations otherwise clarify that reporting during the transitional period is required for aggregate payments paid *by* a participating FFI rather than *to a* participating FFI.

XI. Comments and Changes to §§1.1474-2 through -5 – Refunds, Credits, and Reimbursement

Proposed §§1.1471-2 through -5 provide rules relating to the refund or credit of taxes withheld under chapter 4 and reimbursement procedures for withholding agents in cases of overwithholding. Comments requested the establishment of efficient procedures for beneficial owners to obtain refunds of tax withheld under chapter 4. In response to these comments, the final regulations provide the alternative allowance for participating FFIs and reporting Model 1 FFIs to obtain refunds on behalf of their account holders under the collective refund procedures of §1.1471-4(h). To facilitate the provision of refunds in other appropriate cases, the final regulations include in §1.1474-1(d) the allowance for a withholding agent to issue a specific Form 1042-S to an account holder subjected to withholding under chapter 4 (in lieu of the pooled reporting otherwise permitted) for purposes of substantiating withholding of amounts under chapter 4.

XII. Comments and Changes to §1.1474-6 -- Coordination of Chapter 4 with Other Withholding Provisions

Proposed §1.1474-6 provided rules for coordinating withholding under chapter 4 with other withholding provisions under the Code. The final regulations adopt the provisions of this section without substantial change, but add paragraph (b)(3) to permit a withholding agent to offset its obligation to withhold under chapter 4 with respect to payments of dividend equivalents under section

871(m) in a security lending or substantially similar transaction to the extent that another withholding agent has withheld under chapter 3 or 4 with respect to the same underlying security in such a transaction. This offset is permitted only when there is sufficient evidence that tax was actually withheld as determined under the provisions of chapter 3.

XIII. Comments and Changes to §301.1474-1 -- Required Use of Magnetic Media for Financial Institutions Filing Form 1042-S or Form 8966

Proposed §301.1474-1 requires that a financial institution file Forms 1042-S on magnetic media. The final regulations add a requirement that a financial institution also file Form 8966, "FATCA Report," on magnetic media.

Procedural Matters

I. The FATCA Registration Portal

The FATCA Registration Portal (Portal) will be the primary means for financial institutions to interact with the IRS to complete and maintain their chapter 4 registrations, agreements, and certifications. The Portal will be accessible to financial institutions beginning no later than July 15, 2013. At that time, financial institutions will be able to register and, as appropriate, agree to comply with their obligations as participating FFIs or as sponsoring entities (as described in section 3 below), or to register and agree to act as limited FFIs or registered deemed-compliant FFIs (including reporting Model 1 FFIs, which are treated as registered deemed-compliant FFIs under the final regulations). The

IRS will permit registration of FFIs that are reporting Model 1 FFIs or described as a Reporting Financial Institution under a Model 2 IGA so long as the associated jurisdiction is identified on a list published by the IRS of countries treated as having in effect an IGA, as appropriate, even if any necessary ratification of such IGA in the jurisdiction has not yet been completed.

Once a financial institution has registered, the IRS will approve its registration. The IRS intends, upon such approval, to issue a GIIN to each participating FFI and registered deemed-compliant FFI. These GIINs will be assigned beginning no later than October 15, 2013, and should be used as the institution's identifying number for satisfying its reporting requirements and identifying its status to withholding agents. The IRS will electronically post the first list (IRS FFI List) of participating FFIs and registered deemed-compliant FFIs (including reporting Model 1 FFIs) on December 2, 2013. The IRS intends to update the IRS FFI List on a monthly basis. The last date by which a financial institution can register with the IRS to ensure its inclusion on the December 2013 IRS FFI List is October 25, 2013.

A. The FFI Agreement

A financial institution registering through the Portal will agree to comply with the FATCA requirements pertaining to its particular situation. These requirements will vary depending on the financial institution's status in the jurisdictions in which it operates. For example, an FFI may be a resident of a jurisdiction for which it reports as a reporting Model 1 FFI and have other branches in jurisdictions covered by applicable Model 2 IGAs and branches in

jurisdictions not covered by an IGA. In such case, the FFI will be able to register once and may enter into an FFI agreement on behalf of its branches that are not covered under an applicable Model 1 IGA. Accordingly, the FFI agreement will not relate to its operations as a reporting Model 1 FFI because those operations will be subject to the rules set out under the law of the applicable jurisdiction, but the FFI agreement will incorporate the requirements applicable to its operations in jurisdictions other than those covered under an applicable Model 1 IGA.

Before the Portal opens for registration, the Treasury Department and the IRS will publish a revenue procedure (FATCA Rev. Proc.) containing all the terms and conditions applicable to FFIs for chapter 4 purposes and for FFIs also assuming chapter 3 responsibilities (that is, as QIs, WPs, and WTs). The terms and conditions set forth in the FATCA Rev. Proc. applicable to FFIs for chapter 4 purposes will be fully consistent with the rules set forth in these final regulations. The terms and conditions set forth in the FATCA Rev. Proc. applicable to FFIs that are assuming or continuing chapter 3 responsibilities are discussed in more detail in I.C and D of this section.

B. Sponsored FFIs

As discussed in section VI.F above, the final regulations include three deemed-compliant categories for sponsored FFIs, under which a sponsoring entity agrees to register with the IRS and undertake all of the chapter 4 obligations of a participating FFI on behalf of one or more sponsored FFIs. Beginning no later than July 15, 2013, financial institutions will be able to register as sponsoring entities but will not at that time be required to provide information

regarding their sponsored FFIs. It is anticipated that sponsoring entities will be able to provide sponsored FFI information and obtain GIINs for each sponsored FFI beginning no later than October 15, 2013.

If a sponsoring entity must also become a participating FFI or registered deemed-compliant FFI with respect to accounts that it maintains or register as a reporting Model 1 FFI, the sponsoring entity will be required to do so separately from its registration as a sponsoring entity. Such an FFI will obtain a separate GIIN to be used with respect to its own chapter 4 or FATCA Partner reporting requirements and to establish its own chapter 4 status to withholding agents.

C. Qualified Intermediaries

Beginning January 1, 2014, QIs will be required to assume chapter 4 responsibilities with respect to their accounts as a condition for maintaining QI status or for obtaining QI status. For this purpose, existing QI agreements will be modified to take into account the applicable chapter 4 requirements. The modified provisions of the QI agreement will be set forth in the FATCA Rev. Proc. that the IRS will publish before the Portal opens for registration.

Existing QIs will be required to renew their QI agreements by registering on the Portal and agreeing to comply with the modified QI agreement described in the FATCA Rev. Proc. Such a renewing QI will be issued a GIIN that it will use for FATCA reporting purposes and establishing its FATCA status with withholding agents. The IRS currently contemplates that the GIIN will also be used by QIs, in lieu of the current QI EIN, for purposes of QI reporting and establishing QI status vis-à-vis withholding agents.

FFIs that wish to apply for QI status for the first time must do so under the existing paper-based QI application process. Once approved as a QI through this process, the FFI must also register or update its information regarding its QI status (including its chapter 4 requirements) through the Portal.

D. Withholding Foreign Partnerships and Withholding Foreign Trusts

The existing agreements governing WPs and WTs will also be modified to incorporate the applicable chapter 4 requirements of these entities (for financial accounts other than equity interests) with respect to their partners, owners and beneficiaries. The FATCA Rev. Proc. will describe these modifications.

Existing WPs and WTs that are FFIs will be required to renew their agreements by registering on the Portal and agreeing to comply with the modified agreement described in the FATCA Rev. Proc. Such a renewing WP or WT will be issued a GIIN that it will use for FATCA reporting purposes and establishing its FATCA status with withholding agents. The IRS currently contemplates that the GIIN will also be used by WPs and WTs, in lieu of the current WP EIN or WT EIN, for purposes of chapter 3 reporting and establishing its status vis-à-vis withholding agents.

FFIs that wish to apply for WP or WT status for the first time must do so under the existing paper-based application process. Once approved as a WP or WT through this process, the FFI must also register or update its information regarding its WP or WT status through the Portal. A foreign entity other than an FFI will be required to apply as a WP or WT or renew its status as such for

assuming its chapter 4 requirements under the existing paper-based application process.

E. Foreign Branches of U.S. Financial Institutions

U.S. financial institutions will register their foreign branch operations through the Portal in certain circumstances. A U.S. financial institution with a foreign branch that is a reporting Model 1 FFI must register on behalf of the branch and obtain a GIIN to comply with its FATCA Partner reporting obligations with respect to such branch. A U.S. financial institution with a foreign branch that is a QI and seeks to maintain QI status will register through the Portal to renew its QI status for the branch regardless of whether the branch is a reporting Model 1 FFI. A U.S. financial institution with non-QI branch operations in a Model 2 jurisdiction or in a non-IGA jurisdiction is not required to register with the IRS. The Treasury Department and the IRS are considering ways to eliminate duplicative reporting or effect, as appropriate, uniform reporting under chapters 4 and 61.

II. Future Guidance and Request for Comments

A. Qualified Intermediaries

The Treasury Department and the IRS are considering revising the requirements of the QI agreement for external audit procedures to verify a QI's compliance with its QI agreement. Comments are requested regarding the merits of requiring QIs to provide, in lieu of external audit reports, periodic

certifications of compliance similar to that required of participating FFIs under the final regulations. Comments are also requested as to the cases in which internal audits and reviews by third-parties should be required or permitted in lieu of external audits, including the extent to which such reviews should include evaluations of a QI's internal controls in lieu (in whole or in part) of the account review procedures prescribed in Revenue Procedure 2002-55.

B. Private Arrangement Intermediaries

The Treasury Department and the IRS anticipate issuing guidance to allow participating FFIs and registered-deemed compliant FFIs currently acting as private arrangement intermediaries (PAIs) to continue to act as PAIs for FATCA purposes under requirements similar to those specified in the current model QI agreement. Further, the QI agreement will be modified in the FATCA Rev. Proc. to incorporate the requirement that a QI may only contract with a PAI that is a participating FFI or registered-deemed compliant FFI (in addition to the chapter 3 requirements for PAIs). As under the existing procedures applicable to PAIs, PAIs will not be required to separately register with the IRS to obtain PAI status (other than registering for chapter 4 purposes). QIs that contract with PAIs for purposes of their QI agreement will be required to identify these PAIs as part of the Portal registration process described above. As part of the revised requirements for PAIs, the Treasury Department and the IRS anticipate amending the external audit requirements of PAIs to provide requirements comparable to those required of QIs.

C. Coordination with Chapters 3 and 61

The Treasury Department and the IRS intend: (1) to issue guidance coordinating chapters 3 and 61 with chapter 4, in order to reduce or eliminate duplicative reporting as between chapter 4 (and reporting pursuant to a Model 1 IGA) and chapters 3 and 61; and (2) to conform, as appropriate, the withholding, payee identification, and other due diligence rules of chapters 3 and 61 with rules under chapter 4. Comments are requested regarding how such coordination should be undertaken and whether other chapter 4 rules should be coordinated with other Code provisions.

D. Forms

A number of new and revised IRS forms must be issued due to the new certification, reporting, and withholding requirements of chapter 4.

For purposes of obtaining certifications of account holder status for chapter 3 purposes, withholding agents have relied on IRS forms in the "W-8" series. The forms in the W-8 series will be modified for chapter 4 purposes. It should be noted, however, that the regulations provide that a financial institution, depending on the circumstances, may also rely on substitute forms, written certifications, and other documentation.

The IRS has already released draft versions of a revised Form W-8IMY, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," a revised Form W-8ECI "Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States," and a revised Form W-8EXP "Certificate of Foreign Government or Other Foreign Organization for

United States Tax Withholding." The IRS intends to release shortly a new Form W-8BEN-E, "Certificate of Status for Beneficial Owner for United States Tax Withholding (Entities)," to be used only by beneficial owners that are entities and, shortly thereafter, a draft version of a revised Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," to be used only by beneficial owners that are individuals.

The IRS also intends to release shortly a new Form 8966, "FATCA Report," that will be used by FFIs (including QIs, WPs, WTs) and withholding agents (in limited circumstances) to comply with their chapter 4 reporting obligations. This new Form 8966 will set forth all the information that must be reported with respect to financial accounts in accordance with these regulations. Finally, the IRS intends to issue shortly a revised Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding." Revised Forms 1042 and 1042-S will set forth all the information that must be reported by withholding agents to meet their obligations under both §1.1474-1(c) and (d) (chapter 4) and §1.1461-1 (chapter 3). The IRS intends to publish later in 2013 or in early 2014 final versions of Form 8966 and Form 1042-S, together with the XML-based schemas to be used by withholding agents for the electronic filing of these forms.

Effect on Other Documents

The following publications are obsolete as of **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].**

Notice 2010-60, 2010-37 I.R.B. 329

Notice 2011-34, 2011-19 I.R.B. 765

Notice 2011-53, 2011-32 I.R.B. 124

Announcement 2012-42, 2012-47 I.R.B. 561

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. Chapter 6) do not apply to these regulations.

The collection of information in these final regulations is contained in a number of provisions including §§1.1471-2, 1.1471-3, 1.1471-4, 1.1472-1, and 1.1474-1. The IRS intends that these information collection requirements will be satisfied by persons complying with revised chapter 3 reporting forms, new reporting forms based on these final regulations, the terms, conditions, and requirements of an FFI agreement, a QI agreement, a WP agreement, or a WT agreement that satisfies the requirements of an applicable revenue procedure to be issued by the IRS, or the alternative certification and documentation requirements set out in these final regulations. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these final regulations will be reflected in the respective OMB Form 83-1, Paperwork Reduction Act Submission, associated with new or revised IRS forms, the revenue procedure relating to the FFI, QI,

WP, and WT agreements, and the alternative certification and documentation requirements of these final regulations.

It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS anticipate that a substantial number of domestic small entities will be affected by the collection of information in these final regulations, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant.

The domestic small business entities that are subject to chapter 4 and these regulations are those domestic business entities that are payors of U.S. source FDAP income that are presently subject to the information collection and reporting rules under chapter 3. These domestic small business entities are required to be familiar with chapter 3's information collection and reporting rules and forms in order to determine a payee's U.S. withholding status and, based on that status, withhold and remit the proper amount of tax on payments of U.S. source FDAP income. Small domestic business entities that are payors of U.S. source FDAP income have developed and implemented internal reporting and information collection systems under which the business entity satisfies its chapter 3 payee identification, withholding, and tax remittance requirements.

The IRS intends to revise the present chapter 3 reporting forms, with the revised forms being used by a payor of U.S. source FDAP income to satisfy the

payor's obligations under chapters 3 and 4. As a result, these final regulations' information collection requirements build on reporting and information collection systems familiar to and currently used by payors of U.S. source FDAP income that are domestic small business entities, thereby reducing the burden imposed on these entities. In addition, the final regulations' alternative certification and documentation provisions reduce the information otherwise required to be collected by withholding agents and submitted by payees, thereby further limiting the burden imposed by the final regulations on domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires that an agency prepare a costs and benefits analysis and a budgetary impact statement before promulgating a rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Treasury Department and the IRS have determined that there is no federal mandate imposed by this rulemaking that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the

Small Business Administration for comment on its impact on small businesses. No comments were received from the Small Business Administration.

Drafting Information

The principal authors of §§1.1471-1 through 1.1474-7 are John Sweeney, Danielle Nishida, Tara Ferris, Quyen Huynh, Josephine Firehock, and Susan Massey, all of the Office of Associate Chief Counsel (International). The principal author of §301.1474-1 is Michael E. Hara, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income Taxes, Penalties, Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1--INCOME TAXES

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

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

Section 1.1471-1 is also issued under 26 U.S.C. 1471
Section 1.1471-2 is also issued under 26 U.S.C. 1471

Section 1.1471-3 is also issued under 26 U.S.C. 1471
Section 1.1471-4 is also issued under 26 U.S.C. 1471
Section 1.1471-5 is also issued under 26 U.S.C. 1471
Section 1.1471-6 is also issued under 26 U.S.C. 1471
Section 1.1472-1 is also issued under 26 U.S.C. 1472
Section 1.1473-1 is also issued under 26 U.S.C. 1473
Section 1.1474-1 is also issued under 26 U.S.C. 1474
Section 1.1474-2 is also issued under 26 U.S.C. 1474
Section 1.1474-3 is also issued under 26 U.S.C. 1474
Section 1.1474-4 is also issued under 26 U.S.C. 1474
Section 1.1474-5 is also issued under 26 U.S.C. 1474
Section 1.1474-6 is also issued under 26 U.S.C. 1474
Section 1.1474-7 is also issued under 26 U.S.C. 1474* * *

Par. 2. . The undesignated center heading and subheading immediately following §1.1464-1 are removed.

Par. 3. Section 1.1471-1 and the editorial note that follows are removed.

Par. 4. A new undesignated center heading and §1.1471-0 are added immediately following §1.1464-1 to read as follows:

Information Reporting by Foreign Financial Institutions

§1.1471-0 Outline of regulation provisions for sections 1471 through 1474.

This section lists the table of contents for §§1.1471-1 through 1.1474-7 and §301.1474-1 of this chapter.

§1.1471-1 Scope of chapter 4 and definitions.

(a) Scope of chapter 4 of the Internal Revenue Code.
(b) Definitions.
(1) Account.
(2) Account holder.
(3) Active NFFE.
(4) AML due diligence.
(5) Annuity contract.
(6) Assumes primary withholding responsibility.
(7) Beneficial owner.
(8) Blocked account.

(9) Broker.
(10) Cash value.
(11) Cash value insurance contract.
(12) Certified deemed-compliant FFI.
(13) Change in circumstances.
(14) Chapter 3.
(15) Chapter 4.
(16) Chapter 4 reportable amount.
(17) Chapter 4 status.
(18) Clearing organization.
(19) Complex trust.
(20) Consolidated obligations.
(21) Custodial account.
(22) Custodial institution.
(23) Customer master file.
(24) Deemed-compliant FFI.
(25) Deferred annuity contract.
(26) Depository account.
(27) Depository institution.
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(29) Documentation.
(30) Dormant account.
(31) Effective date of the FFI agreement.
(32) EIN.
(33) Election to be withheld upon.
(34) Electronically searchable information.
(35) Entity.
(36) Entity account.
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(39) Expanded affiliated group.
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(41) FATF-compliant jurisdiction.
(42) FFI.
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(44) Financial account.
(45) Financial institution.
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(49) Foreign passthru payment.
(50) Foreign payee.
(51) Foreign person.
(52) GIIN.
(53) Grandfathered obligation.
(54) Grantor trust.

(55) Gross proceeds.
(56) Group annuity contract.
(57) Group insurance contract.
(58) Immediate annuity.
(59) Individual account.
(60) Insurance company.
(61) Insurance contract.
(62) Intermediary.
(63) Intermediary withholding certificate.
(64) Investment entity.
(65) Investment-linked annuity contract.
(66) Investment-linked insurance contract.
(67) IRS FFI list.
(68) Life annuity contract.
(69) Life insurance contract.
(70) Limited branch.
(71) Limited FFI.
(72) Model 1 IGA.
(73) Model 2 IGA.
(74) NFFE.
(75) Nonparticipating FFI.
(76) Nonreporting IGA FFI.
(77) Non-U.S. account.
(78) NQI.
(79) NWP.
(80) NWT.
(81) Offshore account.
(82) Offshore obligation.
(83) Owner.
(84) Owner-documented FFI.
(85) Participating FFI.
(86) Participating FFI group.
(87) Partnership.
(88) Passive NFFE.
(89) Passthru payment.
(90) Payee.
(91) Payment with respect to an offshore obligation.
(92) Payor.
(93) Permanent residence address.
(94) Person.
(95) Preexisting account.
(96) Preexisting entity account.
(97) Preexisting individual account.
(98) Preexisting obligation.
(99) Pre-FATCA Form W-8.
(100) Prima facie FFI.

(101) QI.
(102) QI agreement.
(103) QI branch of a U.S. financial institution.
(104) Recalcitrant account holder.
(105) Registered deemed-compliant FFI.
(106) Relationship manager.
(107) Reporting Model 1 FFI.
(108) Responsible officer.
(109) Restricted distributor.
(110) Simple trust.
(111) Specified insurance company.
(112) Specified U.S. person.
(113) Sponsored FFI.
(114) Sponsored FFI group.
(115) Sponsoring entity.
(116) Standardized industry code.
(117) Standing instructions to pay amounts.
(118) Subject to withholding.
(119) Substantial U.S. owner.
(120) Territory entity.
(121) Territory financial institution.
(122) Territory financial institution treated as a U.S. person.
(123) Territory NFFE.
(124) TIN.
(125) U.S. account.
(126) U.S. branch treated as a U.S. person.
(127) U.S. financial institution.
(128) U.S. indicia.
(129) U.S. owned foreign entity.
(130) U.S. payee.
(131) U.S. payor.
(132) U.S. person.
(133) U.S. source FDAP income.
(134) U.S. territory.
(135) U.S. withholding agent.
(136) Withholdable payment.
(137) Withholding.
(138) Withholding agent.
(139) Withholding certificate.
(140) WP.
(141) Written statement.
(142) WT.
(c) Effective/applicability date.

<u>§1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs</u>.

(a) Requirement to withhold on payments to FFIs.
(1) General rule of withholding.
(2) Special withholding rules.
(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs that are NQIs, NWPs, or NWTs.
(ii) Residual withholding responsibility of intermediaries and flow-through entities.
(iii) Requirement to withhold if a participating FFI or registered deemed-compliant FFI makes an election to be withheld upon.
(A) Election to be withheld upon for U.S. source FDAP income.
(B) Election to be withheld upon for gross proceeds.
(iv) Withholding obligation of a territory financial institution.
(v) Withholding obligation of a foreign branch of a U.S. financial institution.
(vi) Payments of gross proceeds.
(3) Coordination of withholding under sections 1471(a) and (b).
(4) Payments for which no withholding is required.
(i) Exception to withholding if the withholding agent lacks control, custody, or knowledge.
(A) In general.
(B) Example.
(ii) Exception to withholding for certain payments made prior to January 1, 2016 (transitional).
(A) In general.
(B) Prima facie FFIs.
(iii) Payments to a participating FFI.
(iv) Payments to a deemed-compliant FFI.
(v) Payments to an exempt beneficial owner.
(vi) Payments to a territory financial institution.
(vii) Payments to an account held with a clearing organization with FATCA-compliant membership.
(viii) Payments to certain excepted accounts.
(5) Withholding requirements if source or character of payments is unknown.
(i) General rule.
(ii) Optional escrow procedure.
(b) Grandfathered obligations.
(1) Grandfathered treatment of outstanding obligations.
(2) Definitions.
(i) Grandfathered obligation.
(ii) Obligation.
(iii) Date outstanding.
(iv) Material modification.
(3) Application to flow-through entities.
(i) Partnerships.
(ii) Simple trusts.
(iii) Grantor trusts.
(4) Determination by withholding agent of grandfathered treatment.

(i) In general.
(ii) Determination of material modification.
(iii) Record retention.
(c) Effective/applicability date.

§1.1471-3 Identification of payee.

(a) Payee defined.
(1) In general.
(2) Payee with respect to a financial account.
(3) Exceptions.
(i) Certain foreign agents or intermediaries.
(ii) Foreign flow-through entity.
(iii) U.S. intermediary or agent of a foreign person.
(iv) Territory financial institution.
(v) Disregarded entity or branch.
(vi) U.S. branch of certain foreign banks or foreign insurance companies.
(vii) Foreign branch of a U.S. person.
(b) Determination of payee's status.
(1) Determining whether a payment is received by an intermediary.
(2) Determination of entity type.
(3) Determination of whether the payment is made to a QI, WP, or WT.
(4) Determination of whether the payee is receiving effectively connected income.
(c) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation.
(1) In general.
(2) Reliably associating a payment with documentation if a payment is made through an intermediary or flow-through entity that is not the payee.
(i) In general.
(ii) Exception to entity account documentation rules for an offshore account of an intermediary or flow-through entity.
(3) Requirements for validity of certificates.
(i) Form W-9.
(ii) Beneficial owner withholding certificate (Form W-8BEN).
(iii) Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY).
(A) In general.
(B) Withholding statement.
(1) In general.
(2) Special requirements for an FFI withholding statement.
(3) Special requirements for a chapter 4 withholding statement.
(4) Special requirements for an exempt beneficial owner withholding statement.
(C) Failure to provide allocation information.
(D) Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.

(E) Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.
(F) Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person.
(G) Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person.
(H) Special rules applicable to a withholding certificate of a U.S. branch treated as a U.S. person.
(iv) Certificate for exempt status (Form W-8EXP).
(v) Certificate for effectively connected income (Form W-8ECI).
(4) Requirements for written statements.
(5) Requirements for documentary evidence.
(i) Foreign status.
(A) Certificate of residence.
(B) Individual government identification.
(C) QI documentation.
(D) Entity government documentation.
(E) Third-party credit report.
(ii) Chapter 4 status.
(A) General documentary evidence.
(B) Preexisting account documentary evidence.
(C) Payee-specific documentary evidence.
(6) Applicable rules for withholding certificates, written statements, and documentary evidence.
(i) Who may sign the withholding certificate or written statement.
(ii) Period of validity.
(A) General rule.
(B) Indefinite validity.
(C) Indefinite validity in the case of certain offshore obligations.
(D) Exception for certificate for effectively connected income.
(E) Change in circumstances.
(1) Defined.
(2) Obligation to notify withholding agent of a change in circumstances.
(3) Withholding agent's obligation with respect to a change in circumstances.
(iii) Record retention.
(A) In general.
(B) Exception for documentary evidence received with respect to offshore obligations.
(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence.
(v) Acceptable substitute withholding certificate.
(A) In general.
(B) Non-IRS form for individuals.
(vi) Electronic confirmation of TIN on withholding certificate.
(vii) Reliance on a prior version of a withholding certificate.
(7) Curing documentation errors.

(i) Curing inconsequential errors on a withholding certificate.
(ii) Documentation received after the time of payment.
(8) Documentation furnished on account-by-account basis unless exception provided for sharing documentation within expanded affiliated group.
(i) Single branch systems.
(ii) Universal account systems.
(iii) Shared account systems.
(iv) Document sharing gross proceeds.
(9) Reliance on documentation collected by or certifications provided by other persons.
(i) Shared documentation system maintained by an agent.
(ii) Third-party data providers.
(iii) Reliance on certification provided by introducing brokers.
(iv) Reliance on documentation and certifications provided between principals and agents.
(A) In general.
(B) Reliance upon certification of the principal.
(C) Document sharing.
(D) Examples.
(v) Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.
(d) Documentation requirements to establish payee's chapter 4 status.
(1) Reliance on pre-FATCA Form W-8.
(2) Identification of U.S. persons.
(i) In general.
(ii) Reliance on documentary evidence.
(iii) Preexisting obligations.
(3) Identification of individuals that are foreign persons.
(i) In general.
(ii) Exception for offshore obligations.
(4) Identification of participating FFIs and registered deemed-complaint FFIs.
(i) In general.
(ii) Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).
(iii) Exception for offshore obligations.
(iv) Exceptions for payments to reporting Model 1 FFIs.
(v) Reason to know.
(5) Identification of certified deemed-compliant FFIs.
(i) In general.
(ii) Sponsored, closely-held investment vehicles.
(A) In general.
(B) Offshore obligations.
(6) Identification of owner-documented FFIs.
(i) In general.
(ii) Auditor's letter substitute.
(iii) Documentation for owners of payee.

(iv) Content of FFI owner reporting statement.
(v) Exception for preexisting obligations (transitional).
(vi) Exception for offshore obligations.
(vii) Exception for certain obligations of $1,000,000 or less.
(7) Nonreporting IGA FFIs.
(i) In general.
(ii) Exception for offshore obligations.
(8) Identification of nonparticipating FFIs.
(i) In general.
(ii) Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.
(9) Identification of exempt beneficial owners.
(i) Identification of foreign governments, governments of U.S. territories, international organizations, and foreign central banks of issue.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of retirement funds.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of entities wholly owned by exempt beneficial owners.
(10) Identification of territory financial institutions.
(i) Identification of territory financial institutions that are beneficial owners.
(A) In general.
(B) Exception for preexisting offshore obligations.
(ii) Identification of territory financial institutions acting as intermediaries or that are flow-through entities.
(iii) Reason to know.
(11) Identification of excepted NFFEs.
(i) Identification of excepted nonfinancial group entities.
(A) In general.
(B) Exception for offshore obligations.
(ii) Identification of excepted nonfinancial start-up companies.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of excepted nonfinancial entities in liquidation or bankruptcy.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of section 501(c) organizations.
(A) In general.
(B) Reason to know.
(v) Identification of non-profit organizations.
(A) In general.

(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(D) Reason to know.
(vi) Identification of NFFEs that are publicly traded corporations.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(vii) Identification of NFFE affiliates.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(viii) Identification of excepted territory NFFEs.
(A) Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of $1,000,000 or less (transitional).
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations of $1,000,000 or less.
(ix) Identification of active NFFEs.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(C) Limit on reason to know.
(12) Identification of passive NFFEs.
(i) Exception for offshore obligations.
(ii) Special rule for preexisting offshore obligations.
(iii) Required owner certification for passive NFFEs.
(A) In general.
(B) Exception for preexisting obligations of $1,000,000 or less (transitional).
(e) Standards of knowledge.
(1) In general.
(2) Notification by the IRS.
(3) Participating FFIs and registered deemed-compliant FFIs.
(i) In general.
(ii) Special rules for reporting Model 1 FFIs.
(4) Reason to know.
(i) Information conflicting with person's claim of chapter 4 status.
(ii) Specific standards of knowledge applicable to withholding certificates.
(A) In general.
(B) Classification of U.S. status, U.S. address, or U.S. telephone number.
(1) Presumption of individual's foreign status.
(2) Presumption of entity's foreign status.
(C) U.S. place of birth.
(1) Accounts opened on or after January 1, 2014.
(2) Preexisting obligations.
(D) Standing instructions with respect to offshore obligations.
(iii) Specific standard of knowledge applicable to written statements.
(iv) Specific standard of knowledge applicable to documentary evidence.
(A) In general.
(B) Classification of U.S. status, U.S. address, or U.S. telephone number.
(1) Presumption of individual's foreign status.

(2) Presumption of entity's foreign status.
(C) U.S. place of birth.
(1) Accounts opened on or after January 1, 2014.
(2) Preexisting obligations.
(D) Standing instructions.
(E) Standards of knowledge applicable to certain types of documentary evidence.
(1) Financial statement.
(2) Organizational documents.
(v) Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.
(A) U.S. indicia for entities.
(B) Documentation required to cure U.S. indicia.
(vi) Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities.
(A) In general.
(B) Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.
(vii) Limits on reason to know.
(A) Scope of review for preexisting obligations of entities.
(B) Reason to know there is a U.S. telephone number associated with a preexisting obligation.
(C) Reason to know there are U.S. indicia associated with preexisting offshore obligations.
(D) Limits on reason to know for multiple obligations belonging to a single account holder.
(viii) Reasonable explanation supporting claim of foreign status.
(5) Conduit financing arrangements.
(6) Additional guidance.
(f) Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation.
(1) In general.
(2) Presumptions of classification as an individual or entity.
(i) In general.
(ii) Documentary evidence furnished for offshore obligation.
(3) Presumptions of U.S. or foreign status.
(i) Payments to entities with indicia of foreign status.
(ii) Payments to certain exempt recipients.
(iii) Payments with respect to offshore obligations.
(4) Presumption of chapter 4 status for a foreign entity.
(5) Presumption of status as an intermediary.
(6) Presumption of effectively connected income for payments to certain U.S. branches.
(7) Joint payees.
(i) In general.
(ii) Exception for offshore obligations.

(8) Rebuttal of presumptions.
(9) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
(i) In general.
(ii) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
(g) Effective/applicability date.

§1.1471-4 FFI agreement.

(a) In general.
(1) Withholding.
(2) Identification and documentation of account holders.
(3) Reporting.
(4) Expanded affiliated group.
(5) Verification.
(6) Event of default.
(7) Refunds.
(b) Withholding requirements.
(1) In general.
(2) Withholding determination.
(3) Satisfaction of withholding requirements.
(4) Foreign passthru payments.
(5) Withholding on limited FFIs and limited branches.
(i) Limited FFIs.
(ii) Limited branches.
(6) Special rule for dormant accounts.
(7) Withholding requirements for U.S. branches of participating FFIs that are treated as U.S. persons.
(c) Due diligence for the identification and documentation of account holders and payees.
(1) Scope of paragraph.
(2) General rules for the identification and documentation of account holders and payees.
(i) Overview.
(ii) Standards of knowledge.
(A) In general.
(B) Limits on reason to know with respect to certain accounts acquired in merger of bulk acquisition.
(1) In general.
(2) Participating FFIs and certain deemed-compliant FFIs that apply the due diligence rules, and U.S. financial institutions.
(iii) Change in circumstances.
(A) Obligation to identify a change in circumstances.
(B) Definition of change in circumstances.

(C) Requirements following a change in circumstances.
(iv) Record retention.
(v) Special rule for U.S. branches of participating FFIs that are treated as U.S. persons.
(3) Identification and documentation procedure for entity accounts and payees.
(i) In general.
(ii) Timeframe for applying identification and documentation procedure for entity accounts and payees.
(iii) Documentation exception for certain preexisting entity accounts.
(A) Accounts to which this exception applies.
(B) Aggregation of entity accounts.
(C) Election to forgo exception.
(4) Identification and documentation procedure for individual accounts other than preexisting accounts.
(i) In general.
(ii) Reliance on third-party for identification of individual accounts other than preexisting accounts.
(iii) Alternative identification and documentation procedure for certain cash value insurance or annuity contracts.
(A) Group cash value insurance contracts or group annuity contracts.
(B) Accounts held by beneficiaries of a cash value insurance contract that is a life insurance contract.
(5) Identification and documentation procedure for preexisting individual accounts.
(i) In general.
(ii) Special rule for preexisting individual accounts previously documented as U.S. accounts for purposes of chapter 3 or 61.
(iii) Exceptions for certain low value preexisting individual accounts.
(A) Accounts to which an exception applies.
(B) Aggregation of accounts.
(C) Election to forgo exception.
(iv) Specific identification and documentation procedures for preexisting individual accounts.
(A) In general.
(B) U.S. indicia and relevant documentation rules.
(1) U.S. indicia.
(2) Documentation to be retained upon identifying U.S. indicia.
(i) Designation of account holder as a U.S. citizen or resident.
(ii) Unambiguous indication of a U.S. place of birth.
(iii) U.S. address or U.S. mailing address.
(iv) Only U.S. telephone numbers.
(v) U.S. telephone numbers and non-U.S. telephone numbers.
(vi) Standing instructions to pay amounts.
(vii) Power of attorney or signatory authority granted to a person with a U.S. address or "in-care-of" address or "hold mail" address.
(C) Electronic search for identifying U.S. indicia.

(D) Enhanced review for identifying U.S. indicia in the case of certain high-value accounts.
(1) In general.
(2) Relationship manager inquiry.
(3) Additional review of non-electronic records.
(4) Limitations on the enhanced review in the case of comprehensive electronically searchable information.
(E) Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement.
(6) Examples.
(7) Certifications of responsible officer.
(d) Account reporting.
(1) Scope of paragraph.
(2) Reporting requirements in general.
(i) Accounts subject to reporting.
(ii) Financial institution required to report an account.
(A) In general.
(B) Special reporting of account holders of territory financial institutions.
(C) Special reporting of account holders of a sponsored FFI.
(D) Special reporting of account holders that are owner-documented FFIs.
(E) Branch reporting of accounts.
(iii) Special U.S. account reporting rules for U.S. payors.
(A) Special reporting rule for U.S. payors other than U.S. branches.
(B) Special reporting rules for U.S. branches treated as U.S. persons.
(3) Reporting of accounts under section 1471(c)(1).
(i) In general.
(ii) Accounts held by specified U.S. persons.
(iii) Accounts held by U.S. owned foreign entities.
(iv) Special reporting of accounts held by owner-documented FFIs.
(v) Branch reporting.
(vi) Form for reporting accounts under section 1471(c)(1).
(vii) Time and manner of filing.
(viii) Extensions in filing.
(4) Descriptions applicable to reporting requirements of §1.1471-4(d)(3).
(i) Address.
(ii) Account number.
(iii) Account balance or value.
(A) In general.
(B) Currency translation of account balance or value.
(iv) Payments made with respect to an account.
(A) Depository accounts.
(B) Custodial accounts.
(C) Other accounts.
(D) Transfers and closing of deposit, custodial, insurance, and annuity financial accounts.

(E) Amount and character of payments subject to reporting.
(F) Currency translation.
(v) Record retention requirements.
(5) Election to perform chapter 61 reporting.
(i) In general.
(A) Election under section 1471(c)(2).
(B) Election to report in a manner similar to section 6047(d).
(ii) Additional information to be reported.
(iii) Special reporting of accounts held by owner-documented FFIs.
(iv) Branch reporting.
(v) Time and manner of making the election.
(vi) Revocation of election.
(vii) Filing of information under election.
(6) Reporting on recalcitrant account holders.
(i) In general.
(ii) Definition of dormant account.
(iii) End of dormancy.
(iv) Forms.
(v) Time and manner of filing.
(vi) Record retention requirements.
(7) Special reporting rules with respect to the 2013 through 2015 calendar years.
(i) In general.
(ii) Participating FFIs that report under §1.1471-4(d)(3).
(A) Reporting with respect to the 2013 and 2014 calendar years.
(B) Reporting with respect to the 2015 calendar year.
(iii) Participating FFIs that report under §1.1471-4(d)(5).
(iv) Forms for reporting.
(A) In general.
(B) Special determination date and timing for reporting with respect to the 2013 calendar year.
(8) Reporting requirements of QIs, WPs and WTs.
(9) Examples.
(e) Expanded affiliated group requirements.
(1) In general.
(2) Limited branches.
(i) In general.
(ii) Branch defined.
(iii) Limited branch defined.
(iv) Conditions for limited branch status.
(v) Term of limited branch status (transitional).
(3) Limited FFI.
(i) In general.
(ii) Limited FFI defined.
(iii) Conditions for limited FFI status.
(iv) Period for limited FFI status (transitional).
(4) Special rule for QIs.

(f) Verification.
(1) In general.
(2) Compliance program.
(i) In general.
(ii) Consolidated compliance program.
(A) In general.
(B) Requirements of compliance FI.
(3) Certification of compliance.
(i) In general.
(ii) Certification of effective internal controls.
(iii) Qualified certification.
(iv) Material failures defined.
(4) IRS review of compliance.
(i) General inquiries.
(ii) Inquiries regarding substantial non-compliance.
(g) Event of default.
(1) Defined.
(2) Notice of event of default.
(3) Remediation of event of default.
(h) Collective credit or refund procedures for overpayments.
(1) In general.
(2) Persons for which a collective refund is not permitted.
(3) Payments for which a collective refund is permitted.
(4) Procedural and other requirements for collective refund.
(i) Legal prohibitions on reporting U.S. accounts and withholding.
(1) In general.
(2) Requesting wavier or closure of a U.S. account.
(i) In general.
(ii) Valid and effective waiver for a U.S. account.
(iii) Closure or transfer of U.S. account.
(3) Legal prohibitions preventing withholding.
(i) In general.
(ii) Block or transfer accounts or obligations.
(j) Effective/applicability date.

<u>§1.1471-5 Definitions applicable to section 1471</u>.

(a) U.S. accounts.
(1) In general.
(2) Definition of U.S. account.
(3) Account holder.
(i) In general.
(ii) Grantor trust.
(iii) Financial accounts held by agents that are not financial institutions.
(iv) Jointly held accounts.
(v) Account holder for insurance and annuity contracts.

(vi) Examples.
(4) Exceptions to U.S. account status.
(i) Exception for certain individual accounts of participating FFIs.
(ii) Election to forgo exception.
(iii) Example.
(b) Financial accounts.
(1) In general.
(i) Depository account.
(ii) Custodial account.
(iii) Equity or debt interest.
(A) Equity or debt interest in an investment entity.
(B) Certain equity or debt interests in a holding company or treasury center.
(C) Equity or debt interests in other financial institutions.
(iv) Insurance and annuity contracts.
(2) Exceptions.
(i) Certain savings accounts.
(A) Retirement and pension accounts.
(B) Non-retirement savings accounts.
(C) Rollovers.
(D) Coordination with section 6038D.
(E) Account that is tax-flavored.
(ii) Certain term life insurance contracts.
(iii) Account held by an estate.
(iv) Certain escrow accounts.
(v) Certain annuity contracts.
(vi) Account or product excluded under an intergovernmental agreement.
(3) Definitions.
(i) Depository account.
(A) In general.
(B) Exceptions.
(ii) Custodial account.
(iii) Equity interest in certain entities.
(A) Partnership.
(B) Trust.
(iv) Regularly traded on an established securities market.
(v) Value of interest determined, directly or indirectly, primarily by reference to assets the give rise (or could give rise) to withholdable payments.
(A) Equity interest.
(B) Debt interest.
(vi) Redemption or retirement amount or return earned on the interest determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs.
(A) Equity interest.
(B) Debt interest.
(vii) Cash value insurance contracts.
(A) In general.

(B) Cash value.
(C) Amounts excluded from cash value.
(D) Policyholder dividend.
(4) Account balance or value.
(i) In general.
(ii) Special rule for immediate annuity.
(A) Immediate annuities without minimum benefit guarantees.
(B) Immediate annuities with a minimum benefit guarantee.
(C) Net present value of amounts payable in future periods.
(iii) Account aggregation requirements.
(A) In general.
(B) Aggregation rule for relationship managers.
(C) Examples.
(iv) Current translation of balance or value.
(5) Account maintained by financial institution.
(c) U.S. owned foreign entity.
(d) Definition of FFI.
(e) Definition of financial institution.
(1) In general.
(2) Banking or similar business.
(i) In general.
(ii) Exception for certain lessors and lenders.
(iii) Application of section 581.
(iv) Effect of local regulation.
(3) Holding financial assets for others as a substantial portion of its business.
(i) Substantial portion.
(A) In general.
(B) Special rule for start-up entities.
(ii) Income attributable to holding financial assets and related financial services.
(iii) Effect of local regulation.
(4) Investment entity.
(i) In general.
(ii) Financial assets.
(iii) Primarily conducts as a business.
(A) In general.
(B) Special rule start-up entities.
(iv) Primarily attributable to investing, reinvesting, or trading in financial assets.
(A) In general.
(B) Special rule for start-up entities.
(v) Examples.
(5) Exclusions.
(i) Excepted nonfinancial group entities.
(A) In general.
(B) Nonfinancial group.
(C) Holding company.
(D) Treasury center.

(E) Captive finance company.
(ii) Excepted nonfinancial start-up companies or companies entering a new line of business.
(A) In general.
(B) Exception for investment funds.
(iii) Excepted nonfinancial entities in liquidation or bankruptcy.
(iv) Excepted inter-affiliate FFI.
(v) Section 501(c) entities.
(vi) Non-profit organizations.
(6) Reserving activities of an insurance company.
(f) Deemed-compliant FFIs.
(1) Registered deemed-compliant FFIs.
(i) Registered deemed-compliant FFI categories.
(A) Local FFIs.
(B) Nonreporting members of participating FFI groups.
(C) Qualified collective investment vehicles.
(D) Restricted funds.
(E) Qualified credit card issuers.
(F) Sponsored investment entities and controlled foreign corporations.
(ii) Procedural requirements for registered deemed-compliant FFIs.
(iii) Deemed-compliant FFI that is merged or acquired.
(2) Certified deemed-compliant FFIs.
(i) Nonregistering local bank.
(ii) FFIs with only low-value accounts.
(iii) Sponsored, closely-held investment vehicles.
(iv) Limited life debt investment entities (transitional).
(3) Owner-documented FFIs.
(i) In general.
(ii) Requirements of owner-documented FFI status.
(4) Definition of restricted distributor.
(g) Recalcitrant account holders.
(1) Scope.
(2) Recalcitrant account holder.
(3) Start of recalcitrant account holder status.
(i) Preexisting accounts identified under the procedures described in §1.1471-4(c) for identifying U.S. accounts.
(A) In general.
(B) Accounts other than high-value accounts.
(C) High-value accounts.
(D) Preexisting accounts that become high-value accounts.
(ii) Accounts that are not preexisting accounts and accounts requiring name/TIN correction.
(iii) Accounts with changes in circumstances.
(4) End of recalcitrant account holder status.
(h) Passthru payment.
(1) Defined.

(2) Foreign passthru payment.
(i) Expanded affiliated group.
(1) Scope of paragraph.
(2) Expanded affiliated group defined.
(i) In general.
(ii) Partnerships and entities other than corporations.
(3) Exception for FFIs holding certain capital investments.
(4) Seed capital.
(5) Anti-abuse rule.
(j) Effective/applicability date.

§1.1471-6 Payments beneficially owned by exempt beneficial owners.

(a) In general.
(b) Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.
(1) Integral part.
(2) Controlled entity.
(3) Inurement to the benefit of private persons.
(c) Any international organization or any wholly owned agency or instrumentality thereof.
(d) Foreign central bank of issue.
(1) In general.
(2) Separate instrumentality.
(3) Bank for International Settlements.
(4) Income on certain collateral.
(e) Governments of U.S. territories.
(f) Certain retirement funds.
(1) Treaty-qualified retirement fund.
(2) Broad participation retirement fund.
(3) Narrow participating retirement funds.
(4) Fund formed pursuant to a plan similar to a section 401(a) plan.
(5) Investment vehicles exclusively for retirement funds.
(6) Pension fund of an exempt beneficial owner.
(7) Example.
(g) Entities wholly owned by exempt beneficial owners.
(h) Exception for commercial activities.
(1) General rule.
(2) Limitation.
(i) Effective/applicability date.

§1.1472-1 Withholding on NFFEs.

(a) In general.
(b) Withholdable payments made to an NFFE.
(1) In general.

(2) Transitional relief.
(c) Exceptions.
(1) Beneficial owner that is an excepted NFFE.
(i) Publicly traded corporation.
(A) Regularly traded.
(B) Special rules regarding the regularly traded requirement.
(1) Year of initial public offering.
(2) Classes of stock treated as meeting the regularly traded requirement.
(3) Anti-abuse rule.
(C) Established securities market.
(1) In general.
(2) Foreign exchange with multiple tiers.
(3) Computation of dollar value of stock traded.
(ii) Certain affiliated entities related to a publicly traded corporation.
(iii) Certain territory entities.
(iv) Active NFFEs.
(A) Passive income.
(B) Exceptions from passive income treatment.
(C) Methods of measuring assets.
(v) Excepted nonfinancial entities.
(2) Payments made to a WP, WT, or an exempt beneficial owner.
(d) Rules for determining payee and beneficial owner.
(1) In general.
(2) Payments made to an NFFE that is a WP or WT.
(3) Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT.
(4) Payments made to a beneficial owner that is an NFFE.
(5) Absence of valid documentation.
(e) Information reporting requirements.
(1) Reporting on withholdable payments.
(2) Reporting on substantial U.S. owners.
(f) Effective/applicability date.

§1.1473-1 Section 1473 definitions.

(a) Definition of withholdable payment.
(1) In general.
(2) U.S. source FDAP income defined.
(i) In general.
(A) FDAP income defined.
(B) U.S. source.
(C) Exceptions to withholding on U.S. source FDAP income not applicable under chapter 4.
(ii) Special rule for certain interest.
(iii) Original issue discount.
(iv) REMIC residual interests.

(v) Withholding liability of payee that is satisfied by withholding agent.
(vi) Special rule for sales of interest bearing debt obligations.
(vii) Payment of U.S. source FDAP income.
(A) Amount of payment of U.S. source FDAP income.
(B) When payment of U.S. source FDAP income is made.
(3) Gross proceeds defined.
(i) Sale or other disposition.
(A) In general.
(B) Special rule for sales effected by brokers.
(C) Special rule for gross proceeds from sales settles by a clearing organization.
(ii) Property of a type that can produce interest or dividend payments that would be U.S. source FDAP income.
(A) In general.
(B) Contracts producing dividend equivalent payments.
(C) Regulated investment company distributions.
(iii) Payment of gross proceeds.
(A) When gross proceeds are paid.
(B) Amount of gross proceeds.
(4) Payments not treated as withholdable payments.
(i) Certain short-term obligations.
(ii) Effectively connected income.
(iii) Excluded nonfinancial payments.
(iv) Gross proceeds from sales of excluded property.
(v) Fractional shares.
(vi) Offshore payments of U.S. source FDAP income prior to 2017 (transitional).
(5) Special payment rules for flow-through entities, complex trusts, and estates.
(i) In general.
(ii) Partnerships.
(iii) Simple trusts.
(iv) Complex trusts and estates.
(v) Grantor trusts.
(vi) Special rule for an NWP or NWT.
(vii) Special rule for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.
(6) Reporting of withholdable payments.
(7) Example.
(b) Substantial U.S. owner.
(1) Definition.
(2) Indirect ownership of foreign entities.
(i) Indirect ownership of stock.
(ii) Indirect ownership in a foreign partnership or ownership of a beneficial interest in a foreign trust.
(iii) Ownership and holdings through options.
(iv) Determination of proportionate interest.
(v) Interests owned or held by a related person.
(3) Beneficial interest in a foreign trust.

(i) In general.
(ii) Determining the 10 percent threshold in the case of a beneficial interest in a foreign trust.
(iii) Valuation rules for beneficial interests in foreign trusts.
(4) Exceptions.
(i) De minimis amount or value exception.
(ii) Trusts wholly owned by certain U.S. persons.
(5) Special rule for certain financial institutions.
(6) Determination dates for substantial U.S. owners.
(7) Examples.
(c) Specified U.S. person.
(d) Withholding agent.
(1) In general.
(2) Participating FFIs and registered deemed-compliant FFIs as withholding agents.
(3) Grantor trusts as withholding agents.
(4) Deposit and return requirements.
(5) Multiple withholding agents.
(6) Exception for certain individuals.
(e) Foreign entity.
(f) Effective/applicability date.

<u>§1.1474-1 Liability for withheld tax and withholding agent reporting</u>.

(a) Payment and returns of tax withheld.
(1) In general.
(2) Withholding agent liability.
(3) Use of agents.
(i) In general.
(ii) Authorized agent.
(iii) Liability of withholding agent acting through an agent.
(4) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.
(i) In general.
(ii) Withholding satisfied by another withholding agent.
(b) Payment of withheld tax.
(1) In general.
(2) Special rule for foreign passthru payments and payments of gross proceeds that include an undetermined amount of income subject to tax.
(c) Income tax return.
(1) In general.
(2) Participating FFIs, registered deemed-compliant FFIs, and U.S. branches treated as U.S. persons.
(3) Amended returns.
(d) Information returns for payment reporting.
(1) Filing requirement.

(i) In general.
(ii) Recipient.
(A) Defined.
(B) Persons that are not recipients.
(2) Amounts subject to reporting.
(i) In general.
(ii) Exception to reporting.
(iii) Coordination with chapter 3.
(3) Required information.
(4) Method of reporting.
(i) Payments by U.S. withholding agent to recipients.
(A) Payments to certain entities that are beneficial owners.
(B) Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.
(C) Amounts paid to a U.S. branch of a participating FFI or registered deemed-compliant FFI.
(D) Amounts paid to territory financial institutions that are flow-through entities or acting as intermediaries.
(E) Amounts paid to NFFEs.
(ii) Payments made by withholding agents to certain entities that are not recipients.
(A) Entities that provide information for a withholding agent to perform specific payee reporting.
(B) Nonparticipating FFI that is a flow-through entity or intermediary.
(C) Disregarded entities.
(iii) Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs).
(A) In general.
(B) Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3).
(C) Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional).
(D) Reporting by U.S. branches of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person.
(iv) Reporting by territory financial institutions.
(v) Nonparticipating FFIs.
(vi) Other withholding agents.
(e) Magnetic media reporting.
(f) Indemnification of withholding agent.
(g) Extensions of time to file Forms 1042 and 1042-S.
(h) Penalties.
(i) Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs.
(1) Reporting by certain withholding agents with respect to owner-documented FFIs.

(2) Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs.
(3) Cross reference to reporting by participating FFIs.
(j) Effective/applicability date.

§1.1474-2 Adjustments for overwithholding or underwithholding of tax.

(a) Adjustments of overwithheld tax.
(1) In general.
(2) Overwithholding.
(3) Reimbursement of tax.
(i) General rule.
(ii) Record maintenance.
(4) Set-offs.
(5) Examples.
(b) Withholding of additional tax when underwithholding occurs.
(c) Effective/applicability date.

§1.1474-3 Withheld tax as credit to beneficial owner of income.

(a) Creditable tax
(b) Amounts paid to persons that are not the beneficial owners
(c) Effective/applicability date

§1.1474-4 Tax paid only once.

(a) Tax paid.
(b) Effective/applicability date.

§1.1474-5 Refunds or credits.

(a) Refund and credit.
(1) In general.
(2) Limitation to refund and credit for a nonparticipating FFI.
(3) Requirement to provide additional documentation for certain beneficial owners.
(i) In general.
(ii) Claim of reduced withholding under an income tax treaty.
(iii) Additional documentation to be furnished to the IRS for certain NFFEs.
(b) Tax repaid to payee.
(c) Effective/applicability date.

§1.1474-6 Coordination of chapter 4 with other withholding provisions.

(a) In general.

(b) Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443.
(1) In general.
(2) When withholding is applied.
(3) Special rule for certain substitute dividend payments.
(c) Coordination with amounts subject to withholding under section 1445.
(1) In general.
(2) Determining amount of distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding.
(i) Distribution from qualified investment entity.
(ii) Distribution from a United States real property holding corporation.
(d) Coordination with section 1446.
(1) In general.
(2) Determining the amount of distribution subject to section 1446.
(e) Example.
(f) Effective/applicability date.

<u>§1.1474-7 Confidentiality of information</u>.

(a) Confidentiality of information.
(b) Exception for disclosure of participating FFIs.
(c) Effective/applicability date.

<u>§301.1474-1 Required use of magnetic media for financial institutions filing Form 1042-S or Form 8966</u>.

(a) Financial institutions filing certain information returns.
(b) Waiver.
(c) Failure to file.
(d) Meaning of terms.
(1) Magnetic media.
(2) Financial institution.
(e) Effective/applicability date.

Par. 5. Section 1.1471-1 is added to read as follows:

<u>§1.1471-1 Scope of chapter 4 and definitions</u>.

(a) <u>Scope of chapter 4 of the Internal Revenue Code</u>. Sections 1.1471-1 through 1.1474-7 provide rules for withholding when a withholding agent makes a payment to an FFI or NFFE and prescribe the requirements for and definitions relevant to FFIs and NFFEs to which withholding will not apply. Section 1.1471-1

provides definitions for terms used in chapter 4 of the Internal Revenue Code (Code) and the regulations thereunder. Section 1.1471-2 provides rules for withholding under section 1471(a) on payments to FFIs, including the exception from withholding for payments made with respect to certain grandfathered obligations. Section 1.1471-3 provides rules for determining the payee of a payment and the documentation requirements to establish a payee's chapter 4 status. Section 1.1471-4 describes the requirements of an FFI agreement under section 1471(b) and the application of sections 1471(b) and (c) to an expanded affiliated group of FFIs. Section 1.1471-5 defines terms relevant to section 1471 and the FFI agreement and defines categories of FFIs that will be deemed to have met the requirements of section 1471(b) pursuant to section 1471(b)(2). Section 1.1471-6 defines classes of beneficial owners of payments that are exempt from withholding under chapter 4. Section 1.1472-1 provides rules for withholding when a withholding agent makes a payment to an NFFE, and defines categories of NFFEs that are not subject to withholding. Section 1.1473-1 provides definitions of the statutory terms in section 1473. Section 1.1474-1 provides rules relating to a withholding agent's liability for withheld tax, filing of income tax and information returns, and depositing of tax withheld. Section 1.1474-2 provides rules relating to adjustments for overwithholding and underwithholding of tax. Section 1.1474-3 provides the circumstances in which a credit is allowed to a beneficial owner for a withheld tax. Section 1.1474-4 provides that a chapter 4 withholding obligation need only be collected once. Section 1.1474-5 contains rules relating to credits and refunds of tax withheld.

Section 1.1474-6 provides rules coordinating withholding under sections 1471 and 1472 with withholding provisions under other sections of the Code. Section 1.1474-7 provides the confidentiality requirement for information obtained to comply with the requirements of chapter 4. Any reference in the provisions of sections 1471 through 1474 to an amount that is stated in U.S. dollars includes the foreign currency equivalent of that amount. Except as otherwise provided, the provisions of sections 1471 through 1474 and the regulations thereunder apply only for purposes of chapter 4. See §301.1474-1 of this chapter for the requirements for reporting on magnetic media that apply to financial institutions making payments or otherwise reporting accounts pursuant to chapter 4.

(b) Definitions. Except as otherwise provided in this paragraph (b) or under the terms of an applicable Model 2 IGA, the following definitions apply for purposes of sections 1471 through 1474 and the regulations under those sections.

(1) Account. The term account means a financial account as defined in §1.1471-5(b).

(2) Account holder. The term account holder means the person who holds an account, as determined under §1.1471-5(a)(3).

(3) Active NFFE. The term active NFFE has the meaning set forth in §1.1472-1(c)(1)(iv).

(4) AML due diligence. The term AML due diligence means the customer due diligence procedures of a financial institution pursuant to the anti-money laundering or similar requirements to which the financial institution, or branch

thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.

(5) Annuity contract. The term annuity contract means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 72(s), 72(u), 817(h), and the investor control prohibition) applicable to the taxation of a contract holder or issuer.

(6) Assumes primary withholding responsibility. The term assumes primary withholding responsibility means that a QI, territory financial institution, or U.S. branch of a participating FFI or registered deemed-compliant FFI that assumes responsibility for withholding on a payment for purposes of chapters 3 and 4 as if it were a U.S. person. A QI may only assume primary withholding responsibility if it does not make an election to be withheld upon with respect to the payment.

(7) Beneficial owner. Except as provided in §1.1472-1(d), §1.1471-6(d)(4), and §1.1471-6(f), the term beneficial owner has the meaning set forth in §1.1441-1(c)(6).

(8) Blocked account. The term blocked account has the meaning set forth in §1.1471-4(e)(2)(iii)(B).

(9) Broker. The term broker means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Examples of a broker include an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that effects sales of securities for its members. A broker does not include an international organization described in §1.1471-6(c) that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than transactions incidental to the purpose of the escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

(10) Cash value. The term cash value has the meaning set forth in §1.1471-5(b)(3)(vii)(B).

(11) Cash value insurance contract. The term cash value insurance contract has the meaning set forth in §1.1471-5(b)(3)(vii).

(12) Certified deemed-compliant FFI. The term certified deemed-compliant FFI means an FFI described in §1.1471-5(f)(2).

(13) Change in circumstances. The term change in circumstances has the meaning set forth in §1.1471-3(c)(6)(ii)(E) for withholding agents and, in the case of a participating FFI, has the meaning set forth in §1.1471-4(c)(2)(iii).

(14) Chapter 3. For purposes of chapter 4, the term chapter 3 means sections 1441 through 1464 and the regulations thereunder, but does not include sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.

(15) Chapter 4. The term chapter 4 means sections 1471 through 1474 and the regulations thereunder.

(16) Chapter 4 reportable amount. The term chapter 4 reportable amount has the meaning set forth in §1.1474-1(d)(2)(i).

(17) Chapter 4 status. The term chapter 4 status means a person's status as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

(18) Clearing organization. The term clearing organization means an entity that is in the business of holding securities for its member organizations or clearing trades of securities and transferring, or instructing the transfer of, securities by credit or debit to the account of a member without the necessity of physical delivery of the securities.

(19) Complex trust. A complex trust is a trust that is not a simple trust or a grantor trust.

(20) Consolidated obligations. The term consolidated obligations means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(98)(ii) of this section or in order to share documentation between the obligations pursuant to §1.1471-3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§1.1471-3(e) and 1.1471-4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§1.1471-3(c)(6)(ii), 1.1471-3(d), 1.1471-4(c), 1.1471-5(a)(4), and 1.1471-5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

(21) Custodial account. The term custodial account has the meaning set forth in §1.1471-5(b)(3)(ii).

(22) Custodial institution. The term custodial institution has the meaning set forth in §1.1471-5(e)(1)(ii).

(23) Customer master file. A customer master file includes the primary files of a participating FFI or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

(24) Deemed-compliant FFI. The term deemed-compliant FFI means an FFI that is treated, pursuant to section 1471(b)(2) and §1.1471-5(f), as meeting the requirements of section 1471(b). The term deemed-compliant FFI also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(25) Deferred annuity contract. The term deferred annuity contract means an annuity contract other than an immediate annuity contract.

(26) Depository account. The term depository account has the meaning set forth in §1.1471-5(b)(3)(i).

(27) Depository institution. The term depository institution has the meaning set forth in §1.1471-5(e)(1)(i).

(28) Documentary evidence. The term documentary evidence means documents, other than a withholding certificate or written statement, that a withholding agent is permitted to rely upon to determine the chapter 4 status of a person in accordance with §1.1471-3(c)(5).

(29) Documentation. The term documentation means withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining a person's chapter 4 status, including any

document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.

(30) Dormant account. The term dormant account has the meaning set forth in §1.1471-4(d)(6)(ii).

(31) Effective date of the FFI agreement. The term effective date of the FFI agreement means the date on which the IRS issues a GIIN to the participating FFI. For participating FFIs that receive a GIIN prior to December 31, 2013, the effective date of the FFI agreement is December 31, 2013.

(32) EIN. The term EIN means an employer identification number (also known as a federal tax identification number) described in §301.6109-1(a)(1)(i) of this chapter.

(33) Election to be withheld upon. The term election to be withheld upon has the meaning set forth in §1.1471-2(a)(2)(iii).

(34) Electronically searchable information. The term electronically searchable information means information that an FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

(35) Entity. The term entity means any person other than an individual.

(36) Entity account. The term entity account means an account held by one or more entities.

(37) Excepted NFFE. The term excepted NFFE means an NFFE that is described in §1.1472-1(c)(1).

(38) Exempt beneficial owner. The term exempt beneficial owner means any person described in §1.1471-6(b) through (g) or that is otherwise treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA.

(39) Expanded affiliated group. The term expanded affiliated group has the meaning set forth in §1.1471-5(i)(2).

(40) FATF. The term FATF means the Financial Action Task Force, an inter-governmental body that develops and promotes international policies to combat money laundering and terrorist financing.

(41) FATF-compliant jurisdiction. The term FATF-compliant jurisdiction means a jurisdiction that —

(i) Is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from the jurisdiction;

(ii) Is not a jurisdiction with strategic AML/CFT (anti-money laundering and combating the financing of terrorism) deficiencies that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies; and

(iii) Is not a jurisdiction with strategic AML/CFT deficiencies that the FATF has identified as not making sufficient progress on its action plan agreed upon with the FATF.

(42) FFI. The term FFI or foreign financial institution has the meaning set forth in §1.1471-5(d).

(43) FFI agreement. The term FFI agreement means an agreement that is described in §1.1471-4(a). An FFI agreement includes a QI agreement, a withholding partnership agreement, and a withholding trust agreement that is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013. The term FFI agreement also includes a QI agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013.

(44) Financial account. The term financial account has the meaning set forth in §1.1471-5(b).

(45) Financial institution. The term financial institution has the meaning set forth in §1.1471-5(e).

(46) Flow-through entity. The term flow-through entity means a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

(47) Flow-through withholding certificate. The term flow-through withholding certificate means a Form W-8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(48) Foreign entity. The term foreign entity has the meaning set forth in §1.1473-1(e).

(49) Foreign passthru payment. The term foreign passthru payment has the meaning set forth in §1.1471-5(h)(2).

(50) Foreign payee. The term foreign payee means any payee other than a U.S. payee.

(51) Foreign person. The term foreign person means any person other than a U.S. person and includes a QI branch of a U.S. financial institution.

(52) GIIN. The term GIIN or Global Intermediary Identification Number means the identification number that is assigned to a participating FFI or registered deemed-compliant FFI. The term GIIN or Global Intermediary Identification Number also includes the identification number assigned to a reporting Model 1 FFI for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(53) Grandfathered obligation. The term grandfathered obligation has the meaning set forth in §1.1471-2(b).

(54) Grantor trust. A grantor trust is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

(55) Gross proceeds. The term gross proceeds has the meaning set forth in §1.1473-1(a)(3).

(56) Group annuity contract. The term group annuity contract means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labor union, or other association or group.

(57) Group insurance contract. The term group insurance contract means an insurance contract that—

(i) Provides coverage on individuals who are affiliated through an employer, trade association, labor union, or other association or group; and

(ii) Charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

(58) Immediate annuity. The term immediate annuity means an annuity contract that—

(i) Is purchased with a single premium or annuity consideration; and

(ii) No later than one year from the purchase date of the contract commences to pay annually or more frequently substantially equal periodic payments.

(59) Individual account. The term individual account means an account held by one or more individuals.

(60) Insurance company. The term insurance company means an entity or arrangement —

(i) That is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;

(ii) The gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or

(iii) The aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

(61) Insurance contract. The term insurance contract means a contract (other than an annuity contract) under which the issuer in exchange for consideration agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

(62) Intermediary. The term intermediary has the meaning set forth in §1.1441-1(c)(13).

(63) Intermediary withholding certificate. The term intermediary withholding certificate means a Form W-8IMY submitted by an intermediary.

(64) Investment entity. The term investment entity has the meaning set forth in §1.1471-5(e)(1)(iii).

(65) Investment-linked annuity contract. The term investment-linked annuity contract means an annuity contract under which benefits or premiums

are adjusted to reflect the investment return or market value of assets associated with the contract.

(66) Investment-linked insurance contract. The term investment-linked insurance contract means an insurance contract under which benefits, premiums, or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract.

(67) IRS FFI list. The term IRS FFI list means the list published by the IRS that contains the names and GIINs for all participating FFIs, registered deemed-compliant FFIs, and reporting Model 1 FFIs.

(68) Life annuity contract. The term life annuity contract means an annuity contract that provides for payments over the life or lives of one or more individuals.

(69) Life insurance contract. The term life insurance contract means an insurance contract under which the issuer, in exchange for consideration, agrees to pay an amount upon the death of one or more individuals. That a contract provides one or more payments (for example, for endowment benefits or disability benefits) in addition to a death benefit will not cause the contract to be other than a life insurance contract. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 101(f), 817(h), 7702, or investor control prohibition) applicable to the taxation of the contract holder or issuer.

(70) Limited branch. The term limited branch has the meaning set forth in §1.1471-4(e)(2)(iii).

(71) Limited FFI. The term limited FFI has the meaning set forth in §1.1471-4(e)(3)(ii).

(72) Model 1 IGA. The term Model 1 IGA means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 1 IGA.

(73) Model 2 IGA. The term Model 2 IGA means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 2 IGA.

(74) NFFE. The term NFFE or non-financial foreign entity means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

(75) Nonparticipating FFI. The term nonparticipating FFI means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(76) Nonreporting IGA FFI. The term nonreporting IGA FFI means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI.

(77) Non-U.S. account. The term non-U.S. account means an account that is not a U.S. account and that does not have an account holder that is a nonparticipating FFI or recalcitrant account holder.

(78) NQI. The term NQI or nonqualified intermediary has the meaning set forth in §1.1441-1(c)(14).

(79) NWP. The term NWP or nonwithholding foreign partnership means a foreign partnership that is not a withholding foreign partnership.

(80) NWT. The term NWT or nonwithholding foreign trust means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(81) Offshore account. The term offshore account means an account that is an offshore obligation, all payments to which are made outside of the United States, within the meaning of §1.6049-5(e).

(82) Offshore obligation. The term offshore obligation means any account, instrument, or contract that is maintained and executed at an office or branch of the withholding agent at any location outside of the United States or in any location in a U.S. territory. The term also includes any equity interest in a foreign

entity that is purchased by the owner of such interest outside of the United States either directly from the entity or from another person that is located outside of the United States.

(83) Owner. The term owner means a person described in §1.1473-1(b)(1), without regard to whether such person is a U.S. person and without regard to whether such person owns a ten percent interest in the entity. The term also includes a person that owns a discretionary interest in a trust and receives a distribution during the calendar year.

(84) Owner-documented FFI. The term owner-documented FFI means an FFI described in §1.1471-5(f)(3).

(85) Participating FFI. The term participating FFI means an FFI that has agreed to comply with the requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term participating FFI also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

(86) Participating FFI group. The term participating FFI group means an expanded affiliated group that includes one or more participating FFIs and meets the requirements of §1.1471-4(e)(1). The term participating FFI group also means an expanded affiliated group in which one or more members of the group is a reporting Model 1 FFI and each member of the group that is an FFI is a registered deemed-compliant FFI, nonreporting IGA FFI, limited FFI, or retirement fund described in §1.1471-6(f).

(87) Partnership. The term partnership has the meaning set forth in §301.7701-2(c)(1) of this chapter.

(88) Passive NFFE. The term passive NFFE means an NFFE other than an excepted NFFE.

(89) Passthru payment. The term passthru payment has the meaning set forth in §1.1471-5(h).

(90) Payee. The term payee has the meaning set forth in §1.1471-3(a).

(91) Payment with respect to an offshore obligation. The term payment with respect to an offshore obligation means a payment made outside of the United States, within the meaning of §1.6049-5(e), with respect to an offshore obligation.

(92) Payor. The term payor has the meaning set forth in §§31.3406(a)-2 of this chapter and 1.6049-(a)(2) and generally includes a withholding agent.

(93) Permanent residence address. The term permanent residence address is the address in the country of which the person claims to be a resident for purposes of that country's income tax. The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent address is the

place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office.

(94) Person. The term person has the meaning set forth in section 7701(a)(1) and the regulations thereunder, and also includes an entity or arrangement that is an insurance company . The term person does not include a wholly owned entity that is disregarded for federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term person includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(95) Preexisting account. The term preexisting account means a financial account that is a preexisting obligation.

(96) Preexisting entity account. The term preexisting entity account means a preexisting account held by one or more entities.

(97) Preexisting individual account. The term preexisting individual account means a preexisting account held by one or more individuals.

(98) Preexisting obligation--(i) The term preexisting obligation means any account, instrument, contract, debt, or equity interest maintained, executed, or issued by the withholding agent that is outstanding on December 31, 2013. With respect to a withholding agent that is a participating FFI, the term preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a withholding agent that

is a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to §1.1471-5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under §1.1471-5(f).

(ii) The term preexisting obligation also includes any obligation (referring to an account, instrument, contract, debt, or equity interest) of an account holder or payee, regardless of the date such obligation was entered into, if—

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(98)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(98)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(96)(i) of this section.

(99) Pre-FATCA Form W-8. The term pre-FATCA Form W-8 means a version of a Form W-8 (or a substitute form) that was issued prior to 2013 and that does not contain chapter 4 statuses but otherwise meets the requirements of §1.1441-1(e)(1)(ii) applicable to such certificate and has not expired.

(100) Prima facie FFI. The term prima facie FFI means an entity described in §1.1471-2(a)(4)(ii)(B).

(101) QI. The term QI or qualified intermediary has the meaning set forth in §1.1441-1(e)(5)(ii).

(102) QI agreement. The term QI agreement means the agreement described in §1.1441-1(e)(5)(iii).

(103) QI branch of a U.S. financial institution. The term QI branch of a U.S. financial institution means a foreign branch of a U.S. financial institution for which a QI agreement is in effect.

(104) Recalcitrant account holder. The term recalcitrant account holder has the meaning set forth in §1.1471-5(g).

(105) Registered deemed-compliant FFI. The term registered deemed-compliant FFI means an FFI described in §1.1471-5(f)(1). The term registered deemed-compliant FFI also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(106) Relationship manager. A relationship manager is an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of an FFI's private banking department), advises account holders regarding their

banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. Notwithstanding the previous sentence, a person is only a relationship manager with respect to an account that has a balance or value of more than $1,000,000, taking into account the aggregation rules described in §1.1471-5(b)(4)(iii)(A) and (B).

(107) Reporting Model 1 FFI. The term reporting Model 1 FFI means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonparticipating FFI under the Model 1 IGA.

(108) Responsible officer. The term responsible officer means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term responsible officer means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of §1.1471-5(f). If a participating FFI elects to be part of a consolidated compliance program, the term responsible officer means an officer of the compliance FI (as described in §1.1471-4(f)) with sufficient authority to fulfill the

duties of a responsible officer described in §1.1471-4(f)(2) and (3) on behalf of each FFI in the compliance group.

(109) Restricted distributor. The term restricted distributor means an entity described in §1.1471-5(f)(4).

(110) Simple trust. The term simple trust means a trust that meets the requirements of section 651(a)(1) and (2).

(111) Specified insurance company. The term specified insurance company has the meaning set forth in §1.1471-5(e)(1)(iv).

(112) Specified U.S. person. The term specified U.S. person or specified United States person has the meaning set forth in §1.1473-1(c).

(113) Sponsored FFI. The term sponsored FFI means any entity described in §1.1471-5(f)(1)(i)(F) (sponsored investment entities and sponsored controlled foreign corporations) or §1.1471-5(f)(2)(iii) (sponsored, closely held investment vehicles).

(114) Sponsored FFI group. The term sponsored FFI group means a group of sponsored FFIs that share the same sponsoring entity.

(115) Sponsoring entity. The term sponsoring entity means an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to §1.1471-5(f)(1)(i)(F) or (2)(iii).

(116) Standardized industry code. The term standardized industry code means a code that is part of a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax

purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(117) Standing instructions to pay amounts. The term standing instructions to pay amounts means current payment instructions provided by the account holder, or an agent of the account holder, that will repeat without further instructions being provided by the account holder. Therefore, for example, a payment instruction to make an isolated payment is not a standing instruction to pay amounts, even if the instructions are given one year in advance. However, an instruction to make payments indefinitely is a standing instruction to pay amounts for the period during which such instructions are in effect, even if such instructions are amended after a single payment.

(118) Subject to withholding. The term subject to withholding, with respect to an amount, means an amount for which withholding is required under chapter 4 or an amount for which chapter 4 withholding was otherwise applied.

(119) Substantial U.S. owner. The term substantial U.S. owner or substantial United States owner has the meaning set forth in §1.1473-1(b).

(120) Territory entity. The term territory entity means any entity that is incorporated or organized under the laws of any U.S. territory.

(121) Territory financial institution. The term territory financial institution means a financial institution that is incorporated or organized under the laws of any U.S. territory, not including a territory entity that is an investment entity but

that is not a depository institution, custodial institution, or specified insurance company.

(122) Territory financial institution treated as a U.S. person. The term territory financial institution treated as a U.S. person means a territory financial institution that is treated as a U.S. person under §1.1471-3(a)(3)(iv).

(123) Territory NFFE. The term territory NFFE means a territory entity that is not a financial institution, including a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company.

(124) TIN. The term TIN means the tax identifying number assigned to a person under section 6109.

(125) U.S. account. The term U.S. account or United States account has the meaning set forth in §1.1471-5(a).

(126) U.S. branch treated as a U.S. person. The term U.S. branch treated as a U.S. person means a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person under §1.1441-1(b)(2)(iv)(A).

(127) U.S. financial institution. The term U.S. financial institution means a financial institution that is a U.S. person, including a U.S. branch treated as a U.S. person.

(128) U.S. indicia. The term U.S. indicia has the meaning set forth in §1.1471-4(c)(5)(iv)(B) when applied to an individual and as set forth in §1.1471-3(e)(4)(v)(A) when applied to an entity.

(129) U.S. owned foreign entity. The term U.S. owned foreign entity or United States owned foreign entity has the meaning set forth in §1.1471-5(c).

(130) U.S. payee. The term U.S. payee means any payee that is a U.S. person.

(131) U.S. payor. The term U.S. payor means a U.S. payor or U.S. middleman as defined in §1.6049-5(c)(5).

(132) U.S. person. The term U.S. person or United States person means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). For purposes of the preceding sentence, the determination of whether an insurance company is a U.S. person is made without regard to an election by a company not licensed to do business in any State to be subject to U.S. income tax as if it were a domestic insurance company. Thus, a foreign insurance company not licensed to do business in any State that elects pursuant to section 953(d) to be subject to U.S. income tax as if it were a U.S. insurance company is not a U.S. person.

(133) U.S. source FDAP income. The term U.S. source FDAP income has the meaning set forth in §1.1473-1(a)(2).

(134) U.S. territory. The term U.S. territory or possession of the United States means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(135) U.S. withholding agent. The term U.S. withholding agent means a withholding agent that is either a U.S. person or a U.S. branch of a foreign person.

(136) Withholdable payment. The term withholdable payment has the meaning set forth in §1.1473-1(a).

(137) Withholding. The term withholding means the deduction and remittance of tax at the applicable rate from a payment.

(138) Withholding agent. The term withholding agent has the meaning set forth in §1.1473-1(d).

(139) Withholding certificate. The term withholding certificate means a Form W-8, Form W-9, or any other certificate that under the Code or regulations certifies or establishes the chapter 4 status of a payee or beneficial owner.

(140) WP. The term WP or withholding foreign partnership means a foreign partnership that has executed the agreement described in §1.1441-5(c)(2)(ii).

(141) Written statement. The term written statement has the meaning set forth in §1.1471-3(c)(4).

(142) WT. The term WT or withholding foreign trust means a foreign grantor trust or foreign simple trust that has executed the agreement described in §1.1441-5(e)(5)(v).

(c) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 6. Section 1.1471-2 is added to read as follows:

§1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) Requirement to withhold on payments to FFIs--(1) General rule of withholding. Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section, or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under §1.1471-3(a) with respect to that payment and the chapter 4 status of such payee. See §1.1471-3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements where a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a withholdable payment to an NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and §1.1472-1. Except as otherwise

provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under §1.1473-1(a).

(2) Special withholding rules--(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs that are NQIs, NWPs, or NWTs. A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or reporting Model 1 FFI that is an NQI receiving the payment as an intermediary, NWP, or NWT must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in §1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of §1.1471-3(d)(4) and an FFI withholding statement that meets the requirements of §1.1471-3(c)(3)(iii)(B)(1) and (2) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch of a participating FFI that is treated as a U.S. person under §1.1441-1(b)(2)(iv)(A).

(ii) Residual withholding responsibility of intermediaries and flow-through entities. An intermediary or flow-through entity that receives a withholdable payment after December 31, 2013, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another

withholding agent has withheld the full amount required. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by §1.1471-3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI withholding agreement, WP agreement, or WT agreement.

(iii) Requirement to withhold if a participating FFI or registered deemed-compliant FFI makes an election to be withheld upon. A person that otherwise would be a payee with respect to a payment but that makes an election to be withheld upon does not agree to accept primary withholding responsibility for the payment under chapter 3 or 4. Accordingly, such person cannot be treated as the payee and the withholding agent must determine whether it must withhold based on the chapter 4 status of the payee on whose behalf the person is receiving the payment. The election to be withheld upon is only available to the extent provided in paragraph (a)(2)(iii)(A) and (B) of this section. The election is not available to an entity that is required to accept primary withholding responsibility for the payment, such as a WP or WT receiving a payment of U.S. source FDAP income, or an entity that already must be withheld upon because it may not accept primary withholding responsibility for the payment and, as such, already must pass up documentation with respect to the payee to the withholding

agent, such as a participating FFI that is an NQI receiving a payment of U.S. source FDAP income.

(A) Election to be withheld upon for U.S. source FDAP income. A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after December 31, 2013, to a QI that has elected in accordance with this paragraph to be withheld upon. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in §1.1471-3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of §1.1471-3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

(1) The withholding agent is a participating FFI, reporting Model 1 FFI, QI, or a U.S. withholding agent;

(2) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment and that is not a QI branch of a U.S. financial institution;

(3) The person who receives the payment provides the withholding agent, at or before the time of the payment, with a valid intermediary withholding certificate with respect to the payment that notifies the withholding agent that it has elected to be withheld upon, certifies that it is not assuming primary withholding responsibility under chapter 3, and designates whether such election is made for all accounts held with the withholding agent or for the specific accounts identified on the withholding certificate; and

(4) The intermediary withholding certificate is accompanied by a withholding statement described in §1.1471-3(c)(3)(iii)(B).

(B) Election to be withheld upon for gross proceeds. [Reserved].

(iv) Withholding obligation of a territory financial institution. A territory financial institution is a withholding agent with respect to a withholdable payment if it is a withholding agent under §1.1473-1(d) with respect to such payment. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and §1.1441-1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section, however, if it has provided the withholding agent that is a U.S.

withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in §1.1471-3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under §1.1474-1(d).

(v) Withholding obligation of a foreign branch of a U.S. financial institution. Generally, a foreign branch of a U.S. financial institution is a withholding agent and is not an FFI. However, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section in addition to meeting its obligations under either §1.1471-4(b) and its FFI agreement or §1.1471-5(f). Similarly, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI. Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section. A foreign branch of a U.S. financial institution that is not a QI is not permitted to make an election to be withheld upon.

(vi) Payments of gross proceeds. [Reserved].

(3) Coordination of withholding under sections 1471(a) and (b). The following entities are deemed to satisfy their withholding obligations under section 1471(a) and this section: participating FFIs that comply with the withholding requirements of §1.1471-4(b); exempt beneficial owners; section

501(c) entities described in §1.1471-5(e)(5)(v); and nonprofit organizations described in §1.1471-5(e)(5)(vi). See §1.1471-5(f) for when a deemed-compliant FFI is deemed to satisfy its withholding obligations under section 1471(a) and this section.

(4) Payments for which no withholding is required. A withholding agent that has determined, in accordance with the documentation requirements and other rules provided in §1.1471-3, that the payee of a withholdable payment is a foreign entity must determine whether the payment is exempt from withholding. Paragraphs (a)(4)(i) through (viii) of this section describe the circumstances in which a withholdable payment is not subject to withholding under section 1471(a) and this section.

(i) Exception to withholding if the withholding agent lacks control, custody, or knowledge--(A) In general. A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under section 1471 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (a)(4)(i) does not apply, however, to payments with respect to stock or other securities or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the

withholding agent to avoid withholding under section 1471 or 1472. A withholding agent does not lack control over money or property for purposes of this paragraph (a)(4)(i) if the withholding agent directs another party to make the payment. Thus, for example, a principal does not cease to have control over a payment when it contracts with a paying agent to make the payments to its account holders in lieu of paying the account holders directly. Further, a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. See paragraph (a)(5) of this section for rules addressing a withholding agent's obligations when the withholding agent has knowledge of the facts that give rise to the payment, but the character or source of the payment is not known. For purposes of this paragraph (a)(4)(i), a withholding agent is related to the payee or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (a)(4)(i) applies without a requirement that documentation be furnished to the withholding agent. The special rules set forth in §1.1441-2(d)(2) through (4), regarding the obligation of a withholding agent with respect to cancellation of debt, the satisfaction of a tax liability following underwithholding by a withholding agent, and amounts described in §1.860G-3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest) also apply for purposes of chapter 4.

(B) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, which is also a participating FFI. DC pays a dividend of $1,000 that is deposited in A's custodial account at Bank 1. A then directs

Bank 1 to transfer $1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See §1.1473-1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4. With respect to the wire transfer of $1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the $1,000 dividend paid to A, once Bank 1 credits the $1,000 dividend to A's account, the $1,000 becomes A's property. When A transfers the $1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives $1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

(ii) Exception to withholding for certain payments made prior to January 1, 2016 (transitional)--(A) In general. For any withholdable payment made prior to January 1, 2016, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) Prima facie FFIs. If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on July 1, 2014, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A prima facie FFI means any payee if—

(1) The withholding agent has available as part of its electronically searchable information a designation for the payee as a QI or NQI; or

(2) For an account maintained in the United States, the payee is presumed to be a foreign entity under §1.1471-3(f) or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information one of the following North American Industry Classification System or Standard Industrial Classification codes indicating that the payee is a financial institution:

(i) Commercial Banking (NAICS 522110).

(ii) Savings Institutions (NAICS 522120).

(iii) Credit Unions (NAICS 522130).

(iv) Other Depositary Credit Intermediation (NAICS 522190).

(v) Investment Banking and Securities Dealing (NAICS 523110).

(vi) Securities Brokerage (NAICS 523120).

(vii) Commodity Contracts Dealing (NAICS 523130).

(viii) Commodity Contracts Brokerage (NAICS 523140).

(ix) Miscellaneous Financial Investment Activities (NAICS 523999).

(x) Open-End Investment Funds (NAICS 525910).

(xi) Commercial Banks, NEC (SIC 6029).

(xii) Branches and Agencies of Foreign Banks (branches) (SIC 6081).

(xiii) Foreign Trade and International Banking Institutions (SIC 6082).

(xiv) Asset-Backed Securities (SIC 6189).

(xv) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200).

(xvi) Security Brokers, Dealers & Flotation Companies (SIC 6211).

(xvii) Commodity Contracts Brokers & Dealers (SIC 6221).

(xviii) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices (SIC 6726).

(iii) Payments to a participating FFI. Except to the extent provided in paragraph (a)(2)(i) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a participating FFI in accordance with §1.1471-3(d)(3). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

(iv) Payments to a deemed-compliant FFI. Except to the extent provided in paragraph (a)(2)(i) or (iii) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a deemed-compliant FFI in accordance with §1.1471-3(d)(4) through (7). For this purpose, a limited branch of a deemed-compliant FFI is treated as a nonparticipating FFI.

(v) Payments to an exempt beneficial owner. A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to the extent that the withholding agent can reliably associate the payment with documentation to determine the portion of the payment that is allocable to an exempt beneficial owner in accordance with §1.1471-3(d)(8). For example, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that is an exempt beneficial owner with respect to the payment, to a nonparticipating FFI to the extent that the

nonparticipating FFI receives the payment as an intermediary on behalf of one or more of its account holders that are exempt beneficial owners, or to a flow-through entity to the extent that the flow-through entity receives the payment with respect to one or more of its partners, beneficiaries, or owners (as applicable) that are exempt beneficial owners. See §1.1471-3(d)(8)(ii) for special rules for a withholding agent to determine the portion of a withholdable payment that is beneficially owned by an exempt beneficial owner in the case of a payment made to a nonparticipating FFI.

(vi) Payments to a territory financial institution. A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a territory financial institution that beneficially owns the payment in accordance with §1.1471-3(d)(10)(i). A withholding agent also is not required to withhold under this section on a withholdable payment that the withholding agent can treat, in accordance with §1.1471-3(d)(10)(ii), as made to a territory financial institution that is a flow-through entity or that acts as an intermediary with respect to the payment and that has agreed to be treated as a U.S. person for purposes of chapters 3 and 4 with respect to the payment. A territory financial institution's agreement to be treated as a U.S. person for purposes of this section must be evidenced by a withholding certificate described in §1.1471-3(c)(3)(iii)(F) furnished by the territory financial institution to the withholding agent.

(vii) Payments to an account held with a clearing organization with FATCA-compliant membership. [Reserved].

(viii) Payments to certain excepted accounts. A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to an account described in §1.1471-5(b)(2).

(5) Withholding requirements if source or character of payment is unknown—(i) General rule. If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the character of the payment sufficiently to determine whether it is a withholdable payment, such payment must be treated as a withholdable payment. If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the source of the payment, such payment must be treated as U.S. source income. For example, if a withholding agent does not know at the time of payment the amount of the payment that is a withholdable payment, because that calculation depends on facts that are not known at the time of payment (for example, because the withholding agent does not know whether services were performed in the United States or whether the payment constitutes income to the recipient) the withholding agent must withhold an amount necessary to ensure that the amount withheld is not less than 30 percent of the amount that could be a withholdable payment, subject to the limitation that the withheld amount must not exceed 30 percent of the amount paid. Notwithstanding this paragraph (a)(5), a withholding agent may presume a payment to be effectively connected with the conduct of a trade or business in the United States, and thus, not a withholdable payment, if it can do so under §1.1471-3(f)(6) (regarding payments to certain U.S. branches).

(ii) Optional escrow procedure. With respect to a payment described in paragraph (a)(5) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of the withholdable payment can be determined or one year from the date the amount is placed in escrow, at which time either the withholding becomes due under this section or, to the extent that it is determined that the payment is of a type for which no withholding is required, the escrowed amount must be paid to the payee.

(b) Grandfathered obligations--(1) Grandfathered treatment of outstanding obligations. Notwithstanding §1.1473-1(a), a withholdable payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) of this section, or any gross proceeds from the disposition of such an obligation. Notwithstanding §1.1471-5(h), a foreign passthru payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) or (B) of this section, or any gross proceeds from the disposition of such an obligation. A premium paid with regard to an insurance contract or annuity contract that is a grandfathered obligation is treated as a payment made under a grandfathered obligation.

(2) Definitions. The following definitions apply solely for purposes of this paragraph (b).

(i) Grandfathered obligation—(A) The term grandfathered obligation means—

(1) Any obligation outstanding on January 1, 2014;

(2) Any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; and

(3) Any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating (pro rata by value) the collateral (or each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral).

(B) Solely for purposes of a foreign passthru payment, the term grandfathered obligation also includes any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the Federal Register.

(ii) Obligation--(A) Except as otherwise provided in paragraph (b)(2)(ii)(B) of this section, the term obligation means any legally binding agreement or instrument. An obligation for purposes of this paragraph (b)(2)(i) includes, for example—

(1) A debt instrument (for example, a bond, guaranteed investment certificate, or term deposit);

(2) An agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided;

(3) A derivatives transaction entered into between counterparties under an ISDA Master Agreement that is evidenced by a confirmation;

(4) A life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract; and

(5) An immediate annuity contract payable for a period certain or for the life of the annuitant.

(B) An obligation for purposes of this paragraph (b)(2)(ii) does not include any legal agreement or instrument that—

(1) Is treated as equity for U.S. tax purposes;

(2) Lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or a life insurance contract or annuity contract that permits a substitution of a new individual as the insured or as the annuitant under the contract);

(3) Is a brokerage agreement, custodial agreement, investment linked insurance contract, investment linked annuity contract, or similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets; or

(4) Is a master agreement that merely sets forth standard terms and conditions that are intended to apply to a series of transactions between parties but that does not set forth all of the specific terms necessary to conclude a particular transaction.

(iii) Date outstanding. Except as provided in the following sentence, an obligation that constitutes indebtedness for U.S. tax purposes is outstanding on the date provided in paragraph (b)(2)(i) if it has an issue date before such date. In all other cases, including an agreement described in paragraph (b)(2)(ii)(A)(2) of this section, an obligation is outstanding on the date provided in paragraph (b)(2)(i) if a legally binding agreement establishing the obligation was executed between the parties to the agreement before such date. Any material modification of an outstanding obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification.

(iv) Material modification. In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in §1.1001-3(e). In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) Application to flow-through entities--(i) Partnerships. A payment made under a grandfathered obligation includes a payment made to a partnership with respect to such obligation and a payment made with respect to a partnership's disposition of such obligation. A payment made under a grandfathered obligation also includes the income from such obligation that is includible in the gross

income of a partner with respect to a capital or profits interest in the partnership and the gross proceeds allocated to a partner from the disposition of such obligation as determined under §1.1473-1(a)(5)(vii).

(ii) Simple trusts. A payment made under a grandfathered obligation includes a payment made to a simple trust with respect to such obligation, including a payment made with respect to a simple trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the income of a beneficiary and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under §1.1473-1(a)(5)(vii).

(iii) Grantor trusts. A payment made under a grandfathered obligation includes a payment made to a grantor trust with respect to such obligation, including a payment made with respect to the trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the gross income of a person that is treated as an owner of the trust and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation.

(4) Determination by withholding agent of grandfathered treatment--(i) In general. A withholding agent other than the issuer of the obligation (or agent of the issuer) may, absent actual knowledge, rely on a written statement by the issuer of the obligation to determine if such obligation meets the requirements for grandfathered treatment provided under this paragraph (b).

(ii) Determination of material modification. For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent is required to treat a modification of an obligation as material only if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation. A withholding agent, other than the issuer of the obligation (or agent of the issuer), has reason to know that a material modification has occurred with respect to an obligation if the withholding agent receives a disclosure from the issuer of the obligation stating that there has been a material modification to such obligation.

(iii) Record retention. A withholding agent that relies on a document provided by the issuer of an obligation as described in paragraph (b)(4)(i) or (ii) of this section must retain such document in its records for the applicable period of limitations on assessment and collection with respect to amounts paid under the obligation or from disposition of the obligation.

(c) Effective/applicability date. This section generally applies on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability, see §§1.1471-2(a)(1); 1.1471-2(a)(2)(i), (ii), (iii)(A); 1.1471-2(a)(4)(ii).

Par. 7. Section 1.1471-3 is added to read as follows:

§1.1471-3 Identification of payee.

(a) Payee defined--(1) In general. Except as otherwise provided in this paragraph (a), for purposes of chapter 4 a payee is the person to whom a

payment is made, regardless of whether such person is the beneficial owner of the amount.

(2) Payee with respect to a financial account. For purposes of payments made to a financial account and except as otherwise provided in paragraph (a)(3) of this section, the payee is the holder of the financial account.

(3) Exceptions--(i) Certain foreign agents or intermediaries--(A) Except as otherwise provided in paragraphs (a)(3)(iv) and (vi) of this section (applicable to territory financial institutions and certain U.S. branches), a foreign person that is acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if such foreign person is—

(1) An NFFE, unless the NFFE is a QI that has assumed primary withholding responsibility; or

(2) In the case of a payment of U.S. source FDAP income, a participating FFI, deemed-compliant FFI, or restricted distributor, unless the participating FFI, deemed-compliant FFI, or restricted distributor is a QI that has assumed primary withholding responsibility.

(B) In the case of an agent or intermediary described in paragraph (a)(3)(i)(A) of this section, the payee is the person or persons for whom the agent or intermediary collects the payment. Thus, for example, the payee of a payment of U.S. source FDAP income that the withholding agent can reliably associate with a withholding certificate from a QI that does not assume primary withholding responsibility with respect to the payment under chapter 3, or a payment to a

participating FFI that is an NQI, is the person or persons for whom the QI or NQI acts.

(ii) Foreign flow-through entity--(A) A foreign entity that is a flow-through entity is a payee with respect to a payment only if the flow-through entity is—

(1) An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor receiving a payment of U.S. source FDAP income;

(2) An excepted NFFE that is not acting as an agent or intermediary with respect to the payment;

(3) A WP or WT that is not acting as an agent or intermediary with respect to the payment; or

(4) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States and that is excluded from the definition of a withholdable payment under §1.1473-1(a)(4).

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(1) through (3) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(1) through (3)).

(iii) U.S. intermediary or agent of a foreign person. A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution as the payee if the withholding agent does not have reason to know that the U.S. financial institution will not comply with its obligations to withhold under sections 1471 and 1472.

(iv) Territory financial institution. A withholding agent that makes a withholdable payment to a territory financial institution that is a flow-through entity or is acting as an intermediary or agent with respect to the payment may treat the territory financial institution as the payee only if the territory financial institution has agreed (as evidenced by a withholding certificate described in paragraphs (c)(3)(iii)(A) and (F) of this section) to be treated as a U.S. person with respect to the payment for purposes of both chapters 3 and 4. In all other cases, the withholding agent must treat as the payee the partner, beneficiary, or owner (as applicable) of the territory financial institution that is a flow-through entity (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(1) through (3)) or the person on whose behalf the territory financial institution is acting.

(v) Disregarded entity or branch. Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under §301.7701-2(c)(2)(i) of this chapter as an entity separate from its single owner must treat the single owner as the payee. Notwithstanding the previous sentence, a withholding agent that makes a payment to a limited branch will be required to treat the payment as being made to a nonparticipating FFI.

(vi) U.S. branch of certain foreign banks or foreign insurance companies. A withholdable payment to a U.S. branch of either a participating FFI or registered deemed-compliant FFI is a payment to a U.S. person if the U.S. branch is treated as a U.S. person for purposes of §1.1441-1(b)(2)(iv). In such case the U.S. branch is treated as the payee. A U.S. branch, however, that is treated as a U.S. person under §1.1441-1(b)(2)(iv) is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4. Accordingly, a U.S. branch of either a participating FFI or registered deemed-compliant FFI must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9). See also paragraph (f)(6) for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) and §1.1471-2(a)(2)(iii), for purposes of chapter 4. See §1.1471-

4(c)(2)(v) for the rule requiring a U.S. branch to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See §1.1471-4(d) for rules for when a U.S. branch of a participating FFI is required to report as a U.S. person.

(vii) Foreign branch of a U.S. person. A payment to a foreign branch of a U.S. person is generally a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to an FFI if the foreign branch is a QI that is acting as an intermediary with respect to the payment. Therefore, a foreign branch that is a QI will provide the withholding agent with an intermediary withholding certificate and the withholding agent will report the payment as having been made to the foreign branch on a Form 1042-S.

(b) Determination of payee's status. Except as otherwise provided in this section, a withholding agent must base its determination of the chapter 4 status of a payee on documentation that the withholding agent can reliably associate with such payment. If a withholding agent makes a payment to a person that is not the payee, the withholding agent will be required to determine the chapter 4 status of each intermediary or flow-through entity in the payment chain until the withholding agent is able to identify the payee. Paragraph (c) of this section provides rules for when a withholding agent can reliably associate a payment with appropriate documentation. Paragraph (d) of this section provides documentation requirements applicable to each class of payees, including exceptions for payments made with respect to offshore obligations or preexisting

obligations. Paragraph (e) provides standards for determining when a withholding agent will be considered to have reason to know that a claim of exemption from withholding is unreliable or incorrect. Paragraph (f) of this section provides presumptions that apply for purposes of determining a payee's chapter 4 status in the absence of documentation or if the documentation provided is unreliable or incorrect.

(1) Determining whether a payment is received by an intermediary. A withholding agent must treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. A U.S. person's foreign branch that is acting in its capacity as a QI is treated as a foreign intermediary. A withholding agent that makes a payment with respect to an offshore obligation must also treat the person who receives the payment as an intermediary if the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the type of certificate furnished as determinative of whether the person who receives the payment is an intermediary, unless the withholding agent knows or has reason to know that the certificate is incorrect. For example, a withholding agent that receives a beneficial owner withholding certificate from an FFI may treat the FFI as the beneficial owner unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (for example, sub-account numbers that do not

correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the FFI receives a payment in part as a beneficial owner and in part as an intermediary, the withholding agent may request that the FFI furnish two certificates, that is, a beneficial owner certificate for the amounts it receives as a beneficial owner, and an intermediary withholding certificate for the amounts it receives as an intermediary. A withholding agent that cannot reliably associate a payment with documentation sufficient to treat the person who receives the payment as an intermediary or as other than an intermediary pursuant to this paragraph (b)(1) must follow the presumption rules set forth in paragraph (f)(5) of this section to determine whether it must treat the person who receives the payment as an intermediary. A determination that a payment is made to an intermediary under this paragraph (b)(1) is not a determination that the payment can be reliably associated with documentation. See paragraph (c)(2) of this section for rules on reliably associating a payment with documentation if such payment is made through an intermediary.

(2) Determination of entity type. A person's entity classification for purposes of chapter 4 is the person's entity classification for U.S. federal income tax purposes. Thus, for example, an entity that is disregarded as a legal entity in its country of organization or an arrangement that does not have a legal personality and is not a juridical person in the country in which it was organized will be treated as an entity for purposes of chapter 4 if it is an entity for U.S. federal income tax purposes. A withholding agent may rely upon a person's

entity classification contained in a valid Form W-8 or W-9 if the withholding agent has no reason to know that the entity classification is incorrect. A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent has reason to know that the entity classification indicated by the person who receives the payment is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is a per se corporation described in §301.7701-2(b)(8) of this chapter unless the certificate or written statement contains a statement that the person is a grandfathered per se corporation described in §301.7701-2(b)(8) and that its grandfathered status has not been terminated.

(3) Determination of whether the payment is made to a QI, WP, or WT. A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a valid Form W-8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, and the form contains the person's GIIN, in the case of a QI or a WP or WT that is an FFI, or the person's QI-EIN, WP-EIN, or WT-EIN in the case of a QI, WP, or WT that is not an FFI.

(4) Determination of whether the payee is receiving effectively connected income. A withholding agent may treat a payment as being made to a payee that

is receiving income that is effectively connected with a trade or business in the United States, or gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States, if it can reliably associate the payment with a valid Form W-8ECI described in paragraph (c)(3)(v) of this section or if it can do so under the presumption rule in paragraph (f)(6) of this section.

(c) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation--(1) In general. A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it has obtained (either directly or through an agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may

rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee.

(2) Reliably associating a payment with documentation if a payment is made through an intermediary or flow-through entity that is not the payee—(i) In general. A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation if, in addition to the documentation described in paragraph (d) of this section that is relevant to each payee, the withholding agent also has obtained a valid Form W-8IMY, described in paragraph (c)(3)(iii) of this section, from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a valid Form W-8IMY from each intermediary or flow-through entity in that chain). An intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI receiving a payment of U.S. source FDAP income may, in lieu of providing the withholding agent with documentation for each payee, provide pooled allocation information to the extent and in the manner permitted by paragraph (c)(3)(iii)(B)(2) of this section.

(ii) Exception to entity account documentation rules for an offshore account of an intermediary or flow-through entity. In the case of an offshore

account held by an intermediary or flow-through entity not receiving a payment of U.S. source FDAP income, an FFI may, in lieu of obtaining a withholding certificate, reliably associate such account with valid documentation if the FFI has obtained a written statement certifying as to the account holder's chapter 4 status and stating that the account holder is a flow-through entity or is acting as an intermediary with respect to the payment. In such case, the intermediary or flow-through entity will also be required to provide the withholding statement that generally accompanies the Form W-8IMY, designating the payees and the appropriate amount that should be allocated to each payee, and valid documentation for each payee. If no such withholding statement or underlying documentation is provided, the payment will be treated as made to a nonparticipating FFI.

(3) Requirements for validity of certificates--(i) Form W-9. A valid Form W-9, or a substitute form, must meet the requirements prescribed in §31.3406(h)-3 of this chapter, including the requirement that the form contain the payee's name and TIN, and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee pursuant to sections 6061 through 6063 and the regulations thereunder. A foreign person, including a U.S. branch of a foreign person that is treated as a U.S. person under §1.1441-1(b)(2)(iv), or a foreign branch of a U.S. financial institution that is a QI, may not provide a Form W-9.

(ii) Beneficial owner withholding certificate (Form W-8BEN). A beneficial owner withholding certificate includes a Form W-8BEN (or a substitute form) and

such other form as the IRS may prescribe. A beneficial owner withholding certificate is valid only if its validity period has not expired, it is signed under penalties of perjury by a person with authority to sign for the person whose name is on the form, and it contains—

(A) The person's name, permanent residence address, and TIN (if required);

(B) A certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the person is created, incorporated, or governed (for a person other than an individual);

(C) The entity classification of the person;

(D) The chapter 4 status of the person; and

(E) Such other information required under paragraph (d) of this section applicable to the chapter 4 status selected or otherwise required by the regulations under section 1471 or 1472, or by the form or its accompanying instructions in addition to, or in lieu of, the information described in this paragraph (c)(3)(ii).

(iii) Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)--(A) In general. A withholding certificate of an intermediary, flow-through entity, or U.S. branch is valid for purposes of chapter 4 only if it is furnished on a Form W-8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period

has not expired, and it contains the following information, statements, and certifications--

(1) The name and permanent residence address of the person.

(2) The country under the laws of which the person is created, incorporated, or governed.

(3) The person's entity classification for U.S. tax purposes.

(4) The person's chapter 4 status.

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), or an EIN in the case of a QI, WP, or WT that is not an FFI.

(6) In the case of an intermediary certificate, a certification that, with respect to accounts listed on the withholding statement, the intermediary is not acting for its own account.

(7) With respect to a withholding certificate of a QI, a certification that it is acting as a QI with respect to the accounts listed on the withholding statement.

(8) In the case of a participating FFI or registered deemed-compliant FFI (including a U.S. branch of either such entities that is not treated as a U.S. person) that is an NQI, NWP, NWT, or a QI that makes an election to be withheld upon, an FFI withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (2) of this section.

(9) In the case of a territory financial institution that does not agree to be treated as a U.S. person or a U.S. branch that is not a U.S. branch of a participating FFI, registered deemed-compliant FFI, or nonparticipating FFI, a

chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

(10) In the case of an NFFE or certified deemed-compliant FFI that is an NQI, NWP, or NWT and is not the payee, a chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

(11) In the case of a nonparticipating FFI receiving a payment on behalf of one or more exempt beneficial owners, an exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (4) of this section.

(12) Any other information, certifications, or statements as may be required by the form or its accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph.

(B) Withholding statement--(1) In general. A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the person submitting the withholding certificate and the electronic system must document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic

system must be capable of providing a hard copy of all withholding statements provided electronically. The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under §1.1474-1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a payment for which a withholding statement is also required for purposes of chapter 3, may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(2) Special requirements for an FFI withholding statement. An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to U.S. persons, recalcitrant account holders, nonparticipating FFIs, and any other class of payees that is not subject to withholding under chapter 4; or, when payee specific information is provided for purposes of chapter 3, an allocation of the payment to each payee with the payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled basis or on a payee specific basis, the withholding statement must identify each intermediary or flow-through entity that

receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(3) Special requirements for a chapter 4 withholding statement. A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs.

(4) Special requirements for an exempt beneficial owner withholding statement. An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably

requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment.

(C) Failure to provide allocation information. A withholding certificate that fails to provide allocation information or any of the required documentation for one or more of the payees will not be treated as invalid with respect to the persons for whom valid documentation and allocation information is properly provided. The portion of the payment that is not reliably associated with underlying documentation or that is not properly allocated will be treated in accordance with the presumption rules set forth in paragraph (f) of this section. For example, assume a withholding certificate that is provided by a participating FFI that is an NQI includes an FFI withholding statement that indicates that 50 percent of the payment is allocable to payees that are exempt for purposes of chapter 4 but does not allocate the remaining 50 percent of the payment for purposes of chapter 4. In such case, the withholding agent may treat 50 percent of the payment as exempt from chapter 4 and the remaining 50 percent that was not allocated will be treated, under the presumption rules set forth in paragraph (f) of this section, as made to a pool of payees that are nonparticipating FFIs.

(D) Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3. A QI that assumes primary withholding responsibility under chapter 3 for a payment may not make an election to be withheld upon, as described in §1.1471-2(a)(2)(iii), with respect to that payment. Thus, if a QI assumes primary withholding responsibility under

chapter 3 with respect to a payment of U.S. source FDAP income, in addition to the other requirements described in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has also indicated on the intermediary withholding certificate that it will assume primary withholding responsibility for that payment for purposes of chapter 4.

(E) Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3. A QI that does not assume primary withholding responsibility under chapter 3 with respect to a payment of U.S. source FDAP income will be required to make the election to be withheld upon with respect to that payment. Thus, if a QI does not assume primary withholding responsibility under chapter 3, a withholding agent can reliably associate a payment of U.S. source FDAP income with a valid withholding certificate only when, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the withholding certificate indicates that the QI does not assume primary withholding responsibility for that payment for purposes of chapter 4.

(F) Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person. A withholding agent may reliably associate a payment with an intermediary withholding certificate or flow-through withholding certificate of a territory financial institution that agrees to be treated as a U.S. person if, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the certificate contains an EIN

of the territory financial institution and a certification that the territory financial institution agrees to be treated as a U.S. person and accepts primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4.

(G) Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person. A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person for purposes of chapter 4 and the institution provides a withholding statement described in paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

(H) Special rules applicable to a withholding certificate of a U.S. branch treated as a U.S. person. A withholding agent may reliably associate a payment with a withholding certificate of a U.S. branch that is treated as a U.S. person for purposes of §1.1441-1(b)(2)(iv) if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section; the certificate contains the EIN of the U.S. branch; the GIIN of the U.S. branch; and a certification that the U.S. branch is described in paragraph §1.1441-1(b)(2)(iv) and, accordingly, is required to accept primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4.

(iv) Certificate for exempt status (Form W-8EXP). A Form W-8EXP is valid only if it contains the name, address, and chapter 4 status of the payee, the

relevant certifications or documentation, and any other requirements indicated in the instructions to the form, and is signed under penalties of perjury by a person with authority to sign for the payee.

(v) Certificate for effectively connected income (Form W-8ECI). A Form W-8ECI is valid only if, in addition to meeting the requirements in the instructions to the form, it contains the name, address, and TIN of the payee (other than a GIIN), represents that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and are includable in the payee's gross income for the taxable year (or are gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States), and is signed under penalties of perjury by a person with authority to sign for the payee.

(4) Requirements for written statements. A written statement is a statement by the payee, or other person receiving the payment, that provides the person's chapter 4 status and any other information reasonably requested by the withholding agent to fulfill its obligations under chapter 4 with respect to the payment, such as whether the person is receiving the payment as a beneficial owner, intermediary, or flow-through entity. A written statement is valid only if it is provided by a person with respect to an offshore obligation, contains the name of the person, the person's address, the certifications relevant to the person's chapter 4 status (as contained on a withholding certificate), any additional information required with respect to the chapter 4 status claimed as provided under paragraph (d) of this section (for example, a GIIN), and a signed and dated

certification that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. A written statement may be submitted in any form that is acceptable to the withholding agent, including a statement made as part of the account opening documentation. A written statement may be used in lieu of a withholding certificate only to the extent provided under §1.1471-3(d), as applicable to the chapter 4 status claimed.

(5) Requirements for documentary evidence. Documentary evidence with respect to a payee is only reliable if it contains sufficient information to support the payee's claim of chapter 4 status.

(i) Foreign status. Acceptable documentary evidence supporting a claim of foreign status includes the following types of documentation if the documentation contains a permanent residence address for the person named on the documentation (or indicates the country in which a person that is an individual is a resident or citizen or the country in which a person that is an entity has a permanent residence or is incorporated or organized, if the withholding agent has otherwise obtained a current permanent residence address for the person)—

(A) Certificate of residence. A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country;

(B) Individual government identification. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that is typically used for identification purposes;

(C) QI documentation. With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as referenced in §1.1441-1(e)(5)(iii)), any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities;

(D) Entity government documentation. With respect to an entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality); and

(E) Third-party credit report. For a payment made with respect to an offshore obligation to an individual, a third-party credit report that is obtained pursuant to the conditions described in §1.1471-4(c)(4)(ii).

(ii) Chapter 4 status. Acceptable documentary evidence supporting an entity's claim of chapter 4 status includes--

(A) General documentary evidence. With respect to an entity other than a participating FFI or registered deemed-compliant FFI, any organizational document (such as articles of incorporation or a trust agreement), financial statement, third-party credit report, letter from a government agency, or statement from a government website, agency, or registrar (such as an SEC report) to the extent permitted in paragraphs (d) and (e) of this section;

(B) Preexisting account documentary evidence. With respect to a preexisting obligation of an entity, any standardized industry code or any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) and that was recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized, to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and

(C) Payee-specific documentary evidence. A letter from an auditor or attorney with a location in the United States that is not related to the withholding agent or payee and is subject to the authority of a regulatory body that governs the auditor's or attorney's review of the chapter 4 status of the payee, any bankruptcy filing, corporate resolution, copy of a stock market index or other document to the extent permitted in the specific payee documentation requirements in paragraph (d) and (e) of this section.

(6) Applicable rules for withholding certificates, written statements, and documentary evidence. The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates (Forms W-8 or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms

W-9 (or their substitutes). For corresponding provisions regarding the Form W-9 (or a substitute Form W-9), see section 3406 and the regulations thereunder.

(i) Who may sign the withholding certificate or written statement. A withholding certificate (including an acceptable substitute) or written statement may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate or written statement, as provided in sections 6061 through 6063 and the regulations thereunder. A person authorized to sign a withholding certificate or written statement includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate or written statement to sign documentation on such person's behalf.

(ii) Period of validity--(A) General rule. Except as provided otherwise in paragraphs (c)(6)(ii)(B) and (C), a withholding certificate or written statement will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed. Documentary evidence is generally valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Notwithstanding the validity periods permitted by paragraphs (c)(6)(ii)(A) through (D) of this section, a withholding

certificate, written statement, and documentary evidence will cease to be valid if the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect. Therefore, a withholding agent is required to institute procedures to ensure that any change to the customer master files that constitutes a change in circumstances described in paragraph (c)(6)(ii)(E) of this section is identified by the withholding agent. In addition, a withholding agent is required to notify any person providing documentation of the person's obligation to notify the withholding agent of a change in circumstances.

(B) Indefinite validity. Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates (or parts of certificates), written statements, or documentary evidence shall remain valid until the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect--

(1) A withholding certificate or written statement provided by a participating FFI or registered deemed-compliant FFI that has furnished a valid GIIN that has been verified by the withholding agent in the manner set forth in paragraph (e)(3) of this section;

(2) A beneficial owner withholding certificate that is provided by an individual claiming foreign status if the withholding certificate is furnished with documentary evidence supporting the individual's claim of foreign status and the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone

numbers that are the only telephone numbers the withholding agent has for the payee;

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section if the withholding certificate is furnished with documentary evidence establishing the entity's foreign status;

(4) A withholding certificate of an intermediary, flow-through entity, or U.S. branch (not including the withholding certificates, written statements, or documentary evidence of the payees, or withholding statements associated with the withholding certificate);

(5) A withholding certificate, written statement, or documentary evidence furnished by a foreign government, government of a U.S. territory, foreign central bank (including the Bank for International Settlements), international organization, or entity that is wholly owned by any such entities; and

(6) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

(C) Indefinite validity in the case of certain offshore obligations. Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates, written statements, and documentary evidence that are provided with respect to offshore obligations shall remain valid until a change in circumstances occurs that makes the information on the documentation incorrect--

(1) A withholding certificate or documentary evidence provided by an individual claiming foreign status if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee, does not have one or more

current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and has not been provided standing instructions to make a payment in the United States for the obligation;

(2) A withholding certificate, written statement, or documentary evidence provided by one of the following entities if such entity is the payee—

(i) A retirement fund described in §1.1471-6(f) or an entity that is wholly owned by such a retirement fund;

(ii) An excepted nonfinancial group entity described in §1.1471-5(e)(5)(i);

(iii) A section 501(c) entity described in §1.1471-5(e)(v);

(iv) A non-profit organization described in §1.1471-5(e)(5)(vi);

(v) A nonreporting IGA FFI;

(vi) A territory financial institution that agrees to be treated as a U.S. person for chapter 4 purposes;

(vii) An NFFE whose stock is regularly traded as described in §1.1472-1(c)(1)(i);

(viii) An NFFE affiliate described in §1.1472-1(c)(1)(ii);

(ix) An active NFFE that the withholding agent has determined, through its AML due diligence, is engaged in a business other than that of a financial institution, and ongoing monitoring of the account for purposes of AML due diligence does not indicate that the determination is incorrect; and

(x) A sponsored FFI described in §1.1471-5(f)(2)(iii);

(3) A withholding certificate of an owner-documented FFI, but not including the withholding statements, documentary evidence, and withholding certificates

of its owners (unless such documentation is permitted indefinite validity under another provision);

(4) A withholding statement associated with a withholding certificate of an owner-documented FFI provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed $1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(5) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed $1,000,000 on the later of December 31, 2013, or the last of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), and the withholding agent does know not or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) Exception for certificate for effectively connected income. Notwithstanding paragraphs (c)(6)(ii)(B) to (C) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the

conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (c)(6)(ii)(A) of this section.

(E) Change in circumstances--(1) Defined. For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change in circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia that is not otherwise cured by documentation on file and that is relevant to the chapter 4 status claimed) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(E) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools contained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(2) Obligation to notify withholding agent of a change in circumstances. If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. If an intermediary or a flow-through entity becomes

aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change in circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances.

(3) Withholding agent's obligation with respect to a change in circumstances. A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to treat a person as having the same chapter 4 status that it had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became unreliable due to the change in circumstances or the date that a new certificate or new documentation is obtained. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a

payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

(iii) Record Retention—(A) In general. A withholding agent must retain each withholding certificate, written statement, or copy of documentary evidence for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1474(a) and §1.1474-1. A withholding agent may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the withholding certificate, written statement, or documentary evidence. With respect to documentary evidence, the withholding agent must also note in its records the date on which the document was received and reviewed. Any documentation that is stored electronically must be made available in hard copy form to the IRS upon request during an examination.

(B) Exception for documentary evidence received with respect to offshore obligations. A withholding agent that is making a payment with respect to an offshore obligation and is not required to retain copies of documentation reviewed pursuant to its AML due diligence, may, in lieu of retaining the documents as set forth in paragraph (c)(6)(iii)(A), retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any) (for example, a passport number), and whether such documentation contained any U.S. indicia. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation,

except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. See also §1.1471-4(c)(2)(iv) for the record retention requirements of a participating FFI.

(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence. A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in §1.1441-1(e)(4)(iv). See §1.1441-1(e)(4)(iv) for procedures for the electronic transmission of a withholding certificate that has been completed and signed with a handwritten signature, scanned into an electronic system, and sent to the withholding agent via e-mail. A withholding certificate (including a substitute form), written statement, or other such form prescribed by the IRS may be accepted by facsimile if the withholding agent confirms that the individual or entity furnishing the form is the individual or entity named on the form and the faxed form contains a signature of the person whose name is on the form (or such person's authorized representative) made under penalties of perjury in the manner described in §1.1441-1(e)(4)(iv)(B)(3)(i). A withholding agent may also accept a copy of documentary evidence electronically, including by facsimile or by e-mail, if the withholding agent confirms that the person furnishing the documentary evidence is the person named on the documentary evidence (or such person's authorized representative) and the copy does not appear to have been altered from its original form.

(v) Acceptable substitute withholding certificate--(A) In general. A withholding agent may substitute its own form for an official Form W-8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. A withholding agent may choose to provide a substitute form that does not include all of the exemptions from withholding provided on the official version but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. A withholding agent that uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate from a person (including the official Form W-8) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the

withholding agent furnishes the person with an acceptable substitute form within five business days of receipt of an unacceptable form from the person. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the person and that the person must submit the acceptable form provided by the withholding agent in order for the person to be treated as having furnished the required withholding certificate.

(B) Non-IRS form for individuals. A withholding agent may also substitute its own form for an official Form W-8BEN (for individuals), regardless of whether the substitute form is titled a Form W-8. However, in addition to the name and address of the individual that is the payee or beneficial owner, the form must provide all countries in which the individual is resident for tax purposes, city and country of birth, a tax identification number, if any, for each country of residence, and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. Notwithstanding the previous sentence, the signed certification provided on a form need not be signed under penalties of perjury if the form is accompanied by documentary evidence that supports the individual's claim of foreign status. Such documentary evidence may be the same documentary evidence that is used to support foreign status in the case of a payee whose account has U.S. indicia as described in paragraph (e) of this section or §1.1471-4(c)(4)(i)(A). The form may also request other information

required for purposes of tax or AML due diligence in the United States or in other countries.

(vi) Electronic confirmation of TIN on withholding certificate. The Commissioner may prescribe procedures in a revenue procedure or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

(vii) Reliance on a prior version of a withholding certificate. Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate for six months after the revision date shown on the updated withholding certificate, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(7) Curing documentation errors. The provisions in this paragraph (c)(7) describe standards generally applicable to withholding certificates (Forms W-8 or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding the Form W-9 (or a substitute Form W-9), see section 3406 and the regulations thereunder.

(i) Curing inconsequential errors on a withholding certificate. A withholding agent may treat a withholding certificate as valid, notwithstanding that the withholding certificate contains an inconsequential error, if the withholding agent has sufficient documentation on file to supplement the

information missing from the withholding certificate due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive. For example, a withholding certificate in which the individual submitting the form abbreviated the country of residence may be treated as valid, notwithstanding the abbreviation, if the withholding agent has government issued identification for the person from a country that reasonably matches the abbreviation. On the other hand, an abbreviation for the country of residence that does not reasonably match the country of residence shown on the person's passport is not an inconsequential error. A failure to select an entity type on a withholding certificate is not an inconsequential error, even if the withholding agent has an organization document for the entity that provides sufficient information to determine the person's entity type, if the person was eligible to make an election under §301.7701-3(c)(1)(i) of this chapter (that is, a check-the-box election). A failure to check a box to make a required certification on the withholding certificate or to provide a country of residence or a country under which treaty benefits are sought is not an inconsequential error. In addition, information on a withholding certificate that contradicts other information contained on the withholding certificate or in the customer master file is not an inconsequential error.

(ii) Documentation received after the time of payment. Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other

appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment.

(8) Documentation furnished on account-by-account basis unless exception provided for sharing documentation within expanded affiliated group. Except as otherwise provided in this paragraph (c)(8), a withholding agent that is

a financial institution with which a customer may open an account must obtain withholding certificates, written statements, Forms W-9, or documentary evidence on an account-by-account basis. Notwithstanding the previous sentence, a withholding agent may rely upon the withholding certificate, written statement, or documentary evidence furnished by a customer under any one or more of the circumstances described in this paragraph (c)(8).

(i) Single branch systems. A withholding agent may rely on documentation furnished by a customer for another account if both accounts are held at the same branch location and both accounts are treated as consolidated obligations.

(ii) Universal account systems. A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated obligations and the withholding agent and the other branch location or expanded affiliated group member are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the universal account system without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence)

relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iii) Shared account systems. A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated accounts and the withholding agent and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, that is described in this paragraph (c)(8)(iii). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation. The information system must also allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the shared account system without

obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iv) Document sharing for gross proceeds. [Reserved].

(9) Reliance on documentation collected by or certifications provided by other persons—(i) Shared documentation system maintained by an agent. A withholding agent may rely on documentation collected by an agent (including a fund advisor for mutual funds, hedge funds, or a private equity group) of the withholding agent. The agent may retain the documentation as part of an information system maintained for a single withholding agent or multiple withholding agents provided that under the system, any withholding agent on behalf of which the agent retains documentation may easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and its validity, and must allow such withholding agent to easily transmit data, either directly into an electronic system or by providing such information to the agent, regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be

able to establish that any data it has transmitted has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. The agent must have a system in effect to ensure that any information it receives regarding facts that affect the reliability of the documentation or the chapter 4 status assigned to the customer are provided to all withholding agents for which the agent retains the documentation and any chapter 4 status assigned by the agent is amended to incorporate such information. A withholding agent that opts to rely upon the chapter 4 status assigned by the agent without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from a failure of the agent to assign the correct status based upon the available information. See §1.1474-1(a) for a withholding agent's liability when it relies upon an agent for chapter 4 purposes. This paragraph (c)(9)(i) does not apply to a withholding certificate provided by a QI, a withholding certificate provided by a territory financial institution that elects to be treated as a U.S. person, or any withholding statement, unless the person submitting the form specifically identifies the withholding agents for which the certificates and/or statements are provided.

(ii) Third-party data providers. A withholding agent may rely upon documentation collected by a third-party data provider with respect to an entity, subject to the conditions described in this paragraph (c)(9)(ii).

(A) The third-party data provider must have collected documentation that is sufficient to determine the chapter 4 status of the entity under paragraph (d) of this section.

(B) The third-party data provider must be in the business of providing credit reports or business reports to unrelated customers and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity.

(C) The third-party data provider must notify the entity submitting the documentation that such entity must notify the third-party data provider in the event of a change in circumstances within 30 days of the change in circumstances, and the third-party data provider must be obligated under its contract with the withholding agent to notify the withholding agent if a change in circumstances occurs.

(D) The withholding agent may not rely upon a chapter 4 status provided by a third-party data provider if the withholding agent knows or has reason to know that the chapter 4 status is unreliable or incorrect based on information in the withholding agent's account records, or if the documentation or information provided by the third-party data provider does not support the chapter 4 status claimed.

(E) The withholding agent must be able to submit copies of the documentation received from the third-party data provider upon request to the IRS and will remain liable for any underwithholding that occurs as a result of its

reliance on information provided by the third-party data provider if the documentation is invalid or unreliable.

(F) This paragraph (c)(9)(ii) does not apply to a withholding statement or a withholding certificate that contains an election to accept withholding or reporting responsibility (such as one made by a QI, territory financial institution, or U.S. branch) provided by a third-party data provider.

(iii) Reliance on certification provided by introducing brokers--(A) A withholding agent may rely on a certification of a broker indicating the broker's determination of a payee's chapter 4 status and indicating that the broker holds valid documentation sufficient to determine the payee's chapter 4 status under paragraph (d) of this section with respect to any readily tradable instrument as defined in §31.3406(h)-1(d) of this chapter if the conditions in paragraph (c)(9)(iii)(B) of this section are satisfied and the broker is either—

(1) A U.S. person (including a U.S. branch that is treated as a U.S. person) that is acting as the agent of the payee; or

(2) A participating FFI or a reporting Model 1 FFI that is acting as the agent of the payee with respect to an obligation and receiving all payments from the withholding agent with respect to such obligation as an intermediary on behalf of the payee.

(B) The certification from the broker must be in writing or in electronic form and contain all of the information required of a chapter 4 withholding statement described in paragraph (c)(3)(iii)(B)(3). Notwithstanding this paragraph (c)(9)(iii), a withholding agent may not rely upon a certification provided by a broker if it

knows or has reason to know that the broker has not obtained valid documentation as represented or the information contained in the certification is otherwise inaccurate. A broker that chooses to provide a certification under this paragraph (c)(9)(iii) will be responsible for applying the rules set forth in the regulations under section 1471 and 1472 to the withholding certificates, written statements, or documentary evidence obtained from the payee and shall be liable for any underwithholding that occurs as a result of the broker's failure to reasonably apply such rules.

(iv) Reliance on documentation and certifications provided between principals and agents—(A) In general. Subject to the conditions under §1.1474-1(a)(3), a withholding agent is permitted to use an agent to fulfill its chapter 4 obligations and such agent's actions are imputed to the principal. However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under §1.1473-(d) applies. Therefore, the paying agent will have its own obligation to determine the chapter 4 status of the payee and withhold upon the payment if required. Although a paying agent is generally a withholding agent for purposes of chapter 4, the financial accounts to which it makes payments are not necessarily financial accounts of the paying agent. See the rules under §1.1471-5(b)(5) to determine when a financial institution maintains a financial account. In addition, the status of a payment as made with respect to an offshore obligation or as a preexisting obligation will be determined based on such obligation's status in relation to the principal. Further, the due diligence required with respect

to the payment will be determined by the status of the principal and not the paying agent. Consequently, a payment that is made, for example, by a paying agent that is a foreign entity on behalf of a principal that is a U.S. withholding agent will be subject to the due diligence applicable to the principal. See §1.1474-1(a)(3) for rules regarding the reporting obligations of a principal and agent in the case of a payment made by an agent of behalf of a principal.

(B) Reliance upon certification of the principal. An agent that makes a payment on behalf of a principal that it may treat, pursuant to paragraph (d) of this section, as a U.S. withholding agent, participating FFI, or reporting Model 1 FFI may rely upon a certification provided by the principal indicating that the principal has obtained valid documentation sufficient to determine the chapter 4 status of the payee and may rely upon the principal's determination as to the payee's chapter 4 status. In such a case, the agent will be permitted to rely upon the certification provided by the principal when determining whether it is required to withhold on the payment and will not be liable for any underwithholding that occurs as a result of the principal's failure to properly determine the chapter 4 status of the payee unless the agent knows or has reason to know the certification provided by the principal is inaccurate.

(C) Document sharing. In lieu of obtaining a certification from the principal as described in paragraph (c)(9)(iv)(B) of this section, or when reliance upon such certification is not permitted, an agent that makes a payment on behalf of a principal may rely upon copies of documentation provided to the principal with respect to the payment. However, in such case, both the principal and the agent

are obligated to determine the chapter 4 status of the payee based upon the documentation and ensure that adequate withholding occurs with respect to the payment. While a principal is imputed the knowledge of the agent with respect to the payment, the agent is not imputed the knowledge of the principal.

(D) Examples--(1) Example 1. Paying agent that does not collect documentation. A fund, P, that is a participating FFI contracts with a U.S. person, A, to make payments to its account holders with respect to their equity interests in P. P contracts with another agent, B, to obtain documentation sufficient to determine the chapter 4 status of such account holders. Based on the documentation it collects, B determines that none of P's account holders are subject to withholding. P provides a certification to A indicating that it has obtained documentation sufficient to determine the chapter 4 status of P's account holders and that each payee is not subject to withholding under chapter 4. As the actions of B, as P's agent, are attributed to P, P may provide a certification to A indicating that it has determined the chapter 4 status of its payees, even if it is B, and not P, who made the determinations. However, P will be liable for any underwithholding that results from a failure by B to reasonably apply the rules under chapter 4. A is permitted to rely upon the certification provided by P and, accordingly, is not required to withhold on the payments made to P's account holders and would not be liable for any underwithholding that results if the determinations made by B are incorrect unless A had reason to know that chapter 4 status claimed was inaccurate.

(ii) Example 2. Paying agent that collects documentation. A fund, P, that is a participating FFI contracts with a U.S. person, A, to make a payment to its account holders on its behalf. P also contracts with A to obtain documentation sufficient to determine the chapter 4 status of P's account holders. Based on the documentation it collects, A determines that none of P's account holders are subject to withholding. As the actions of A, as P's agent, are imputed to P, P will be liable for any underwithholding that results from a failure by A to reasonably apply the rules under chapter 4. P is also required to retain the documentation upon which A relied in determining the chapter 4 status of its account holders. Because A performed the due diligence on behalf of P, A will have reason to know if any of the chapter 4 determinations made based on the documentation received were made incorrectly, and, as a withholding agent with respect to the payment, is liable, in addition to P, for any underwithholding that results from an incorrect determination that withholding was not required. This result applies regardless of whether A retains copies of the documentation obtained with respect to P's account holders or receives a certification from P indicating that P has obtained documentation sufficient to determine the chapter 4 status of its account holders and that each payee is not subject to withholding under chapter 4.

(v) Reliance upon documentation for accounts acquired in merger or bulk acquisition for value. A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on future payments, if any, made to the account holder the amount of tax that should have been

withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (c)(9)(v), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group as the predecessor or transferor either prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtain a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See §1.1471-4(c)(2)(ii)(B) for an additional allowance for a participating FFI to rely upon the determination made by another participating FFI as to the chapter 4 status of an account obtained as part of a merger or bulk acquisition for value.

(d) Documentation requirements to establish payee's chapter 4 status. Unless the withholding agent knows or has reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) to determine the chapter 4 status of a payee (or other person that receives a payment). Except as otherwise provided in this paragraph (d), a withholding agent is required to obtain a valid withholding certificate or a Form W-9 from a payee in order to treat the payee as having a particular chapter 4 status. Paragraphs (d)(1) through (12) of this section indicate when it is appropriate for a withholding agent to rely upon a written statement, documentary evidence, or other information in lieu of a Form W-8 or W-9. Paragraphs (d)(1) through (12) of this section also prescribe additional documentation requirements that must be met in certain cases in order to treat a payee as having a specific chapter 4 status and specific standards of knowledge that apply to a particular payee, in addition to

the general standards of knowledge set forth in paragraph (e) of this section. This paragraph (d) also provides the circumstances in which special documentation rules are permitted with respect to preexisting obligations. A withholding agent may not rely on documentation described in this paragraph (d) if the documentation is not valid or cannot reliably be associated with the payment pursuant to the requirements of paragraph (c) of this section, or the withholding agent knows or has reason to know that such documentation is incorrect or unreliable as described in paragraphs (d) and (e) of this section. If the chapter 4 status of a payee cannot be determined under this paragraph (d) based on documentation received, a withholding agent must apply the presumption rules in paragraph (f) to determine the chapter 4 status of the payee.

(1) Reliance on pre-FATCA Form W-8. To establish a payee's status as a foreign individual, foreign government, or international organization, a withholding agent may rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate. To establish the chapter 4 status of a payee that is not a foreign individual, foreign government, or international organization, a withholding agent may, for payments made prior to January 1, 2017, rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate if the withholding agent has one or more forms of documentary evidence described in paragraphs (c)(5)(ii), as necessary, to establish the chapter 4 status of the payee and the withholding agent has obtained any additional documentation or information required for the particular

chapter 4 status (such as withholding statements, certifications as to owners, or required documentation for underlying owners), as set forth under the specific payee rules in paragraphs (d)(2) through (12) of this section. See paragraph (d)(4)(ii) and (iv) of this section for specific requirements when relying upon a pre-FATCA Form W-8 for a participating FFI or registered deemed-compliant FFI. This paragraph (d)(1) does not apply to nonregistering local banks, FFIs with only low-value accounts, sponsored FFIs, owner-documented FFIs, territory financial institutions that are not the beneficial owners of the payment, or foreign central banks (other than a foreign central bank specifically identified as an exempt beneficial owner under a Model 1 IGA or Model 2 IGA).

(2) Identification of U.S. persons—(i) In general. A withholding agent must treat a payee as a U.S. person if it has a valid Form W-9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 indicates that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W-9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W-9 from a payee that is an individual would be required to treat the payee as a specified

U.S. person regardless of whether the Form W-9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person

(ii) Reliance on documentary evidence. A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the presumption rules in §1.6049-4(c)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under §1.6049-4(c)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under §1.1473-1(c).

(iii) Preexisting obligations. As an alternative to applying the rules in paragraphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W-9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously

reviewed a Form W-9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the presumption rules in §1.6049-4(c)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

(3) Identification of individuals that are foreign persons--(i) In general. A withholding agent may treat a payee as an individual that is a foreign person if the withholding agent has a withholding certificate identifying the payee as such a person.

(ii) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an individual that is a foreign person if it obtains documentary evidence supporting the payee's claim of status as a foreign individual (as described in paragraph (c)(5)(i)) or if the payee is presumed to be an individual that is a foreign person under the presumption rules set forth in paragraph (f) of this section.

(4) Identification of participating FFIs and registered deemed-compliant FFIs--(i) In general. Except as otherwise provided in paragraph (d)(4)(ii) through (iv) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI or registered deemed-compliant FFI and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For payments made prior to January 1, 2016, a participating FFI

that is a sponsored FFI may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

(ii) Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional). For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI if the payee has provided the withholding agent (either orally or in writing) its GIIN and indicated whether it is a participating FFI or a registered deemed-compliant FFI, and the withholding agent has verified the GIIN in the manner described in paragraph (e)(3) of this section.

(iii) Exception for offshore obligations. A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI if the payee provides the withholding agent with its GIIN and states whether the payee is a participating FFI or a registered deemed-compliant FFI, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section. A withholding agent that makes a payment of U.S. source FDAP income with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI if—

(A) The payee provides the withholding agent with—

(1) A written statement that contains the payee's GIIN and states that the payee is the beneficial owner of the payment and a participating FFI or a registered deemed-compliant FFI, as appropriate; and

(2) Documentary evidence supporting the payee's claim of foreign status; and

(B) The withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(iv) Exceptions for payments to reporting Model 1 FFIs.--(A) For payments made prior to January 1, 2015, a withholding agent may treat the payee as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(B) For payments made prior to January 1, 2015, with respect to a preexisting obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if it obtains a pre-FATCA Form W-8 from the payee, and the payee indicates (either orally or in writing) that it is a reporting Model 1 FFI and the country in which it is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat the payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary

evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(D) For payments made on or after January 1, 2015, that do not constitute U.S. source FDAP income, the withholding agent may continue to treat a payee as a reporting Model 1 FFI if the payee provides the withholding agent with its GIIN, either orally in writing, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(v) Reason to know. Except as otherwise provided in this paragraph (d)(4), a withholding certificate or written statement that identifies the payee as a participating FFI or registered deemed-compliant FFI but does not provide the payee's GIIN or provides a GIIN that does not appear on the current published IRS FFI list within 90 calendar days after the date that the claim is made, will be treated as invalid for purposes of chapter 4, and the payee will be treated as an undocumented payee beginning on the date that the form was submitted until valid documentation or a correct GIIN is provided. A withholding agent that discovers that the payee's GIIN does not appear on the published IRS FFI list within 90 calendar days after the date the claim is made and, as a result, has not withheld as it would have been required to but for its reliance upon the payee's claim of status as a participating FFI or registered deemed-compliant FFI, will be required to withhold on future payments, if any, made to the payee of the amount of tax that should have been withheld during the 90 day period but for the erroneous classification as to the payee's status. The withholding required pursuant the prior sentence is in addition to any withholding required under

§1.1471-2(a) on those payments. A withholding agent that has withheld as required in the previous two sentences may apply reimbursement or set-off procedures, as described in §1.1474-2(a), if it is later determined that the payee appeared on the IRS FFI list as a participating FFI or registered deemed-compliant FFI at the time of payment.

(5) Identification of certified deemed-compliant FFIs--(i) In general. Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a category of certified deemed-compliant FFI, other than a sponsored FFI, if the withholding agent has a withholding certificate that identifies the payee as a certified deemed-compliant FFI, and the withholding certificate contains a certification by the payee that it meets the requirements to qualify as the type of certified deemed-compliant FFI identified on the withholding certificate.

(ii) Sponsored, closely held investment vehicles--(A) In general. A withholding agent may treat a payee as a sponsored, closely held investment vehicle described in §1.1471-5(f)(2)(iii) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a sponsored FFI and includes the sponsor's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle described in §1.1471-5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee.

(B) Offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a sponsored, closely held investment vehicle if it obtains a written statement that indicates that the payee is a sponsored FFI, and provides the GIIN of the sponsor, which the withholding agent has verified in the manner described in paragraph (e)(3) of this section. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(6) Identification of owner-documented FFIs--(i) In general. A withholding agent may treat a payee as an owner-documented FFI if all the following requirements of paragraphs (d)(6)(i)(A) through (F) of this section are met. A withholding agent may not rely upon a withholding certificate to treat a payee as an owner-documented FFI, either in whole or in part, if the withholding certificate does not contain all of the information and associated documentation required by paragraphs (d)(6)(i)(A), (C), and (D) of this section.

(A) The withholding agent has a withholding certificate that identifies the payee as an owner-documented FFI that is not acting as an intermediary;

(B) The withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees pursuant to §1.1471-5(f)(3) to act as a designated withholding agent with respect to the payee;

(C) The payee submits to the withholding agent an FFI owner reporting statement that meets the requirements of paragraph (d)(6)(iv) of this section;

(D) The payee submits to the withholding agent valid documentation meeting the requirements of paragraph (d)(6)(iii) of this section with respect to each person identified on the FFI owner reporting statement;

(E) The withholding agent does not know or have reason to know that the payee (or any other FFI that is an owner of the payee and that the designated withholding agent is treating as an owner-documented FFI) maintains any financial account for a nonparticipating FFI; and

(F) The withholding agent does not know or have reason to know that the payee is in an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any U.S. specified persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) Auditor's letter substitute. A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(6)(i)(C) and (D) of this section, provide a letter from an auditor or an attorney that is licensed in the United States or whose firm has a location in the United States, signed no more than four years prior to the date of the payment, that certifies that the firm or representative has reviewed the payee's documentation with respect to all of its owners and debt holders described in paragraph (d)(6)(iv) of this section in accordance with §1.1471-4(c)

and that the payee meets the requirements of §1.1471-5(f)(3). The payee must also provide an FFI owner reporting statement and a Form W-9, with any applicable waiver, for each specified U.S. person that owns a direct or indirect interest in the payee or that holds debt interests described in paragraph (d)(6)(iv) of this section. A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter in unreliable or incorrect.

(iii) Documentation for owners and debt holders of payee. Acceptable documentation for an individual owning an equity in the payee or debt holders described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W-9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3) of this section. Acceptable documentation for a specified U.S. person means a valid Form W-9 (including any necessary waiver). Acceptable documentation for all other persons owning an equity or debt interest in the payee means documentation described in this paragraph (d), applicable to the chapter 4 status claimed by the person. The rules for reliably associating a payment with a withholding certificate or documentary evidence set forth in paragraph (c) of this section, the rules for payee documentation provided in this paragraph (d), and the standards of knowledge set forth in paragraph (e) of this section will apply to documentation submitted by the owners and debt holders by substituting the phrase “owner of the payee” or “debt holder” for “payee.”

(iv) Content of FFI owner reporting statement. The FFI owner reporting statement provided by an owner-documented FFI must contain the information required by this paragraph (d)(6)(iv) and is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(1) of this section. An FFI that is a partnership, simple trust, or grantor trust may substitute an NWP withholding statement described in §1.1441-5(c)(3)(iv) or a foreign simple trust or foreign grantor trust withholding statement described in §1.1441-5(e)(5)(iv) for the FFI owner reporting statement, provided that the NWP withholding certificate or foreign simple trust or foreign grantor trust withholding certificate contains all of the information required in this paragraph (d)(6)(iv). The owner reporting statement will expire on the last day of the third calendar year following the year in which the statement was provided to the withholding agent unless an exception in paragraph (c)(6)(ii) of this section (for example, accounts with a balance or value of $1,000,000 or less) or this paragraph (d)(6) applies. The owner-documented FFI will also be required to provide the withholding agent with an updated owner reporting statement if there is a change in circumstances as required under paragraph (c)(6)(ii)(E) of this section.

(A) The FFI owner reporting statement must provide the following information:

(1) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a direct or indirect equity interest in the payee (looking through all entities other than specified U.S. persons).

(2) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a debt interest in the payee (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee), in either such case if the debt interest constitutes a financial account in excess of $50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEs, exempt beneficial owners, or U.S. persons other than specified U.S. persons).

(3) Any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(B) The information on the FFI owner reporting statement may contain names of equity and debt holders that are prepopulated by the withholding agent based on prior information provided to the withholding agent by the payee if the prepopulated form instructs the payee to amend the statement if the contents are inaccurate, incomplete, or have changed, and the payee confirms in writing that the FFI owner reporting statement submitted to the withholding agent is accurate and complete.

(C) The FFI owner reporting statement may be submitted in any form that meets the requirements of this paragraph, including a form used for purposes of AML due diligence.

(v) Exception for preexisting obligations (transitional). A withholding agent may treat a payment made prior to January 1, 2017, with respect to a preexisting

obligation as made to an owner-documented FFI if the withholding agent has collected, for purposes of satisfying its AML due diligence, documentation with respect to each individual and specified U.S. person that owns a direct or indirect interest in the payee, other than an interest as a creditor, within four years of the date of payment, that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account, the withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee, and the withholding agent does not know, or have reason to know, that any nonparticipating FFI owns an equity interest in the FFI or that any nonparticipating FFI or specified U.S. person owns a debt interest in the FFI constituting a financial account in excess of $50,000.

(vi) Exception for offshore obligations. A withholding agent that is making a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may, in lieu of obtaining a withholding certificate as otherwise required under paragraph (d)(6)(i)(A) of this section, rely upon a written statement that indicates the payee meets the requirements to qualify as an owner-documented FFI under §1.1471-5(f)(3) and is not acting as an intermediary, if the withholding agent provides a written notice to the payee indicating that the payee is required to update the written statement and all associated documentation (such as the FFI owner reporting statement and underlying documentation) within 30 days of a change in circumstances.

(vii) Exception for certain offshore obligations of $1,000,000 or less--(A) A withholding agent may treat the payment as being made to an owner-documented FFI if--

(1) The payment is made with respect to an offshore obligation that has a balance or value not exceeding $1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last calendar day of each subsequent year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4);

(2) The withholding agent has collected documentation or a certification as to the payee's owners (either for purposes of complying with its AML due diligence or for purposes of satisfying the requirements of this paragraph (d)(6)(vii)) sufficient to identify every individual and specified U.S. person that owns any direct or indirect interest in the payee (other than an interest as a creditor) and determine the chapter 4 status of such person;

(3) The documentation described in paragraph (d)(6)(vii)(A)(2) of this section is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account (and such jurisdiction is a FATF-compliant jurisdiction);

(4) The withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee in accordance with §1.1474-1(d); and

(5) The withholding agent does not know, or have reason to know, that the payee has any contingent beneficiaries or designated classes with unidentified

beneficiaries or owners, that any nonparticipating FFI owns a direct or indirect equity interest in the payee, or that any specified U.S. persons or nonparticipating FFIs own a debt interest constituting a financial account in excess of $50,000 in the payee (other than specified U.S. persons that the withholding agent has sufficient information to report).

(B) For example, a withholding agent that is required to obtain a certification from the payee identifying all persons owning an interest in the payee as part of its AML due diligence will not be required to obtain an FFI owner reporting statement, provided the other conditions of this paragraph (d)(6)(vii) are met. On the other hand, a withholding agent that has only obtained documentation for persons owning a certain threshold percentage of the payee will be required to obtain additional documentation to satisfy the requirements of this paragraph (d)(6)(vii). A withholding agent that treats a payee as an owner-documented FFI pursuant to this paragraph (d)(6)(vii) will not be required to obtain new documentation, including the FFI owner reporting statement, until there is a change in circumstances or until the account balance or value exceeds $1,000,000 on the last day of the calendar year.

(7) Nonreporting IGA FFIs—(i) In general. A withholding agent may treat a payee as a nonreporting IGA FFI if it has a withholding certificate identifying the payee, or the relevant branch of the payee, as a nonreporting IGA FFI.

(ii) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a nonreporting IGA FFI if it can reliably associate the payment with a written

statement identifying the payee (or the relevant branch of the payee) as a nonreporting IGA FFI and, with respect to a payment of U.S. source FDAP income, the written statement indicates that the payee is the beneficial owner of the income and is accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat a payee as a nonreporting IGA FFI if the withholding agent has a permanent residence address for the payee, or an address of the relevant branch of the payee, and has obtained a notification, either orally or in writing, indicating that the payee is not acting as an intermediary and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to reasonably determine that the payee is an entity listed as a nonreporting IGA FFI pursuant to a Model 1 or Model 2 IGA.

(8) Identification of nonparticipating FFIs--(i) In general. A withholding agent is required to treat a payee as a nonparticipating FFI if the withholding agent can reliably associate the payment with a withholding certificate identifying the payee as a nonparticipating FFI, the withholding agent knows or has reason to know that the payee is a nonparticipating FFI, or the withholding agent is required to treat the payee as a nonparticipating FFI under the presumption rules described in paragraph (f) of this section.

(ii) Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI. A withholding agent may treat a

payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner if the withholding agent can reliably associate the payment with—

(A) A withholding certificate that identifies the payee as a nonparticipating FFI that is either acting as an intermediary or is a flow-through entity; and

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (4) of this section and contains the associated documentation necessary to establish the chapter 4 status of the exempt beneficial owner in accordance with paragraph (d)(9) of this section as if the exempt beneficial owner were the payee.

(9) Identification of exempt beneficial owners--(i) Identification of foreign governments, governments of U.S. territories, international organizations, and foreign central banks of issue--(A) In general. A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign bank of central issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and for a government or foreign central bank, indicates that the payee is not engaged in commercial activities with respect to the payments or accounts identified on the form. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288f) and other facts surrounding the transaction reasonably indicate that the international

organization is not receiving the payment as an intermediary on behalf of another person. A withholding agent may treat a payee as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA if it has a withholding certificate that identifies the payee as such an entity and indicates that the payee is the beneficial owner of the payment.

(B) Exception for offshore obligations. A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if the payee provides a written statement that it is such an entity and the written statement indicates that the payee receives the payment as a beneficial owner (within the meaning provided in §1.1471-6). A written statement provided by a foreign central bank of issue must also state that the foreign central bank of issue does not receive the payment in connection with a commercial activity as provided in §1.1471-6(h).

(C) Exception for preexisting offshore obligations. A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if—

(1) The payee is generally known to the withholding agent to be, the payee's name and the facts surrounding the payment reasonably indicate, or the withholding agent has preexisting account documentary evidence (as described

in paragraph (c)(5)(ii)(B) of this section) that reasonably indicates that the payee is a foreign government or government of a U.S territory, a political subdivision of a foreign government or government of a U.S. territory, any wholly owned agency or instrumentality of any one or more of the foregoing, an international organization, a foreign central bank of issue, or the Bank for International Settlements; and

(2) The withholding agent does not know that the payee is not the beneficial owner, within the meaning of §1.1471-6(b) through (e) (disregarding any presumption that a financial institution is assumed to be an intermediary absent documentation indicating otherwise) or a foreign central bank of issue receiving the payment in connection with a commercial activity.

(ii) Identification of retirement funds--(A) In general. A withholding agent may treat a payee as a retirement fund described in §1.1471-6(f) if it has a withholding certificate in which the payee certifies that it is a retirement fund meeting the requirements of §1.1471-6(f).

(B) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as being made to a retirement fund described in §1.1471-6(f) if it obtains a written statement in which the payee certifies that it is a retirement fund under the laws of its local jurisdiction meeting the requirements of §1.1471-6(f) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation

may also treat the payment as made to a retirement fund if it obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a retirement fund meeting the requirements of §1.1471-6(f).

(C) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a retirement fund described in §1.1471-6(f) if the withholding agent has general documentary evidence or preexisting account documentary evidence (as described in paragraphs (c)(5)(ii)(A) or (B)) that establishes that the payee is a foreign entity that qualifies as a retirement fund in the country in which the payee is organized.

(iii) Identification of entities wholly owned by exempt beneficial owners. A withholding agent may treat a payee as an entity described in §1.1471-6(g) (referring to certain entities wholly owned by exempt beneficial owners) if the withholding agent has—

(A) A withholding certificate or, for a payment made with respect to an offshore obligation, a written statement that identifies the payee as an investment entity that is the beneficial owner of the payment;

(B) An owner reporting statement that contains the name, address, TIN (if any), chapter 4 status (identifying the type of exempt beneficial owner), and a description of the type of documentation (Form W-8 or other documentary evidence) provided to the withholding agent for every person that owns a direct equity interest, or a debt interest constituting a financial account, in the payee,

and that is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(1) of this section; and

(C) Documentation for every person identified on the owner reporting statement establishing, pursuant to the documentation requirements described in this paragraph (d)(9), that such person is an exempt beneficial owner (without regard to whether the person is a beneficial owner of the payment).

(10) Identification of territory financial institutions--(i) Identification of territory financial institutions that are beneficial owners--(A) In general. A withholding agent may treat a payee as a territory financial institution if the withholding agent has a withholding certificate identifying the payee as a territory financial institution that beneficially owns the payment. See paragraph (d)(11)(viii) of this section for rules for documenting territory NFFEs.

(B) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a territory financial institution if the withholding agent receives written notification, whether signed or not, that the payee is the beneficial owner of the payment and the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee was organized or incorporated under the laws of any U.S. territory and is a depository institution, custodial institution, or specified insurance company.

(ii) Identification of territory financial institutions acting as intermediaries or that are flow-through entities. A withholding agent may treat a payment as being made to a territory financial institution that is acting as an intermediary or that is a flow-through entity if the withholding agent has an intermediary withholding certificate or flow-through withholding certificate as described in paragraph (c)(3)(iii) of this section that identifies the person who receives the payment as a territory financial institution. A withholding agent that obtains the documentation described in the preceding sentence may treat the territory financial institution as the payee if the withholding certificate contains a certification that the territory financial institution agrees to be treated as a U.S. person with respect to the payment. If the withholding certificate does not contain such a certification, then the withholding agent must treat the person on whose behalf the territory financial institution receives the payment as the payee. See paragraph (c)(3)(iii) of this section for additional documentation that must accompany the withholding certificate of the territory financial institution in this case.

(iii) Reason to know. In addition to the general standards of knowledge described in paragraph (e) of this section, a withholding agent will have reason to know that an entity is not a territory financial institution if the withholding agent has: a current residence or mailing address, either in the entity's account files or on documentation provided by the payee, for the entity that is outside the U.S. territory in which the entity claims to be organized; a current telephone number for the payee that has a country code other than the country code for the U.S. territory or has an area code other than the area code(s) of the applicable U.S.

territory and no telephone number for the payee in the applicable U.S. territory; or standing instructions for the withholding agent to pay amounts from its account to an address or account outside the applicable U.S. territory. A withholding agent that has knowledge of a current address, current telephone number, or standing payment instructions for the entity outside of the applicable U.S. territory, may nevertheless treat the entity as a territory financial institution if it obtains documentary evidence that establishes that the entity was organized in the applicable U.S. territory.

(11) Identification of excepted NFFEs--(i) Identification of excepted nonfinancial group entities--(A) In general. A withholding agent may treat a payee as an excepted nonfinancial group entity described in §1.1471-5(e)(5)(i) if the withholding agent has a withholding certificate identifying the payee as such an entity.

(B) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial group entity described in §1.1471-5(e)(5)(i) if the withholding agent obtains:

(1) A written statement in which the payee certifies that it is a foreign entity operating primarily as an excepted nonfinancial group entity for a group that primarily engages in a business other than a financial business described in §1.1471-5(e)(4) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is an excepted nonfinancial group entity described in §1.1471-5(e)(5)(i).

(ii) Identification of excepted nonfinancial start-up companies--(A) In general. A withholding agent may treat a payee as an excepted nonfinancial start-up company described in §1.1471-5(e)(5)(ii) if the withholding agent has a withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides a formation date for the payee that is less than 24 months prior to the date of the payment.

(B) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial start-up company described in §1.1471-5(e)(5)(ii) if it obtains—

(1) A written statement from the payee in which the payee certifies that it is a foreign entity formed for the purpose of operating a business other than that of a financial institution and provides the entity's formation date which was less than 24 months prior to the date of the payment and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a foreign entity other than a financial institution and

has a formation date which is less than 24 months prior to the date of the payment.

(C) Exception for preexisting offshore obligations. A withholding agent may treat a payment made with respect to an offshore obligation that is also a preexisting obligation as made to a start-up company described in §1.1471-5(e)(5)(ii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that provides the withholding agent sufficient information to establish that the payee is, or intends to be, engaged in a business other than as a financial institution and establishes that the payee is a foreign entity that was organized less than 24 months prior to the date of the payment.

(iii) Identification of excepted nonfinancial entities in liquidation or bankruptcy--(A) In general. A withholding agent may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in §1.1471-5(e)(5)(iii), if the withholding agent has a withholding certificate that identifies the payee as such an entity and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or bankruptcy.

(B) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in §1.1471-5(e)(5)(iii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a copy of a bankruptcy filing, or similar documentation, establishing that the payee is a foreign entity in liquidation or bankruptcy and establishing that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution. A withholding agent may also treat the payee with respect to an offshore obligation as an excepted nonfinancial entity in liquidation or bankruptcy, as described in §1.1471-5(e)(5)(iii), if the withholding agent obtains a written statement stating that the payee is a foreign entity in the process of liquidating or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution, the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years (unless the withholding agent has obtained additional documentary evidence to support the claim that the entity remains in bankruptcy or liquidation), and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in §1.1471-5(e)(5)(iii), if the withholding

agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is not a financial institution and is a foreign entity that entered liquidation or bankruptcy within the three years preceding the date of the payment.

(iv) Identification of section 501(c) organizations--(A) In general. A withholding agent may treat a payee as a 501(c) organization described in §1.1471-5(e)(5)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a section 501(c) organization and the payee provides either a certification that the payee has been issued a determination letter by the IRS that is currently in effect concluding that the payee is a section 501(c) organization and providing the date of the letter, or a copy of an opinion from U.S. counsel certifying that the payee is a section 501(c) organization (without regard to whether the payee is a foreign private foundation).

(B) Reason to know. A withholding agent must cease to treat a foreign organization's claim that it is a section 501(c) organization as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not a section 501(c) organization or 90 days after the date on which the IRS gives notice to the public that such foreign organization is not a section 501(c) organization. Further, a withholding agent will have reason to know that a payee is not a section 501(c) organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(v) Identification of non-profit organizations--(A) In general. A withholding agent may treat a payee as a non-profit organization described in §1.1471-5(e)(5)(vi) if the withholding agent has a withholding certificate that identifies the payee as a non-profit organization.

(B) Exception for offshore obligations. A withholding agent may treat a payment with respect to an offshore obligation as made to a nonprofit organization without obtaining a withholding certificate for the payee if the payee--

(1) Has provided a written statement indicating that the payee is a non-profit organization described in §1.1471-5(e)(5)(vi) and, with respect to a payment of U.S. source FDAP income, has provided documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) Is required to be reported by the withholding agent as a tax-exempt charitable organization under the information reporting laws of the country in which the account is maintained or is permitted an exemption from withholding due to its status as a tax exempt charitable organization under the laws of the country in which the account is maintained, and the withholding agent obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee was organized for charitable purposes in the same country in which the account is maintained by the withholding agent for the purposes described in §1.1471-5(e)(5)(vi) and that the payee has no beneficial owners (as that term is used for purposes of that country's AML due diligence).

(C) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a nonprofit organization described in §1.1471-5(e)(5)(vi) if the payee—

(1) Provides a letter of local counsel that certifies that the payee qualifies as a tax-exempt entity in its local jurisdiction; or

(2) Provides a letter issued by the tax authority of the country in which the payee is organized or a statement provided on the website of such tax authority indicating that the payee is a tax-exempt entity or charitable organization in the payee's country of organization.

(D) Reason to know. A withholding agent will have reason to know that a payee is not a nonprofit organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(vi) Identification of NFFEs that are publicly traded corporations. A withholding agent may treat a payee as an NFFE described in §1.1472-1(c)(1)(i) (applying to an entity the stock of which is regularly traded on an established securities market) if it has a withholding certificate that certifies that the payee is such an entity and provides the name of a securities exchange upon which the payee's stock is regularly traded.

(A) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an NFFE described in §1.1472-1(c)(1)(i) if the withholding agent obtains—

(1) A written statement that the payee is a foreign corporation that is not a financial institution, that its stock is regularly traded on an established securities market, the name of one of the exchanges upon which the payee's stock is traded, and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) Any documentation establishing that the payee is listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee is a foreign corporation other than a financial institution.

(B) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an entity described in §1.1472-1(c)(1)(i) if the withholding agent has any documentation confirming that the payee is listed on a public securities exchange or on a stock market index and preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is a foreign corporation other than a financial institution.

(vii) Identification of NFFE affiliates. A withholding agent may treat a payee as an NFFE described in §1.1472-1(c)(1)(ii) (applying to an affiliate of an entity the stock of which is regularly traded on an established exchange) if it has a beneficial owner withholding certificate that identifies the payee as a foreign corporation that is an affiliate of an entity, described §1.1472-1(c)(1)(i), whose

stock is regularly traded on an established exchange and provides the name of the entity that is regularly traded and one of the exchanges upon which the entity's stock is listed.

(A) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as being made to an NFFE described in §1.1472-1(c)(1)(ii) if the withholding agent obtains--

(1) Documentary evidence or other information confirming that the payee is affiliated with an entity listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that indicates that the payee is a foreign corporation other than a financial institution; or

(2) A written statement that the payee is a foreign corporation that is not a financial institution, that the payee is an affiliate of another nonfinancial entity whose stock is regularly traded on an established securities exchange, providing the name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an NFFE described in §1.1472-1(c)(1)(ii) if the withholding agent has—

(1) Documentation or other information confirming that the payee is affiliated with a corporation that is listed on a public securities exchange or on a stock market index;

(2) Preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a corporation that is not a financial institution; and

(3) In the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(viii) Identification of excepted territory NFFEs. A withholding agent may treat a payee as an excepted territory NFFE described in §1.1472-1(c)(1)(iii) if it has a withholding certificate that identifies the payee as an NFFE that was organized in a U.S. territory and includes a certification for chapter 4 purposes that all of its owners are bona fide residents of that U.S. territory.

(A) Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of $1,000,000 or less (transitional). A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in §1.1472-1(c)(1)(iii) if the withholding agent--

(1) Has a pre-FATCA Form W-8 identifying the payee as a foreign entity with a permanent residence address in a U.S. territory; and

(2) Has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section), preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section), or a prospectus establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company; and

(3) Is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and as part of its AML due diligence has not identified any owners of the payee that are not bona fide residents of the U.S. territory in which the payee is organized.

(B) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as being made to an excepted territory NFFE described in §1.1472-1(c)(1)(iii) if it has—

(1) A written statement providing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company, was organized in a U.S. territory, and is wholly owned by one or more bona fide residents of that U.S. territory, and, with respect to a payment of U.S. source FDAP income, the written statement must indicate that the payee is the beneficial owner of the income and be accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a prospectus establishing that the payee is an entity other than

a depository institution, custodial institution, or specified insurance company, establishing that the payee was organized in a U.S. territory, and establishing that the payee is wholly owned by one or more bona fide residents of that U.S. territory.

(C) Exception for preexisting offshore obligations of $1,000,000 or less. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence, as provided in paragraph (d)(11)(viii)(B) of this section, or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

(ix) Identification of active NFFEs. A withholding agent may treat a payee as an active NFFE described in §1.1472-1(c)(1)(iv) if it has a withholding certificate identifying the payee as an active NFFE.

(A) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an active NFFE if the withholding agent has—

(1) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution; or

(2) A written statement stating that the payee is a foreign entity engaged in an active business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) Exception for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an active NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a foreign entity engaged in a trade or business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income,

documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) Limit on reason to know. A withholding agent relying on documentary evidence to determine that a payee is an active NFFE will not be required to determine that the payee meets the income and asset thresholds but rather must determine only that the payee is primarily engaged in a business other than that of a financial institution.

(12) Identification of passive NFFEs. A withholding agent may treat a payment as having been made to a passive NFFE if it has a withholding certificate that identifies the payee as a passive NFFE.

(i) Exception for offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a passive NFFE if the withholding agent has—

(A) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

(B) A written statement that the payee is a foreign entity that is not a financial institution and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(ii) Special rule for preexisting offshore obligations. A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a passive NFFE if the withholding

agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) Required owner certification for passive NFFEs--(A) In general. Unless it is a WP or WT, a passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE to avoid being withheld upon under §1.1472-1(b).

(B) Exception for preexisting obligations of $1,000,000 or less (transitional). A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due

diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of §1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules).

(e) Standards of knowledge--(1) In general. The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, intermediaries, flow-through entities, and persons that own an interest in an owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section may also be liable for tax, interest, and penalties. See paragraph

(e)(4) in this section for the specific standards of knowledge applicable to a person's specific claims of chapter 4 status.

(2) Notification by the IRS. A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472 is incorrect knows that such a claim is incorrect beginning on the date that is 30 business days after the date the notice is received.

(3) Participating FFIs and registered deemed-compliant FFIs--(i) In general. A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI and that is required under paragraph (d)(4) of this section to confirm that the branch of the FFI claiming status as a participating FFI or registered-deemed compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 calendar days of the date that the claim is made. The withholding agent will also have reason to know that an FFI is either a limited branch or limited FFI (and, thus, not a participating FFI or registered-deemed compliant FFI) if the withholding agent has a permanent residence address or mailing address for the FFI that is in a country other than the country that in which the FFI claims to be a participating FFI or registered deemed-compliant FFI or the withholding agent makes a

payment to the FFI at an address outside of the country in which the FFI claims to be a participating FFI or registered deemed-compliant FFI. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its GIIN and the withholding agent will have 90 calendar days from the date it receives the GIIN to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's GIIN was actually removed from the list.

(ii) Special rules for reporting Model 1 FFIs. Prior to January 1, 2015, a withholding agent that receives an FFI's claim of status as a reporting Model 1 FFI will not be required to confirm that the FFI has a GIIN that appears on the published IRS FFI list. A withholding agent will have reason to know that the FFI is not a reporting Model 1 FFI if the withholding agent does not have a permanent residence address for the FFI, or an address of the relevant branch of the FFI, located in the country in which the FFI claims to be a reporting Model 1

FFI or the withholding agent is directing a payment to a branch of the FFI that is not located in the country in which the FFI claims to be a reporting Model 1 FFI.

(4) Reason to know. A withholding agent shall be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. For accounts opened on or after January 1, 2014, a withholding agent will also be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the payee's claim of chapter 4 status. In addition to the general standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has relied upon documentation that is valid pursuant to paragraph (c) to treat a person as a foreign person, however, will have reason to know that a person's claim of status as a foreign person is inaccurate only if there are U.S. indicia associated with the person, as described in paragraphs (e)(4)(ii) through (vi) of this section, for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in this paragraph (e) has not been obtained.

(i) Information conflicting with person's claim of chapter 4 status. A withholding certificate, written statement, or documentary evidence is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the person's claim regarding its chapter 4 status. For example, a withholding agent will have reason to know that a person's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has a financial statement or credit report that indicates that the person is engaged in business as a financial institution or if documentation submitted by the person indicates that the person is acting as an intermediary with respect to the payment and, thus, is not a beneficial owner for purposes of §1.1472-1(c)(1). Further, a withholding agent that has classified the person as engaged in a particular type of business in its own records, such as through a standard industrial classification code, will have reason to know that that the chapter 4 status claimed by the person is unreliable or incorrect if the claim conflicts with the withholding agent's internal classification.

(ii) Specific standards of knowledge applicable to withholding certificates--(A) In general. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an

exemption from withholding for chapter 4 purposes. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent. Paragraphs (e)(4)(ii)(B) through (D) of this section do not apply to a withholding certificate provided by a participating FFI, a registered deemed-compliant FFI, or a sponsored FFI, described in §1.1471-5(f)(2)(iii), if the certificate contains a GIIN for the FFI or sponsor that the withholding agent verifies on the current published IRS FFI list as provided in paragraph (e)(3) of this section.

(B) Classification of U.S. status, U.S. address, or U.S. telephone number. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its customer files, the withholding certificate has a current permanent residence address in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the person notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States. Notwithstanding the foregoing, a withholding agent may rely upon a withholding certificate to establish the person's status as a

foreign person despite knowing that the person has any of the U.S. indicia described in this paragraph (e)(4)(ii)(B) if it may do so under the provisions of paragraphs (e)(4)(ii)(B)(1) and (2) of this section.

(1) Presumption of individual's foreign status. A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the individual has provided a withholding certificate and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(ii) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), that does not contain a U.S. address; or

(iii) For a payment made with respect to an offshore obligation, the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(2) Presumption of entity's foreign status. A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the entity has provided a withholding certificate and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(ii) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) U.S. place of birth--(1) Accounts opened on or after January 1, 2014. For accounts opened on or after January 1, 2014, a withholding agent has reason to know that a withholding certificate indicating foreign status provided by an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph (e)(4)(ii) of this

section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. place of birth and any other U.S. indicia described in paragraph (e)(4)(ii) of this section, if the withholding agent obtains a non-U.S. passport or other government-issued identification that is evidence of citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States, or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(2) Preexisting obligations. For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding agent, on or after January 1, 2014, reviews documentation that contains a U.S. birth place for an individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section for rules regarding the time period allowed to cure a change in circumstances.

(D) Standing instructions with respect to offshore obligations. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if it is provided with respect to an offshore obligation and the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may rely upon the withholding certificate to establish the person's status as a foreign person, however, if the person provides documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) Specific standard of knowledge applicable to written statements. A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(i) and (ii) of this section, when determining whether it can rely on a written statement.

(iv) Specific standard of knowledge applicable to documentary evidence--(A) In general. A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent may not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules in paragraph (f) of this section if the documentary evidence contains information

that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's claim, or the documentary evidence lacks information necessary to establish the person's chapter 4 status.

(B) Classification of U.S. status, U.S. address, or U.S. telephone number. A withholding agent may not treat documentary evidence provided by a person as valid for purposes of establishing the person's foreign status if the withholding agent does not have a permanent residence address for the person. The previous sentence will not apply, however, to a withholding agent that is making a payment with respect to an offshore obligation. Documentary evidence is unreliable or incorrect to establish a person's status as a foreign person if the withholding agent has classified the person as a U.S. person in its customer files, the withholding agent has a current residence or mailing address (whether or not on the documentation) for the person in the United States, if the person notifies the withholding agent of a new address in the United States, or if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States. Notwithstanding the foregoing, a withholding agent may rely on documentary evidence to establish the person's status as a foreign person despite knowing that the person has any of the U.S. indicia described in this paragraph (e)(4)(iv)(B) if it may do so under the provisions of paragraphs (e)(4)(iv)(B)(1) and (2) of this section.

(1) Presumption of individual's foreign status. A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the individual has provided documentary evidence and—

(i) The withholding agent has in its possession, or obtains, additional documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), that does not contain a U.S. address, and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(ii) The withholding agent has in its possession, or obtains, a valid beneficial owner withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or, if a mailing address is inside the United States, the direct account holder provides a reasonable written explanation supporting the individual's claim of foreign status); or

(iii) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, a beneficial owner withholding certificate that contains a permanent residence address outside the United States.

(2) Presumption of entity's foreign status. A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the entity has provided documentary evidence and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country;

(ii) The withholding agent obtains a valid withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States; or

(iii) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) U.S. place of birth—(1) Accounts opened on or after January 1, 2014. For accounts opened on or after January 1, 2014, a withholding agent has reason to know that documentary evidence provided to demonstrate an individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the individual or the withholding agent has, as part of its account information, a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph

(e)(4)(iv) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. birth place and any other U.S. indicia described in paragraph (e)(4)(iv) of this section, if the withholding agent obtains a withholding certificate from the individual that establishes the payee's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(2) Preexisting obligations. For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding agent, on or after January 1, 2014, reviews documentation that contains a U.S. place of birth for the individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section for rules regarding the time period allowed to cure a change in circumstances.

(D) Standing Instructions. With respect to an offshore obligation, documentary evidence is unreliable or incorrect as an indication of a person's

status as a foreign person if the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the person as a foreign person, however, if the person provides a withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), to the extent such documentary evidence was not already provided.

(E) Standards of knowledge applicable to certain types of documentary evidence—(1) Financial statement. A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold will have reason to know that the chapter 4 status claimed is inaccurate only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in §1.1472-1(c)(1)(iv) and the footnotes of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement

supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has collected the financial statement in the course of its account opening or other procedures.

(2) Organizational documents. A withholding agent that obtains organizational documents for an entity solely for the purpose of supporting the chapter 4 status claimed will only be required to review the document sufficiently to establish that the entity is a foreign person and that the purposes for which the entity was formed and its basic activities appear to be of a type consistent with the chapter 4 status claimed, unless otherwise specified in paragraph (d) of this section. A withholding agent that obtains organizational documents for the purpose of establishing that an entity has a particular chapter 4 status will only be required to review the document to the extent needed to establish that the entity is a foreign person, that the requirements applicable to the particular chapter 4 status are met, and that the document was executed, but will not be required to review the remainder of the document.

(v) Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section. A withholding agent may not rely upon a standard industry code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia described in

paragraph (e)(4)(v)(A) of this section associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

(A) U.S. indicia for entities. The term U.S. indicia when used with respect to an entity includes, for purposes of this paragraph (e)(4)(v) any of the following—

(1) Classification of an account holder as a U.S. resident in the withholding agent's customer files;

(2) A current U.S. residence address or U.S. mailing address;

(3) With respect to an offshore obligation, standing instructions to pay amounts to a U.S. address or an account maintained in the United States;

(4) A current telephone number for the entity in the United States but no telephone number for the entity outside of the United States;

(5) A current telephone number for the entity in the United States in addition to a telephone number for the entity outside of the United States;

(6) A power of attorney or signatory authority granted to a person with a U.S. address; and

(7) An "in-care-of" address or "hold mail" address that is the sole address provided for the entity.

(B) Documentation required to cure U.S. indicia. A withholding agent may rely upon a code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia associated with the entity and the withholding agent obtains the relevant documentation described in this paragraph (e)(4)(v)(B).

(1) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity, the withholding agent may treat the entity as a foreign person only if the withholding agent obtains a withholding certificate for the entity and one form of documentary evidence, described in paragraph (c)(5) of this section that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(2) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) to (4) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(3) If there are indicia described in paragraphs (e)(4)(v)(A)(5) through (7) of this section associated with the entity, the withholding agent may treat the entity as a foreign person if the withholding agent obtains a withholding certificate or one form of documentary evidence, described in paragraph (c)(5) of this

section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(vi) Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities—(A) In general. A withholding agent that receives documentation from a payee through an intermediary or flow-through entity is required to review all documentation obtained with respect to the payee and all intermediaries and/or flow-through entities in the chain of payment, applying the standards of knowledge set forth in paragraph (e) of this section. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (e)(4)(vi)(A)(1) and (2) of this section.

(1) The withholding agent is required to review the withholding statement or owner reporting statement provided and may not rely on information in the statement to the extent the information does not support the claims made regarding the chapter 4 status of the person. For this purpose, a withholding agent may not treat a person as a foreign person if an address in the United States is provided for such person unless the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(2) The withholding agent must review each withholding certificate and written statement in accordance with paragraph (e)(4)(i) through (iii) of this section and all documentary evidence in accordance with paragraph (e)(4)(i) and (iv) of this section, and must verify that the information contained on the withholding certificate, written statement, and documentary evidence is

consistent with the information on the withholding statement or owner reporting statement. If there is a discrepancy between the withholding certificate, written statement, or documentary evidence and the withholding statement or owner reporting statement, the withholding agent may choose to rely on the withholding certificate, written statement, or documentary evidence provided such documentation is valid and the intermediary or flow-through entity does not indicate that the documentation is unreliable or inaccurate, or may apply the presumption rules set forth in paragraph (f) of this section. If the withholding agent chooses to rely upon the withholding certificate, written statement, or documentary evidence, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the documentation is unreliable or inaccurate.

(B) Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities. A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered deemed-compliant FFI in the withholding statement unless the withholding agent has information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records

conflicts with the chapter 4 status claimed, the withholding agent will have reason to know that the chapter 4 status claimed is inaccurate. A withholding agent is not, however, required to verify information contained in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapter 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section. Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE will have reason to know that the claim is inaccurate if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section has been

obtained and provides details of such documentation, such as the type of documentation and an identification number of the person contained on the document.

(vii) Limits on reason to know—(A) Scope of review for preexisting obligations of entities. For purposes of determining whether a withholding agent that makes a payment with respect to a preexisting obligation to an entity has reason to know that the chapter 4 status applied to the entity is unreliable or incorrect, the withholding agent is only required to review information contradicting the chapter 4 status claimed if such information is contained in the current customer master file, the most recent withholding certificate, written statement, and documentary evidence for the person, the most recent account opening contract, the most recent documentation obtained by the withholding agent for purposes of AML due diligence or for other regulatory purposes, any power of attorney or signature authority forms currently in effect, and any standing instructions to pay amounts that is currently in effect.

(B) Reason to know there is a U.S. telephone number associated with a preexisting obligation. For payments made with respect to a preexisting obligation, a withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether the payee (or other person receiving the payment) has a current telephone number in the United States, may rely upon a search of its electronically searchable information associated with such person. However, the withholding agent may only rely upon the electronic search described in the previous sentence if the electronic

search produces at least one current phone number for the person. If the electronic search does not produce a telephone number for the person, the withholding agent will be required, by January 1, 2017, to search the files described in paragraph (e)(4)(vii)(A) of this section to locate a current telephone number for the payee.

(C) Reason to know there are U.S. indicia associated with preexisting offshore obligations. For payments made outside of the United States with respect to an offshore obligation that is also a preexisting obligation and with respect to a withholding agent that had not already documented the payee for purposes of chapter 3 or 61, the withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether there are U.S. indicia associated with the payee (or other person who receives the payment), may instead rely upon a search of its electronically searchable information associated with such person. A withholding agent that relies upon an electronic search pursuant to this paragraph (e)(4)(vii)(C) must also review for U.S. indicia any documentation upon which the withholding agent relies to determine the chapter 4 status of the person and any documentation that the withholding agent had been relying upon to determine the residency or citizenship of the person.

(D) Limits on reason to know for multiple obligations belonging to a single person. A withholding agent that maintains multiple obligations for a single person will have reason to know that a chapter 4 status assigned to the person is

inaccurate based on information contained in the customer files for another obligation held by the person only to the extent that—

(1) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the customer information and payment information for the obligations; or

(2) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to paragraph (c)(8) of this section or for purposes of treating one or more accounts as preexisting obligations.

(viii) Reasonable explanation supporting claim of foreign status. A reasonable explanation supporting a claim of foreign status for an individual means a written statement prepared by the individual (or the individual's completion of a checklist provided by the withholding agent), stating that the individual meets one of the requirements of paragraphs (e)(4)(viii)(A) through (D).

(A) The individual certifies that he or she--

(1) Is a student at a U.S. educational institution and holds the appropriate visa;

(2) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(3) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(4) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (e)(4)(viii)(A) through (C) of this section;

(B) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in §301.7701(b)-1(c) of this chapter (for example, a written statement indicating the number of days present in the United States during the three-year period that includes the current year);

(C) The individual certifies that he or she meets the closer connection exception described in §301.7701(b)-2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(D) With respect a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

(5) Conduit financing arrangements. The rules set forth in §1.1441-7(f), regarding a withholding agent's liability for failing to withhold in the case in which the financing arrangement is a conduit financing arrangement, apply for purposes determining a withholding agent's liability for any withholding required under chapter 4.

(6) Additional guidance. The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence to establish a payee's chapter 4 status is unreliable or incorrect in addition to the circumstances described in this paragraph (e).

(f) Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation--(1) In general. A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) a payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a participating FFI or a nonparticipating FFI). See paragraph (f)(9) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) Presumptions of classification as an individual or entity--(i) In general. A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence, as described in paragraph (c)(5) of this section, but cannot determine a person's status as an individual or an entity from the documentary evidence, must presume that the person is an individual if the person appears to be an individual (for example, based on the person's name or information in the customer file). If the person does not appear to be an individual, then the person shall be presumed to be an entity. In the absence of reliable documentation, a withholding agent must treat a person that is presumed to be an entity as a trust or estate if the person appears to be a trust or estate (for example, based on the person's name or information in the customer file). In addition, a withholding

agent must treat a person that is presumed to be a trust, or a person that is known to be a trust but for which the withholding agent cannot determine the type of trust, as a grantor trust if the withholding agent knows that the settlor of the trust is a U.S. person, and otherwise as a simple trust. In the absence of reliable indications that the entity is a trust or estate, the withholding agent must presume the person is a corporation if it can be treated as such under §1.6049-4(c)(1)(ii)(A)(1). If the withholding agent cannot treat the person as a corporation under §1.6049-4(c)(1)(ii)(A)(1), then the person must be presumed to be a partnership. See paragraph (a) of this section to determine, based upon the person's presumed entity type, whether the person is treated as a payee.

(ii) Documentary evidence furnished for offshore obligation. If the withholding agent receives valid documentary evidence, as described in paragraph (d) of this section, with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume that the entity is a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. However, a withholding agent may not treat a person that is known or presumed to be a foreign corporation as a beneficial owner if the withholding agent knows, or has reason to know, that the person is not the beneficial owner with respect to the payment. For this purpose, a withholding agent will have reason to know that the person is not a beneficial owner if the documentary evidence indicates that the person is a bank, broker, intermediary, custodian, or other agent. A

withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides written notification, regardless of whether such notification is signed, that indicates the person is the beneficial owner of the payment.

(3) Presumptions of U.S. or foreign status. A payment that the withholding agent cannot reliably associate with a valid withholding certificate or documentary evidence is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (f)(3). A payment that is reliably associated with documentation that indicates the payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, will be presumed to be made to a specified U.S. person unless the withholding agent can apply the presumption rules of §1.6049-4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person or the person's name reasonably indicates that the person is a bank (for example because it contains the word "Bank" or a foreign equivalent).

(i) Payments to entities with indicia of foreign status. If a withholding agent cannot reliably associate a payment with valid documentation sufficient to determine the person's status as a U.S. person or foreign person and the person is presumed to be an entity, the person is presumed to be a foreign person and not a U.S. person--

(A) If the withholding agent has actual knowledge of the person's EIN and that number begins with the two digits "98";

(B) If the withholding agent's communications with the person are mailed to an address in a foreign country;

(C) If the withholding agent has a telephone number for the person outside of the United States; or

(D) If the name of the person indicates that the entity is of a type that is on the per se list of foreign corporations contained in §301.7701-2(b)(8)(i) of this chapter (other than a name which contains the designation "corporation" or "company").

(ii) Payments to certain exempt recipients. If the payment is made to an entity that is treated as an exempt recipient under the provisions of §1.6049-4(c)(1)(ii)(A)(1), (F), (G), (H), (I), (M), (O), (P), or (Q) in the case of interest, or under similar provisions in chapter 61 applicable to the type of payment involved, the entity shall be presumed to be a foreign person.

(iii) Payments with respect to offshore obligations. A payment to an individual or an entity is presumed to be made to a foreign person if the payment is made outside of the United States with respect to an offshore obligation and the withholding agent does not know that the person is a U.S. person.

(4) Presumption of chapter 4 status for a foreign entity. A withholding agent that makes a payment to a foreign entity that it cannot reliably associate with a valid withholding certificate or documentary evidence sufficient to determine the chapter 4 status of that entity under paragraph (d) of this section (for example, as a participating FFI, nonparticipating FFI, or NFFE) must presume that the entity is a nonparticipating FFI.

(5) Presumption of status as an intermediary. If a withholding agent cannot reliably associate a payment with documentation to treat the payment as made to an intermediary, then the withholding agent must treat the payment as made to an intermediary if the withholding agent has documentary evidence or other documentation that indicates, or the facts and circumstances of the transaction (including the name of the person who receives the payment or the presence of sub-account numbers not corresponding to accounts maintained by the withholding agent for such person) indicate that the person who receives the payment is a bank, broker, custodian, intermediary, or other agent, and the withholding agent has no knowledge that the person is receiving the payment for its own account. Any portion of a payment that the withholding agent must treat as made to a foreign intermediary (whether a QI or an NQI) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (c) of this section, is presumed to be made to a nonparticipating FFI account holder of the intermediary. A person that the withholding agent is not required to treat as a foreign intermediary under this paragraph (f)(5) is presumed to be a person other than an intermediary.

(6) Presumption of effectively connected income for payments to certain U.S. branches. A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee and the payment is effectively connected with the conduct of a trade or business in the United States if the withholding agent has both an EIN for the branch and a valid GIIN for the

home office establishing that the U.S. branch is a branch of a participating FFI or registered deemed-compliant FFI. A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

(7) Joint payees--(i) In general. If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W-9 furnished in accordance with the procedures described in §§31.3406(d)-1 through 31.3406(d)-5 of this chapter, the payment shall be treated as made to that payee.

(ii) Exception for offshore obligations. If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual.

(8) Rebuttal of presumptions. A payee may rebut the presumptions described in this paragraph (f) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(9) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise--(i) In general. Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in this paragraph (f) with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See §1.1474-1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

(ii) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required. Notwithstanding the provisions of paragraph (f)(9)(i) of this section, a withholding agent that knows or has reason to know that the status or

characteristics of the person are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the person based on such knowledge or reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent provided under §1.1474-1(a).

(g) Effective/applicability date. This section generally applies on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability, see §§1.1471-3(d)(1); 1.1471-3(d)(4)(i), (ii), and (iv); 1.1471-3(d)(6)(v); 1.1471-3(d)(11)(viii)(A); 1.1471-3(d)(12)(iii)(B); 1.1471-3(e)(3)(ii); and 1.1471-3(e)(4)(vii)(B).

Par. 8. Section 1.1471-4 is added to read as follows:

§1.1471-4 FFI agreement.

(a) In general. An FFI agreement will be in effect in accordance with section 1471(b) if an FFI registers with the IRS pursuant to procedures prescribed by the IRS and agrees to comply with the terms of an FFI agreement. The FFI agreement will incorporate the requirements set forth in this section, any modifications set forth in an applicable Model 2 IGA, and any provisions applicable to a reporting Model 1 FFI.

(1) Withholding. A participating FFI is required to deduct and withhold tax with respect to payments made to recalcitrant account holders and nonparticipating FFIs to the extent required under paragraph (b) of this section. A participating FFI that is prohibited by foreign law from withholding as required under paragraph (b) of this section with respect to an account must close such account within a reasonable period of time or must otherwise block or transfer such account as described in paragraph (i) of this section.

(2) Identification and documentation of account holders. A participating FFI is required to obtain such information regarding each holder of each account maintained by the participating FFI to determine whether each account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI in accordance with the due diligence procedures for identifying and documenting account holders described in paragraph (c) of this section.

(3) Reporting. A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in §1.1474-1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in §1.1474-1(d)(4)(iii)(C)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or

transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) Expanded affiliated group. Except as otherwise provided in Model 1 IGA or Model 2 IGA, in order for any FFI that is a member of an expanded affiliated group to be a participating FFI, each FFI that is a member of the expanded affiliated group must be a participating FFI or registered deemed-compliant FFI as described in paragraph (e) of this section. For a limited period described in paragraph (e)(2) or (e)(3) of this section, however, a branch of an FFI or an FFI that is a member of an expanded affiliated group and is unable under foreign law to satisfy the requirements of this section may instead obtain status as a limited branch of a participating FFI or limited FFI if the branch or FFI meets the requirements set forth in paragraph (e)(2) or (e)(3) of this section (as applicable).

(5) Verification. A participating FFI is required to adopt a compliance program as described in paragraph (f) of this section under the authority of the responsible officer, who will be required to certify periodically to the IRS on behalf of the FFI regarding the participating FFI's compliance with the requirements of the FFI agreement. If the IRS identifies concerns about the participating FFI's compliance, the IRS may request additional information to verify compliance with the requirements of the FFI agreement as described in paragraph (f)(4) of this section.

(6) Event of default. A participating FFI is required to cure an event of default with respect to the FFI agreement as defined in paragraph (g) of this

section. Upon the occurrence of an event of default, the IRS will deliver to a participating FFI a notice of default and will allow the FFI an opportunity to cure the event of default as described in paragraph (g) of this section.

(7) Refunds. A participating FFI may file a collective refund on behalf of certain account holders and payees for amounts withheld by the participating FFI or its withholding agent under chapter 4 in excess of the account holder or payee's U.S. tax liability to the extent permitted in paragraph (h) of this section. A participating FFI may also make an adjustment for overwithholding using either the reimbursement procedure described in §1.1474-2(a)(3) or the set-off procedure described in §1.1474-2(a)(4).

(b) Withholding requirements--(1) In general. Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after December 31, 2013, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special

allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of participating FFIs. See §1.1471-2 for the exceptions to withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See §1.1474-1(d)(4)(iii) for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts. See §1.1474-6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) Withholding determination. Except as otherwise provided under §1.1471-2 and paragraph (c) of this section with respect to certain preexisting accounts, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in §1.1471-3(a)(3), the payee is the account holder of the payment. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made with respect to an obligation that is not an account, except as otherwise provided in §1.1471-3(a)(3), the payee is the person to whom the payment is made. See §1.1473-1(a) to determine when a payment is made in the case of a

withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under §1.1471-3(c)(7) or may apply the procedures provided in §1.1474-2 when overwithholding occurs.

(3) Satisfaction of withholding requirements. A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees. A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for the payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a withholding certificate described in §1.1471-3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See §1.1471-2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also §1.1471-3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§1.1471-2(a) and 1.1472-

1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

(4) Foreign passthru payments. A participating FFI is not required to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI before the later of January 1, 2017, or the date of publication in the Federal Register of final regulations defining the term foreign passthru payment.

(5) Withholding on limited FFIs and limited branches--(i) Limited FFIs. A participating FFI is required to withhold on a withholdable payment made to a limited FFI identifying itself as a nonparticipating FFI. A participating FFI that is a member of an expanded affiliated group that includes one or more limited FFIs will also be required to treat any such limited FFI as a nonparticipating FFI with respect to withholdable payments made to such limited FFI. A participating FFI will be considered to have made a withholdable payment to a limited FFI if such participating FFI receives a withholdable payment with respect to a security or instrument held on behalf of a limited FFI (or an account maintained by the limited FFI). A participating FFI will also be considered to have made a withholdable payment to a limited FFI when the limited FFI receives a payment with respect to a transaction between the limited FFI and such participating FFI that is in the same expanded affiliated group and such transaction hedges or otherwise provides total return exposure to another transaction between such participating FFI and a third party that gives rise to a withholdable payment.

(ii) Limited branches. A participating FFI is required to withhold on a withholdable payment made to a limited branch identifying itself as a nonparticipating FFI. A branch of the participating FFI other than the limited branch is also required to withhold on a withholdable payment when it receives the payment on behalf of a limited branch of the participating FFI. A branch of the participating FFI other than a limited branch will be considered to have received a withholdable payment on behalf of a limited branch when such other branch receives a withholdable payment with respect to a security or instrument it holds on behalf of a limited branch (or an account maintained by the limited branch). A branch of a participating FFI other than a limited branch will be considered to hold a security or instrument on behalf of a limited branch when it executes a transaction with a limited branch that hedges or otherwise provides total return exposure to another transaction between such other branch and a third party that gives rise to a withholdable payment.

(6) Special rule for dormant accounts. A participating FFI that makes a payment to a recalcitrant account holder of a dormant account and that withholds on such payment as required under paragraph (b)(1) of this section may, in lieu of depositing the tax withheld under §1.6302-2 and described in §1.1474-1(b), set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder

provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. If a dormant account escheats to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is not required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) Withholding requirements for U.S. branches of participating FFIs that are treated as U.S. persons. A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are treated as U.S. non-exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs with respect to payments that are chapter 4 reportable amounts.

(c) Due diligence for the identification and documentation of account holders and payees--(1) Scope of paragraph. Except to the extent that a participating FFI relies on the due diligence procedures set forth in an applicable Model 2 IGA, a participating FFI must follow this paragraph (c) to identify and document the chapter 4 status of each holder of an account maintained by the

participating FFI to determine if the account is a U.S. account, non-U.S. account, or an account held by a recalcitrant account holder or nonparticipating FFI. Paragraph (c)(2) of this section provides the general rules for identification and documentation of account holders and payees, and paragraph (c)(2)(v) provides special documentation requirements for certain U.S. branches of participating FFIs. Paragraph (c)(3) of this section provides the rules for documenting entity accounts and payees. Paragraph (c)(4) of this section provides the general rules for documenting individual accounts other than preexisting accounts. Paragraph (c)(5) of this section provides the identification and documentation procedure for preexisting individual accounts. Paragraph (c)(6) of this section provides examples illustrating the application of the documentation exceptions for entity accounts and individual accounts. Paragraph (c)(7) of this section outlines the certification requirement relating to the due diligence procedures of this paragraph (c) with respect to preexisting accounts within the specified periods of time.

(2) General rules for the identification and documentation of account holders and payees--(i) Overview. Except as otherwise provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section (documentation exceptions for certain preexisting accounts), a participating FFI is required to identify among accounts maintained by the participating FFI each account that is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI, and to report information about such accounts in the manner provided in paragraph (d) of this section and §1.1474-1(d)(4)(iii). See §1.1471-5(a)(3) for rules to

determine the holder of an account. The participating FFI is also required to retain a record of the documentation collected or otherwise maintained that meets the requirements described in this paragraph (c) when making certain payments to an account holder or payee (if other than an account holder) to determine whether withholding applies under paragraph (b) of this section or whether reporting applies under §1.1474-1(d)(4)(iii)(C) and any payee for which it provides the certification described in §1.1471-3(c)(9)(iii)(A) to another withholding agent.

(ii) Standards of knowledge--(A) In general. A participating FFI may rely on valid documentation that is collected pursuant to the due diligence procedures set forth in this paragraph (c) or that is otherwise maintained in the participating FFI's files, unless the participating FFI knows or has reason to know that such documentation is unreliable or incorrect. For purposes of a participating FFI documenting an account holder under this paragraph (c), the requirements for the validity of withholding certificates, written statements, and documentary evidence provided in §1.1471-3(c) shall apply regardless of whether the participating FFI makes a payment to the account. Except as otherwise provided paragraph (c)(2)(ii)(B) of this section (certain mergers or bulk acquisitions) and in paragraph (c)(5)(iv) of this section (preexisting individual accounts), to determine whether a participating FFI knows or has reason to know that the documentation collected or otherwise maintained with respect to the account holder is unreliable or incorrect, the standards of knowledge provided in §1.1471-3(e) shall apply regardless of whether the participating FFI makes a payment to the account.

See §1.1471-3(c)(8) and (9) for the requirement to obtain documentation on an account-by-account basis and the exceptions to this requirement.

(B) Limits on reason to know with respect to certain accounts acquired in merger or bulk acquisition. A participating FFI that acquires accounts of another financial institution either in a merger or bulk acquisition of accounts for value (other than a related party transaction described in §1.1471-3(c)(9)(v)) may apply the limitations on reason to know provided in paragraphs (c)(2)(ii)(B)(1) or (2) of this section (as applicable and subject to the conditions therein), or the rules of §1.1471-3(c)(9)(v) to rely upon documentation collected by another financial institution for an account acquired either in a merger or bulk acquisition of accounts for value.

(1) In general. The participating FFI may treat accounts acquired in a transaction described in this paragraph (c)(2)(ii)(B) as preexisting accounts for purposes of applying the identification and documentation procedures of this paragraph (c) by substituting the date of acquisition of such accounts for the effective date of the FFI agreement.

(2) Participating FFIs and certain deemed-compliant FFIs that apply the due diligence rules, and U.S. financial institutions. If a participating FFI (transferee FFI) acquires accounts of another participating FFI or deemed-compliant FFI (including a U.S. branch of either such FFI) that applies the due diligence requirements of this paragraph (c) as a condition of its status (as described in §1.1471-5(f)), or of a U.S. financial institution (transferor FI), the transferee FFI may rely on the chapter 4 status determination made by the

transferor FI for an account holder and will not be subject to the standards of knowledge set forth in paragraph (c)(2)(ii)(A) of this section until there is a change in circumstances with respect to the account if the following conditions are met—

(i) The transferee FFI does not have actual knowledge that the chapter 4 status determination provided by the transferor FI is unreliable or incorrect;

(ii) For the certification period following the acquisition of such accounts (described in paragraph (f)(3)(i) of this section), the transferee FFI acquiring the accounts tests a sample of the acquired accounts to determine if the chapter 4 status determinations made by the transferor FI are reliable;

(iii) In the case of a transferor FI that is a branch of a participating FFI or of a registered deemed-compliant FFI (other than a U.S. branch that is treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

(iv) In the case of a transferor FI that is a U.S. financial institution or that is a U.S branch of a participating FFI or of a registered deemed-compliant FFI that is treated as a U.S. person, the transferee FFI may rely on the chapter 4 status determinations for a payee that is an entity only if prior to the date of transfer the

U.S. financial institution or U.S. branch made a withholdable payment to the payee or, for a payee that is an individual, only if the U.S. financial institution or U.S. branch made a reportable payment (as defined under section 3406(b)) to the payee.

(iii) Change in circumstances--(A) Obligation to identify a change in circumstances. A participating FFI is required to institute procedures to ensure that any change in circumstances, as described in paragraph (c)(2)(iii)(B) of this section, is identified by the participating FFI, including procedures to ensure that a relationship manager identifies any change in circumstances with respect to an account. For example, if a relationship manager is notified that the account holder has a mailing address in the United States when there was no U.S. address previously associated with the account, the participating FFI will be required to treat the new address as a change in circumstances and will be required to retain a record of the appropriate documentation from the account holder as described in paragraph (c)(5)(iv)(B)(2)(iii) of this section.

(B) Definition of change in circumstances. For purposes of this section, a change in circumstances (as defined in §1.1471-3(c)(6)(ii)(D)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in §1.1471-5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. For example, if a holder of an

account (including a preexisting account) opens another account that is linked to such account in the participating FFI's computerized system as described under §1.1471-5(b)(4)(iii) and as part of the participating FFI's account opening procedures the account holder provides a U.S. telephone number for such other account, this is a change in circumstances with respect to the first mentioned account. With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value in a subsequent year that causes the account no longer to meet the documentation exception.

(C) Requirements following a change in circumstances. With respect to an individual account or an account held by a passive NFFE for which there is a change in circumstances with respect to the information regarding its owners, following a change in circumstances the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) or (c)(5)(iv)(B)(2) of this section within the time period provided by §1.1471-5(g)(3)(iii) or, if unable to do so, must treat such account as held by a recalcitrant account holder. With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the earlier of 90 days or the date a withholdable payment or foreign passthru payment is made to the account or, if unable to do so, must treat such account as held by a nonparticipating FFI.

(iv) Record retention. A participating FFI must retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee pursuant to the requirements of this paragraph (c)(2)(iv). A participating FFI will be treated as having retained a record of a withholding certificate, written statement, or documentary evidence if the participating FFI retains either an original, certified copy, or photocopy (including a microfiche, scan, or similar means of record retention) of the withholding certificate, written statement, or documentary evidence collected to determine the chapter 4 status of the account holder for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the account. With respect to documentary evidence for an offshore obligation, however, a participating FFI that is not required to retain copies of documentation reviewed pursuant to its AML due diligence will be treated as having retained a record of such documentation if the participating FFI retains a record in its files noting the date the documentation was reviewed, each type of document, the document's identification number (if any) (for example, passport number), and whether any U.S. indicia were identified. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation, except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. A participating FFI must also retain a record of any searches, including search results provided by third-party credit agencies as described in paragraph (c)(4)(ii) of this section, results from electronic searches, and requests made and responses to relationship

manager inquiries for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the account. A participating FFI may be required to extend the six year retention period if the IRS requests such extension prior to the end of the six year retention period. Notwithstanding the preceding sentences, a participating FFI must retain a record of the chapter 4 status of an account holder or payee for as long as the FFI maintains the account or obligation. See §1.1471-3(c)(6)(iii)(A) for the record retention period applicable to a participating FFI that is a withholding agent with respect to documentation collected (or otherwise maintained) for a payee.

(v) Special rule for U.S. branches of participating FFIs that are treated as U.S. persons. A U.S. branch of a participating FFI that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of §1.1471-3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. See paragraph (b)(6) of this section for special withholding rules and paragraph (d)(2)(iii)(B) of this section for special reporting rules applicable to such U.S. branches.

(3) Identification and documentation procedure for entity accounts and payees--(i) In general. With respect to accounts held by entities, unless the documentation exception described in paragraph (c)(3)(iii) of this section applies, a participating FFI must determine if the account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI by applying the

principles of §1.1471-3(b), (c), and (d) to establish the chapter 4 status of each account holder and each payee regardless of whether the participating FFI makes a payment to the account. If an account holder receiving a payment is not the payee of the payment under §§1.1471-3(a) and 1.1472-1(d)(3), the participating FFI is also required to establish the chapter 4 status of the payee or payees in order to determine whether withholding applies under paragraph (b) of this section.

(ii) Timeframe for applying identification and documentation procedure for entity accounts and payees. For preexisting entity accounts, a participating FFI must perform the requisite identification and documentation procedures within six months of the effective date of the FFI agreement for any account holder that is a prima facie FFI, as defined in §1.1471-2(a)(4)(ii)(B), and within two years of the effective date of the FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(iii) of this section. For accounts that are not preexisting accounts, the participating FFI must perform the requisite identification and documentation procedures by the earlier of the date a withholdable payment or a foreign passthru payment is made with respect to the account or within 90 days of the date the participating FFI opens the account. Notwithstanding the foregoing sentences of this paragraph (c)(3)(ii), with respect to a preexisting obligation issued in nonregistered (bearer) form by an investment entity, the investment entity is required to perform the requisite identification and documentation procedures at the time a payment is collected by the beneficial owner of the payment (including a beneficial owner that collects the payment

through an intermediary or agent). If the participating FFI cannot obtain all the documentation described in §1.1471-3(d) or if the participating FFI knows or has reason to know that the documentation provided for an entity account is unreliable or incorrect (by applying the standards of knowledge applicable to entities in §1.1471-3(e) as modified by paragraph (c)(2)(ii)), the participating FFI shall apply the presumption rules of §1.1471-3(f) (as applicable to entities) to determine the chapter 4 status of the account holder. In the case of an account held by a passive NFFE that provides the documentation described in §1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners, see §1.1471-5(g)(2)(iv) for the requirement to treat the account as held by a recalcitrant account holder.

(iii) Documentation exception for certain preexisting entity accounts--(A) Accounts to which this exception applies. Unless the participating FFI elects otherwise pursuant to paragraph (c)(3)(iii)(C) of this section, a participating FFI is not required to perform the identification and documentation procedure contained in this paragraph (c)(3) with respect to a preexisting entity account the aggregate balance or value of which is $250,000 or less if no holder of such account that has previously been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 is a specified U.S. person. For purposes of applying this exception, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(3)(iii)(B) of this section shall apply. An account that meets this exception will cease to meet this exception as of the end of any subsequent calendar year in which the account

balance or value exceeds $1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or as of the date on which there is another change in circumstances with respect to the account or any account aggregated with the account.

(B) Aggregation of entity accounts. For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(iii), an FFI is required to aggregate the balance or value of all accounts held (in whole or in part) by the same account holder to the extent required under §1.1471-5(b)(4)(iii)(A) and (B).

(C) Election to forgo exception. A participating FFI may elect to forgo the exception described in this paragraph (c)(3)(iii) by applying the identification and documentation procedures provided in this paragraph (c)(3) within the time period provided by paragraph (c)(3)(ii) of this section or otherwise applying the presumption rules of §1.1471-3(f) to determine the chapter 4 status of the account holder.

(4) Identification and documentation procedure for individual accounts other than preexisting accounts--(i) In general. With respect to an individual account that is not a preexisting account or an account described under paragraph (c)(4)(iii)(B) of this section or §1.1471-5(a)(4)(i) (providing an exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less), a participating FFI must determine if the account is a U.S. account or non-U.S. account by retaining a record of certain documentation to establish the chapter 4 status of each account

holder. Specifically, a participating FFI must retain a record of documentary evidence that meets the requirements of §1.1471-3(c)(5) (as applicable to individuals), the information described in paragraph (c)(4)(ii) or (c)(4)(iii)(A) of this section, or a withholding certificate to establish an account holder's status as a foreign person. Except as otherwise provided in paragraph (c)(4)(iii)(A) of this section, the participating FFI must also review all information collected in connection with the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes, and apply the standards of knowledge in paragraph (c)(2)(ii) of this section to determine if an account holder's claim of foreign status is unreliable or incorrect. If the participating FFI is not able to establish an account holder's status as a foreign person, the participating FFI must retain a record of either a Form W-9 or U.S. TIN (in any manner) and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, to establish an account holder's status as a U.S. person and to confirm that the account is a U.S. account. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by §1.1471-5(g)(3)(ii), or, if unable to do so, it must treat such account as held by a recalcitrant account holder. The presumption rules of §1.1471-3(f) do not apply to individual account holders of a participating FFI.

(ii) <u>Reliance on third party for identification of individual accounts other than preexisting accounts</u>. A participating FFI may establish an account holder's

status as a foreign person based on information provided by a third-party credit agency only if the following conditions are met—

(A) As part of the participating FFI's account opening procedures, the account holder provides a residence address outside the United States and attests in writing that the account holder is not a U.S. citizen or resident;

(B) The third-party credit agency verifies the account holder's claimed residence with at least one government data source from the jurisdiction in which the participating FFI (or branch thereof) operates or the account holder claims residence; and

(C) The participating FFI (or branch thereof) relies on the information provided by the third-party credit agency for purposes of satisfying AML due diligence with respect to the account in a FATF-compliant jurisdiction.

(iii) Alternative identification and documentation procedure for certain cash value insurance or annuity contracts--(A) Group cash value insurance contracts or group annuity contracts. A participating FFI may treat an account that is a group cash value insurance contract or group annuity contract and that meets the requirements of this paragraph (c)(4)(iii)(A) as a non-U.S. account until the date on which an amount is payable to an employee/certificate holder or beneficiary, if the participating FFI obtains a certification from an employer that no employee/certificate holder (account holder) is a U.S. person. A participating FFI is also not required to review all the account information collected by the FFI to determine if an account holder's claim of foreign status is unreliable or incorrect.

An account that is a group cash value insurance contract or group annuity contract meets the requirements of this paragraph (c)(4)(iii)(A) if—

(1) The group life insurance contract or a group annuity contract issued to an employer and covers twenty-five or more employee/certificate holders;

(2) The employee/certificate holders are entitled to receive any contract value and to name beneficiaries for the benefit payable upon the employee's death; and

(3) The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

(B) Accounts held by beneficiaries of a cash value insurance contract that is a life insurance contract. A participating FFI may presume that an individual beneficiary (other than the owner) of a cash value insurance contract that is a life insurance contract (account holder) receiving a death benefit is a foreign person and treat such account as a non-U.S. account unless the participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person. A participating FFI has reason to know that a beneficiary of a cash value insurance contract is a U.S. person if the information collected by the participating FFI and associated with the beneficiary contains U.S. indicia as described paragraph (c)(5)(iv)(B)(1) of this section. If a participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(2) of this section.

(5) Identification and documentation procedure for preexisting individual accounts--(i) In general. With respect to a preexisting individual account, unless the account is an account described in §1.1471-5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less), a participating FFI may follow the identification and documentation procedures described below in paragraph (c)(5)(ii) through (iv) of this section (as applicable), in lieu of the identification and documentation procedures described in paragraph (c)(4) of this section, to determine if an account that is a preexisting account is a U.S. account, non-U.S. account, or account held by a recalcitrant account holder. A participating FFI must first determine whether there are any U.S. indicia associated with the account (as defined in paragraph (c)(5)(iv)(B)(1) of this section), and second, if there are U.S. indicia associated with the account, retain a record of the documentation described in paragraph (c)(5)(iv)(B)(2) of this section to establish the account holder's chapter 4 status. For this purpose, the presumption rules of §1.1471-3(f) do not apply. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by §1.1471-5(g)(3)(i) or (ii) (as applicable) or, if unable to do so, must treat such account as held by a recalcitrant account holder. A participating FFI may continue to treat an account with no U.S. indicia or an account that meets a documentation exception described in paragraph (c)(5)(iii) of this section or §1.1471-5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less) as a

non-U.S. account, until there is a change in circumstances with respect to the account as described in paragraph (c)(2)(iii) of this section.

(ii) Special rule for preexisting individual accounts previously documented as U.S. accounts for purposes of chapter 3 or 61. If a participating FFI has documented an individual account holder as a U.S. person for purposes of chapter 3 or 61 and such account holder is a specified U.S. person, the account holder's account will be treated as a U.S. account for chapter 4 purposes and the identification and documentation procedures in paragraph (c)(5)(i) and (iv) of this section will not apply.

(iii) Exceptions for certain low value preexisting individual accounts--(A) Accounts to which an exception applies. Unless the participating FFI elects otherwise pursuant to paragraph (c)(5)(iii)(C) of this section, a participating FFI is not required to perform requisite identification and documentation procedures described in paragraph (c)(5)(i) and (iv) of this section with respect to either a preexisting individual account, other than a cash value insurance or annuity contract, the aggregate balance or value of which is $50,000 or less, or a preexisting individual account that is a cash value insurance or annuity contract described in §1.1471-5(b)(1)(iv) the aggregate balance or value of which is $250,000 or less. For purposes of applying these exceptions, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(5)(iii)(B) of this section shall apply. An account that meets either of these exceptions will cease to meet these exceptions as of the end of any subsequent calendar year in which the account

balance or value exceeds $1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or until there is another change in circumstances with respect to the account or any account aggregated with the account.

(B) Aggregation of accounts. For purposes of determining the aggregate balance or value of a preexisting individual account, other than an account that is cash value insurance or annuity contract, an FFI is required to aggregate the balance or value of all accounts that are not cash value insurance or annuity contracts to the extent required under §1.1471-5(b)(4)(iii)(A) or (B). For purposes of determining the aggregate balance or value of preexisting individual account that is a cash value insurance or annuity contract, an FFI will be required to aggregate the balance or value of all accounts that are cash value insurance or annuity contracts to the extent required under §1.1471-5(b)(4)(iii)(A) or (B).

(C) Election to forgo exception. A participating FFI may elect to forgo the exceptions described in paragraph (c)(5)(iii) of this section by applying the identification and documentation procedures provided in this paragraph (c) within the time provided by paragraph (c)(5)(i) of this section or otherwise treating the account as held by a recalcitrant account holder pursuant to §1.1471-5(g).

(iv) Specific identification and documentation procedures for preexisting individual accounts--(A) In general. A participating FFI applying the identification and documentation procedures of this paragraph (c)(5)(iv) must review its preexisting individual accounts (applying the electronic search described in paragraph (c)(5)(iv)(C) of this section and, if appropriate, the enhanced review for

high-value accounts described in paragraph (c)(5)(iv)(D) of this section) to determine if there are any U.S. indicia (as described in paragraph (c)(5)(iv)(B)(1) of this section) associated with the account. If no U.S. indicia are identified with respect to an account, the participating FFI may treat the account as a non-U.S. account. If U.S. indicia are identified with respect to an account, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(2) of this section to establish the account holder's status as a foreign person. A participating FFI that follows the procedures described in this paragraph (c)(5)(iv) (as applicable) with respect to its preexisting individual accounts will not be treated as having reason to know that the determination made with respect to the account was unreliable or incorrect because of information contained in any account files that the participating FFI did not review and was not required to review under the applicable identification procedure. Thus, for example, if a participating FFI was only required to perform an electronic search with respect to a preexisting individual account and no U.S. indicia were identified in the results of the electronic search, the participating FFI would not have reason to know that the individual account holder was a U.S. person, even if the participating FFI had on file (but was not required to and did not review) a copy of the individual's passport that indicates that the individual was born in the United States.

(B) U.S. indicia and relevant documentation rules--(1) U.S. indicia. A participating FFI must review an account holder's account information to the

extent required under paragraphs (c)(5)(iv)(C) and (D) of this section for any of the following U.S. indicia:

(i) Designation of the account holder as a U.S. citizen or resident;

(ii) A U.S. place of birth;

(iii) A current U.S. residence address or U.S. mailing address (including a U.S. post office box);

(iv) A current U.S. telephone number (regardless of whether such number is the only telephone number associated with the account holder);

(v) Standing instructions to pay amounts from the account to an account maintained in the United States;

(vi) A current power of attorney or signatory authority granted to a person with a U.S. address; or

(vii) An “in-care-of” address or a “hold mail” address that is the sole address the FFI has identified for the account holder.

(2) Documentation to be retained upon identifying U.S. indicia. If U.S. indicia are identified with respect to an account holder’s account information, a participating FFI must retain a record of the documentation described in paragraphs (c)(5)(iv)(B)(2)(i) through (vii) of this section, applicable to the U.S. indicia identified, to establish the account holder’s status as a foreign person. If the participating FFI cannot establish an account holder’s status as a foreign person based on such documentation, the participating FFI must retain a record of a Form W-9 and a valid and effective waiver as described in section

1471(b)(1)(F)(ii), if necessary, to confirm that the account is a U.S. account or, if unable to do so, must treat the account as held by a recalcitrant account holder.

(i) Designation of account holder as a U.S. citizen or resident. If the information required to be reviewed with respect to the account contains a designation of an account holder as a U.S. citizen or resident, the participating FFI must retain a record of a withholding certificate and documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States in order to establish the account holder's status as a foreign person.

(ii) Unambiguous indication of a U.S. place of birth. If information required to be reviewed with respect to the account unambiguously indicates a U.S. place of birth for an account holder, the participating FFI must retain a record of a form of documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States, or, alternatively, a withholding certificate, a form of documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth in order to establish the account holder's status as a foreign person.

(iii) U.S. address or U.S. mailing address. If information required to be reviewed with respect to the account contains a U.S. address or a U.S. mailing address for an account holder, the participating FFI must retain a record of a

withholding certificate and a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(iv) Only U.S. telephone numbers. If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and no other telephone numbers for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(v) U.S. telephone numbers and non-U.S. telephone numbers. If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and at least one telephone number outside the United States for an account holder, the participating FFI must retain a record of a withholding certificate or a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(vi) Standing instructions to pay amounts. If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(vii) Power of attorney or signatory authority granted to a person with a U.S. address or "in-care-of" address or "hold mail" address. If information required to be reviewed with respect to the account includes a power of attorney or signatory authority granted to a person with a U.S. address or contains an "in-care-of" address or "hold mail" address that is the sole address identified for the account holder, the participating FFI must retain a record of either a withholding certificate or a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(C) Electronic search for identifying U.S. indicia. Except as provided in paragraph (c)(5)(iv)(D) of this section relating to the enhanced review for high-value accounts, a participating FFI may rely solely on a review of the electronically searchable information associated with an account and maintained by the participating FFI to determine if there are any of the U.S. indicia described in paragraph (c)(5)(iv)(B)(1) of this section associated with the account. For purposes of this paragraph (c)(5)(iv)(C), however, an FFI will not be required to treat as U.S. indicia an in-care-of address or a hold mail address that is the sole address identified for the account holder.

(D) Enhanced review for identifying U.S. indicia in the case of certain high-value accounts--(1) In general. With respect to preexisting individual accounts that have a balance or value that exceeds $1,000,000 as of the effective date of the FFI agreement, or at the end of any subsequent calendar year ("high-value accounts"), a participating FFI must apply the enhanced review described in this paragraph (c)(5)(iv)(D) in addition to the electronic search

described in paragraph (c)(5)(iv)(C) of this section to identify any U.S. indicia described in paragraph (c)(5)(iv)(B)(1) of this section associated with the account. For purposes of determining the balance or value of an account, a participating FFI must apply the aggregation rules §1.1471-5(b)(4)(iii)(A) and (B). If a participating FFI applied the enhanced review described in this paragraph (c)(5)(iv)(D) to an account in a previous year, the participating FFI will not be required to reapply such procedures to such account in a subsequent year.

(2) Relationship manager inquiry. With respect to all high-value accounts, a participating FFI must identify accounts to which a relationship manager is assigned (including any accounts aggregated with such account) and for which the relationship manager has actual knowledge that the account holder is a U.S. citizen or resident.

(3) Additional review of non-electronic records. Except as provided in paragraph (c)(5)(iv)(E) of this section, and except with respect to any account for which the participating FFI has retained a record of a withholding certificate and documentary evidence described in §1.1471-3(c)(5) establishing the account holder's foreign status, a participating FFI must review to identify any U.S. indicia the current customer master file of a high-value account and, if not contained in the current customer master file, the following documents described in paragraphs (c)(5)(iv)(D)(3)(i) through (v) of this section that are associated with such an account and were obtained by the participating FFI within the five calendar years preceding the later of the effective date of the FFI agreement, or the end of the calendar year in which the account exceeded the $1,000,000

threshold described in paragraph (c)(5)(iv)(D)(1) of this section. The documents to be reviewed by the participating FFI if not contained in the current customer master file are—

(i) The most recent withholding certificate, written statement, and documentary evidence;

(ii) The most recent account opening contract or documentation;

(iii) The most recent documentation obtained by the participating FFI for purposes of AML due diligence or for other regulatory purposes;

(iv) Any power of attorney or signature authority forms currently in effect; and

(v) Any standing instructions to pay amounts to another account.

(4) Limitations on the enhanced review in the case of comprehensive electronically searchable information. A participating FFI is not required to apply the enhanced review of this paragraph (c)(5)(iv)(D) and may instead rely on the electronic search described in paragraph (c)(5)(iv)(C) of this section to identify U.S. indicia to the extent the following information is available in the FFI's electronically searchable information—

(i) The account holder's nationality and/or residence status;

(ii) The account holder's current residence address and mailing address;

(iii) The account holder's current telephone number(s);

(iv) Whether there are standing instructions to pay amounts to another account;

(v) Whether there is a current “in-care-of” address or “hold mail” address for the account holder if no other residence or mailing address is found for the account; and

(vi) Whether there is any power of attorney or signatory authority for the account.

(E) Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement. A participating FFI that has previously obtained documentation from an account holder to establish the account holder’s status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for such account. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(2) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(1) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder’s foreign status under chapter 61 if the participating FFI has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year. In the case of a participating FFI that is a QI, WP, or WT, the participating

FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

(6) Examples. The following examples illustrate the documentation exceptions provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section:

Example 1. Aggregation rules applicable to preexisting individual accounts. U, a U.S. resident individual, holds 100 shares of common stock of FFI1, an investment entity. On the effective date of FFI1's FFI agreement, the common stock held by U is worth $45,000. U also holds shares of preferred stock of FFI1. On the effective date of FFI1's FFI agreement, U's preferred stock in FFI1 is worth $35,000. Neither FFI1's common stock nor FFI1's preferred stock is regularly traded on an established securities market. U also holds debt instruments issued by FFI1 that are not regularly traded on an established securities market. On the effective date of FFI1's FFI agreement, U's FFI1 debt instruments are worth $15,000. U's common and preferred equity interests are associated with U and with one another by reference to U's foreign tax identification number in FFI1's computerized information management system. However, U's debt instruments are not associated with U's equity interests in FFI1's computerized information management system. None of these accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W-9 from U for purposes of chapter 3 or 61. U's FFI1 debt interests are eligible for the paragraph (c)(5)(iii)(A) documentation exception because that account does not exceed the $50,000 threshold described in paragraph (c)(5)(iii)(A)(1) of this section, taking into account the aggregation rule described in paragraph (c)(5)(iii)(A)(2) of this section. However, U's common and preferred equity interests are not eligible for the paragraph (c)(5)(iii)(A) documentation exception because the accounts exceed the $50,000 threshold described in paragraph (c)(5)(iii)(A)(1) of this section, taking into account the aggregation rules described in §1.1471-5(b)(4)(iii) pursuant to the requirements of paragraph (c)(5)(iii)(A)(2) of this section.

Example 2. Aggregation rules for owners of entity accounts. In Year 1, U, a U.S. resident individual, maintains a depository account that is a preexisting account in CB, a commercial bank. The balance in U's depository account on the first date CB's FFI agreement is in effect is $20,000. U also owns 100% of Entity X, which maintains a depository account that is a preexisting account in CB, and 50% of Entity Y, which maintains a depository account that is a

preexisting account in CB. The balance in Entity X's account on the first date CB's FFI agreement is in effect is $130,000 and the balance in Entity Y's account on effective date of CB's FFI agreement is $110,000. All three accounts are associated with one another in CB's computerized information management system by reference to U's foreign tax identification number. None of the accounts are managed by a relationship manager. Previously, CB was not required to and did not obtain a Form W-9 from U for purposes of chapter 3 or 61. U's depository account qualifies for the §1.1471-5(a)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in §1.1471-5(a)(4)(i)(B)(2). Entity X's account and Entity Y's account both qualify for the paragraph (c)(3)(iii) documentation exception because the accounts do not exceed the $250,000 threshold described in paragraph (c)(3)(iii)(B)(1) of this section taking into account the aggregation rules described in §1.1471-5(b)(4)(iii) pursuant to the requirements of paragraph (c)(3)(iii)(B)(2) of this section.

(7) Certifications of responsible officer. In order for a participating FFI to comply with the requirements of an FFI agreement with respect to its identification procedures for preexisting accounts, a responsible officer of the participating FFI must certify to the IRS regarding the participating FFIs compliance with the diligence requirements of this paragraph (c). Such certification must be made no later than 60 days following the date that is two years after the effective date of the FFI agreement. The responsible officer must certify that the participating FFI has completed the review of all high-value accounts as required under paragraphs (c)(5)(iv)(D) and (E) of this section and treats any account holder of an account for which the participating FFI has not retained a record of any required documentation as a recalcitrant account holder as required under this section and §1.1471-5(g).The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation

required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and §1.1471-5(g). The responsible officer must also certify to the best of the responsible officer's knowledge after conducting a reasonable inquiry, that the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date of such certification to assist account holders in the avoidance of chapter 4. A reasonable inquiry for purposes of this paragraph (c)(7) is a review of the participating FFI's procedures and a written inquiry, such as e-mail requests to relevant lines of business, that requires responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices during that period. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, suggesting that account holders split up accounts to avoid classification as a high-value account; suggesting that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; suggesting that an account holder remove U.S. indicia from its account information; or facilitating the manipulation of account balances or values to avoid thresholds. If the responsible officer is unable to make any of the certifications described in this paragraph (c)(7), the responsible officer must make a qualified certification to the IRS stating that such certification cannot be made and that corrective actions will be taken by the responsible officer.

(d) Account reporting--(1) Scope of paragraph. This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP or WT with respect to U.S. accounts. See §301.1474-1(a) of this chapter for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) Reporting requirements in general--(i) Accounts subject to reporting. Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall

report by the time and in the manner prescribed in paragraph (d)(3)(vii) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is responsible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to payments and for transitional rules for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs, see §1.1474-1(d)(4)(iii).

(ii) Financial institution required to report an account--(A) In general. Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (E) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (3), or (5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it

maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under §1.1474-1(d)(4)(iii).

(B) Special reporting of account holders of territory financial institutions. In the case of an account held by a territory financial institution acting as an intermediary with respect to a withholdable payment—

(1) If the territory financial institution agrees to be treated as a U.S. person with respect to the payment under §1.1471-3(c)(3)(iii)(F), a participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to the account holders of the territory financial institution; or

(2) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of a foreign entity that is an NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under §1.1471-3(c)(3)(iii)(G).

(C) Special reporting of account holders of a sponsored FFI. A sponsoring entity that has agreed to fulfill the reporting responsibilities of this paragraph (d) on behalf of a sponsored FFI shall report in accordance with the requirements of

paragraph (d)(2)(iii), (3), or (5) of this section (as applicable) with respect to each U.S. account and paragraph (d)(6) of this section with respect to each account held by a recalcitrant account holder of the sponsored FFI to the extent and in the manner required if such sponsored FFI were a participating FFI. The sponsoring entity shall identify each sponsored FFI for which it is reporting to the extent required on the forms for reporting U.S. accounts and recalcitrant account holders and the accompanying instructions to the forms.

(D) Special reporting of accounts held by owner-documented FFIs. A participating FFI that maintains an account held by an FFI that it has agreed to treat as an owner-documented FFI under §1.1471-3(d)(6) shall report the information described in paragraph (d)(3)(iv) or (d)(5)(iii) of this section with respect to each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1). See §1.1474-1(i) for the reporting obligations of a participating FFI with respect to a payee of an obligation other than an account that it has agreed to treat as an owner-documented FFI.

(E) Branch reporting of accounts. A participating FFI may elect to comply with its obligation to report under paragraph (d)(3) or (d)(5) of this section by reporting its accounts on a branch-by-branch basis with respect to one or more of its branches. A participating FFI that makes this election shall use the information reporting number assigned to the branch to identify the branch that is reporting its accounts separately. A branch that reports under this election shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions

provided by the IRS for purposes of this election. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(iii) Special U.S. account reporting rules for U.S. payors--(A) Special reporting rule for U.S. payors other than U.S. branches. Participating FFIs that are U.S. payors (other than U.S. branches) that report the information required under chapter 61 with respect to account holders of accounts that the participating FFI is required to treat as U.S. accounts or accounts held by owner-documented FFIs and that report the information described in paragraph (d)(5)(ii) of this section with respect to each such account shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

(B) Special reporting rules for U.S. branches treated as U.S. persons. A U.S. branch of a participating FFI that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under—

(1) Chapter 61 with respect to account holders that are U.S. non-exempt recipients;

(2) Chapter 61 with respect to persons subject to withholding under section 3406;

(3) Section 1.1474-1(i) with respect to substantial U.S. owners of NFFEs that are not excepted NFFEs as defined in §1.1472-1(c) and;

(4) Section 1.1474-1(i) with respect to specified U.S. persons identified in §1.1471-3(d)(6)(iv)(A)(1) of owner-documented FFIs.

(3) Reporting of accounts under section 1471(c)(1)--(i) In general. The participating FFI (or branch thereof) that is responsible for reporting an account that it is required to treat as a U.S. account or accounts held by owner-documented FFIs under paragraph (d)(2)(ii) of this section shall be required to report such account under this paragraph (d)(3) for each calendar year unless it elects to report its U.S. accounts or accounts held by owner-documented FFIs under paragraph (d)(5) of this section.

(ii) Accounts held by specified U.S. persons. In the case of an account described in paragraph (d)(3)(i) of this section that is held by one or more specified U.S. persons, a participating FFI is required to report the following information under this paragraph (d)(3)—

(A) The name, address, and TIN of each account holder that is a specified U.S. person;

(B) The account number;

(C) The account balance or value of the account;

(D) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(iii) Accounts held by U.S. owned foreign entities. With respect to each U.S. account described in paragraph (d)(3)(i) of this section that is held by an NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

(A) The name of the U.S. owned foreign entity that is the account holder;

(B) The name, address, and TIN of each substantial U.S. owner of such entity;

(C) The account number;

(D) The account balance or value of the account held by the NFFE;

(E) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(iv) Special reporting of accounts held by owner-documented FFIs. With respect to each account held by an owner-documented FFI, a participating FFI is required to report under this paragraph (d)(3)(iv)—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1);

(C) The account number of the account held by the owner-documented FFI;

(D) The account balance or value of the account held by the U.S. owned foreign entity;

(E) The payments made with respect to the account held by the owner-documented FFI, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(v) Branch reporting. Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(E) of this section, a participating FFI that reports the information described in paragraphs (d)(3)(ii) through (iv) of this section shall also report the jurisdiction of the branch that maintains the account being reported in accordance with instructions to the form provided for purposes of such reporting.

(vi) Form for reporting accounts under section 1471(c)(1). The information described in paragraphs (d)(3)(ii) through (iv) of this section shall be reported on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) with respect to each account subject to reporting under paragraph (d)(3)(i) of this section maintained at any time during the calendar year. This form shall be filed in accordance with its requirements and its accompanying instructions.

(vii) Time and manner of filing. Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the

form relates. See the accompanying instructions to this form for electronic filing instructions.

(viii) Extensions in filing. The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809, "Request for Extension of Time to File Information Returns," (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(4) Descriptions applicable to reporting requirements of §1.1471-4(d)(3)--(i) Address. The address to be reported with respect to an account held by a specified U.S. person is the residence address recorded by the participating FFI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or for other purposes by the participating FFI. In the case of an account held by a U.S. owned foreign entity, the address to be reported is the address of each substantial U.S. owner of such entity. In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1).

(ii) Account number. The account number to be reported with respect to an account is the identifying number assigned by the participating FFI for purposes other than to satisfy the reporting requirements of this paragraph (d),

or, if no such number is assigned to the account, a unique serial number or other number such participating FFI assigns to the financial account for purposes of reporting under paragraph (d)(3) of this section that distinguishes the account from other accounts maintained by such institution.

(iii) Account balance or value--(A) In general. The participating FFI shall report the average balance or value of the account if the FFI reports average balance or value to the account holder for a calendar year. If the participating FFI does not report the average balance or value of the account to the account holder, the participating FFI shall report the balance or value of the account as of the end of the calendar year as determined in accordance with §1.1471-5(b)(4). In the case of an account that is a cash value insurance or annuity contract, a participating FFI shall report the balance or value of the account as determined in accordance with §1.1471-5(b)(4).

(B) Currency translation of account balance or value. The account balance or value of an account may be reported in U.S. dollars or in the currency in which the account is denominated. In the case of an account denominated in one or more foreign currencies, the participating FFI may elect to report the account balance or value in a currency in which the account is denominated and is required to identify the currency in which the account is reported. If the participating FFI elects to report such an account in U.S. dollars, the participating FFI must calculate the account balance or value of the account in the manner described in §1.1471-5(b)(4).

(iv) Payments made with respect to an account--(A) Depository accounts. The payments made during a calendar year with respect to a depository account consist of the aggregate gross amount of interest paid or credited to the account during the year.

(B) Custodial accounts. The payments made during a calendar year with respect to a custodial account consist of—

(1) The aggregate gross amount of dividends paid or credited to the account during the calendar year;

(2) The aggregate gross amount of interest paid or credited to the account during the calendar year;

(3) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and

(4) The aggregate gross amount of all other income paid or credited to the account during the calendar year.

(C) Other accounts. In the case of an account described in §1.1471-5(b)(1)(iii) (relating to debt or equity interests) or (iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account.

(D) Transfers and closings of deposit, custodial, insurance, and annuity financial accounts. In the case of an account closed or transferred in its entirety by an account holder during a calendar year that is a depository account, custodial account, or a cash value insurance contract or annuity contract, the payments made with respect to the account shall be—

(1) The payments and income paid or credited to the account that are described in paragraph (d)(4)(iv)(A) or (B) of this section for the calendar year until the date of transfer or closure; and

(2) The amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

(E) Amount and character of payments subject to reporting. For purposes of reporting under paragraph (d)(3) of this section, the amount and character of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and character of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither

reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. federal income tax principles to determine such amounts.

(F) Currency translation. A payment described in this paragraph (d)(4)(iv) may be reported in the currency in which the payment is denominated or in U.S. dollars. In the case of payments denominated in one or more foreign currencies, a participating FFI may elect to report the payments in a currency in which payments are denominated and is required to identify the currency in which the account is reported. If such a payment is reported in U.S. dollars, the participating FFI must calculate the amount in the manner described in §1.1471-5(b)(4).

(v) Record retention requirements. A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account for any calendar year in which the account was required to be reported under paragraph

(d)(3) of this section must retain a record of such account statements. The record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(5) Election to perform chapter 61 reporting--(i) In general--(A) Election under section 1471(c)(2). Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect under section 1471(c)(2) and this paragraph (d)(5) to report under sections 6041, 6042, 6045, and 6049, as appropriate, with respect to any account required to be reported under this paragraph (d). Such reporting must be done as if such participating FFI were a U.S. payor and each holder of an account that is a specified U.S. person, U.S. owned foreign entity, or owner-documented FFI were a payee who is an individual and citizen of the United States. If a participating FFI makes such an election, the FFI is required to report the information required under this paragraph (d)(5) with respect to each such U.S. account or account held by an owner-documented FFI, regardless of whether the account holder of such account qualifies as a recipient exempt from reporting by a payor or middleman under sections 6041, 6042, 6045, or 6049, including the reporting of payments made to such account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report an account under the election described in this paragraph (d)(5) is required to report the information described in paragraph (d)(5)(ii) or (iii) of this section for a calendar year regardless of whether a reportable payment was

made to the U.S. account during the calendar year. A participating FFI that reports an account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) of this section with respect to the account. The election under section 1471(c)(2) described in this paragraph (d)(5)(i)(A) does not apply to cash value insurance contracts or annuity contracts that are financial accounts described in §1.1471-5(b)(1)(iv). See paragraph (d)(5)(i)(B) of this section for an election to report cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons in a manner similar to section 6047(d).

(B) Election to report in a manner similar to section 6047(d). Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect to report with respect to any of its cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons under section 6047(d), modified as follows. The amount to be reported is the sum of the account balance or value (as of the calendar year end or the most recent contract anniversary date) and any amount paid under the contract during such reporting period as if such participating FFI were a U.S. payor. Each holder of a U.S. account that is a specified U.S. person is treated for purposes of reporting under this paragraph (d)(5)(i)(B) as a contract holder or payee who is an individual and citizen of the United States.

(ii) Additional information to be reported. In addition to the information otherwise required to be reported under sections 6041, 6042, 6045, 6047(d) (in the manner described in paragraph (d)(5)(i)(B) of this section with respect to U.S.

accounts held by specified U.S. persons), and 6049, including the reporting of payments made to such accounts subject to reporting under the applicable section, a participating FFI that elects to report under this paragraph (d)(5)(ii) must report with respect to each account that it is required to treat as a U.S. account—

(A) In the case of an account holder that is a specified U.S. person--

(1) The name, address, and TIN of the account holder; and

(2) The account number; and

(B) In the case of an account holder that is a U.S. owned foreign entity that is an NFFE--

(1) The name of such entity;

(2) The name, address, and TIN of each substantial U.S. owner of such entity; and

(3) The account number.

(iii) Special reporting of accounts held by owner-documented FFIs. With respect to each account held by an owner-documented FFI, a participating FFI that elects to report under this paragraph (d)(5) must report payments made to the owner-documented FFI under the requirements of sections 6041, 6042, 6045, 6047(d), and 6049, the other information required under each applicable section, and the following information—

(A) The name of such FFI;

(B) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1); and

(C) The account number for the account held by the owner-documented FFI.

(iv) Branch reporting. A participating FFI that reports the information described in paragraphs (d)(5)(ii) and (iii) of this section shall also report the jurisdiction of the branch that maintains the account being reported.

(v) Time and manner of making the election. A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the calendar year for which the election is made.

(vi) Revocation of election. A participating FFI may revoke the election described in paragraph (d)(5)(i) (as a whole or with regard to any of its accounts) by reporting the information described in paragraph (d)(3) on the next reporting date following the calendar year for which the election is revoked.

(vii) Filing of information under election. In the case of an account holder that is a specified U.S. person, the information required to be reported under the election described in this paragraph (d)(5) shall be filed with the IRS and issued to the account holder in the time and manner prescribed in sections 6041, 6042, 6045, 6047(d), and 6049 and in accordance with the forms referenced therein and their accompanying instructions provided by the IRS for reporting under each of these sections. If the account holder is an NFFE that is a U.S. owned foreign entity or owner-documented FFI, however, the information required to be reported under the election described in this paragraph (d)(5) shall be filed on

Form 8966 in accordance with its requirements and its accompanying instructions.

(6) Reporting on recalcitrant account holders--(i) In general. Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(A) through (E) of this section. See §1.1474-1(d)(4)(ii) for a participating FFI or registered deemed-compliant FFI's requirement to report chapter 4 reportable amounts paid to such account holders and tax withheld.

(A) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in §1.1471-5(g)(2)(iv) (referencing passive NFFEs that are recalcitrant account holders).

(B) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in §1.1471-5(g)(2)(ii) and (iii) (referencing U.S. persons that are recalcitrant account holders).

(C) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A), (B), or (E) of this section, that have U.S. indicia.

(D) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A) or (E) of this section, that do not have U.S. indicia.

(E) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are dormant accounts.

(ii) Definition of dormant account. A dormant account is an account (other than a cash value insurance contract or annuity contract) that is a dormant or inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be a dormant account if--

(A) The account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and

(B) The account holder has not communicated with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI in the past six years.

(iii) End of dormancy. An account that is a dormant account under paragraph (d)(6)(ii) of this section ceases to be a dormant account when—

(A) The account holder initiates a transaction with regard to the account or any other account held by the account holder with the FFI;

(B) The account holder communicates with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI; or

(C) The account ceases to be a dormant account under applicable laws or regulations or the participating FFI's normal operating procedures.

(iv) Forms. Reporting under paragraph (d)(6)(i) of this section shall be filed on Form 8966 in accordance with its requirements and accompanying instructions.

(v) Time and manner of filing. Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(vi) Record retention requirements. A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account held by a recalcitrant account holder described in paragraph (d)(6)(i)(B) of this section for any calendar year in which the account was required to be reported under paragraph (d)(6) of this section must retain a record of such account statements. Such record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be

required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(7) Special reporting rules with respect to the 2013 through 2015 calendar years--(i) In general. If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2014, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2013, 2014, and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) Participating FFIs that report under §1.1471-4(d)(3). With respect to accounts that a participating FFI is required to report in accordance with paragraph (d)(2) of this section, the participating FFI may, instead of the information described in paragraphs (d)(3)(ii) and (iii) of this section, report only the following information—

(A) Reporting with respect to the 2013 and 2014 calendar years. With respect to accounts maintained during the 2013 and 2014 calendar years—

(1) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1);

(2) The account balance or value as of the end of the relevant calendar year, or if the account was closed after the effective date of the FFI agreement, the amount or value withdrawn or transferred from the account in connection with closure; and

(3) The account number of the account.

(B) Reporting with respect to the 2015 calendar year. With respect to the 2015 calendar year, the participating FFI may report only—

(1) The information described in paragraph (d)(7)(ii)(A) of this section; and

(2) The payments made with respect to the account except for those payments described in paragraph (d)(4)(iv)(B)(3) of this section (certain gross proceeds).

(iii) Participating FFIs that report under §1.1471-4(d)(5). A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(1) and (3) of this section for its 2013 and 2014 calendar years. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) Forms for reporting--(A) In general. Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vii) of this section. Reporting under

paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) Special determination date and timing for reporting with respect to the 2013 calendar year. With respect to the 2013 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on December 31, 2013. Reporting for both the 2013 and 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 61 with respect to the 2013 calendar year.

(8) Reporting requirements of QIs, WPs and WTs. See the QI, WP, or WT agreement for the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts that it maintains.

(9) Examples. The following examples illustrate the provisions of this paragraph (d):

Example 1. Financial institution required to report U.S. account. PFFI1, a participating FFI, issues shares of stock that are financial accounts under §1.1471-5(b). Such shares are held in custody by PFFI2, another participating FFI, on behalf of U, a specified U.S. person that holds an account with PFFI2.

The shares of PFFI1 held by PFFI2 will not be subject to reporting by PFFI1 if PFFI1 may treat PFFI2 as a participating FFI under §1.1471-3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 2. Financial institution required to report U.S. account. U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under §1.1471-5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under §1.1471-5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI2, if PFFI2 may treat PFFI1 as a participating FFI under §1.1471-3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 3. U.S owned foreign entity. FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See §1.1473-1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(vi) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

Example 4. Election to perform Form 1099 reporting with regard to an NFFE. Same facts as in Example 3, except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for FC, treating FC as if it were an individual and citizen of the United States and must identify Q as a substantial U.S. owner of FC on such form. See paragraph (d)(5)(ii) of this section. PFFI1 shall not complete the forms described in paragraph (d)(5)(vii) with regard to U.

Example 5. Owner-documented FFI. DC, an owner-documented FFI under §1.1471-3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in §1.1471-3(d)(6)(iv)(A)(1) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(vi) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 6. Election to perform Form 1099 reporting with regard to an owner-documented FFI. Same facts as in Example 5, except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for U and Q.

Example 7. Sponsored FFI. DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under §1.1471-5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under §1.1471-5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(vi) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) Expanded affiliated group requirements--(1) In general. Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI or registered deemed-compliant FFI as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to limited branches and affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) Limited branches--(i) In general. An FFI that otherwise satisfies the requirements for participating FFI status as described in this section will be allowed to become a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of a participating FFI as described in this section if—

(A) All branches (as defined in paragraph (e)(2)(ii) of this section) that cannot satisfy all of the requirements of a participating FFI as described in this section are limited branches as described in paragraph (e)(2)(iii) of this section;

(B) The FFI maintains at least one branch that complies with all of the requirements of a participating FFI, even if the only branch that can comply is a U.S. branch; and

(C) The FFI agrees to and complies with the conditions in paragraph (e)(2)(iv) of this section.

(ii) Branch defined. For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI and that maintains books and records separate from the books and records of other branches of the FFI. For purposes of this section, a branch includes units, businesses, and offices of an FFI located in the country in which the FFI is created or organized. All units, businesses, or offices of a participating FFI in a single country shall be treated as a single branch for purposes of this paragraph (e)(2). An account will be treated as maintained by a branch for purposes of this paragraph (e)(2) if the

rights and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch.

(iii) Limited branch defined. A limited branch is a branch of an FFI that, under the laws of the jurisdiction as of February 15, 2012, and that apply with respect to the accounts maintained by the branch, cannot satisfy the conditions of both paragraphs (e)(2)(iii)(A) and (B) of this section, but with respect to which the FFI will agree to the conditions of paragraph (e)(2)(iv) of this section.

(A) With respect to accounts that pursuant to this section the participating FFI is required to treat as U.S. accounts, either report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account (as defined in this paragraph), close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI. For purposes of this paragraph (e)(2)(iii)(B), an account is a blocked account if the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account is closed, transferred, or the account holder provides

the documentation described in paragraph (c) of this section for the FFI to determine the U.S. or non-U.S. status of the account and report the account if required under paragraph (d) of this section.

(iv) Conditions for limited branch status. An FFI with one or more limited branches must satisfy the following requirements when applying for participating FFI status with the IRS—

(A) Identify the relevant jurisdiction of each branch for which it seeks limited branch status;

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of the FFI agreement, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

(C) Agree to treat each such branch as an entity separate from its other branches for purposes of the withholding requirements described in paragraph (b)(5) of this section;

(D) Agree that each such branch will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any branch of the FFI or from any member of its expanded affiliated group; and

(E) Agree that each limited branch will identify itself to withholding agents as a nonparticipating FFI (including to affiliates of the FFI in the same expanded affiliated group that are withholding agents).

(v) Term of limited branch status (transitional). An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2015, unless otherwise provided pursuant to Model 1 IGA or Model 2 IGA. A branch will cease to be a limited branch as of the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, a participating FFI will retain its status as a participating FFI if it notifies the IRS by the date such branch ceases to be a limited branch that it will comply with the requirements of an FFI agreement with respect to such branch, or if otherwise provided pursuant to a Model 1 IGA or Model 2 IGA.

(3) Limited FFI--(i) In general. An FFI will be allowed to become either a participating FFI or a registered deemed-compliant FFI notwithstanding that one or more of the FFIs in the expanded affiliated group of which the FFI is a member cannot comply with all of the requirements of a participating FFI as described in this section if each such FFI is a limited FFI under paragraph (e)(3)(ii) of this section.

(ii) Limited FFI defined. A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions described in paragraph (e)(3)(iii) of this section to become a limited

FFI and if under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, the affiliate cannot satisfy the conditions of both paragraphs (e)(3)(ii)(A) and (B) of this section.

(A) With respect to accounts that are U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account, close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI. See paragraph (e)(2)(ii)(B) of this section for when an account is considered blocked.

(iii) Conditions for limited FFI status. An FFI that seeks to become a limited FFI must—

(A) Register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its registration as a limited FFI, and report with respect to accounts that it is required to treat as

U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

(C) Agree as part of such registration that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group; and

(D) Agree as part of such registration that it will identify itself to withholding agents as a nonparticipating FFI.

(iv) Period for limited FFI status (transitional). A limited FFI will cease to be a limited FFI after December 31, 2015. An FFI will also cease to be a limited FFI when it becomes a participating FFI or deemed-compliant FFI, or as of the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, participating FFIs and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by the date that an FFI ceases to be a limited FFI, such FFI enters into an FFI agreement or becomes a registered deemed-compliant FFI, unless otherwise provided pursuant to an applicable Model 1 IGA or Model 2 IGA.

(4) Special rule for QIs. An FFI that has in effect a QI agreement with the IRS will be allowed to become a limited FFI notwithstanding that none of the FFIs in the expanded affiliated group of which the FFI is a member can comply with the requirements of a participating FFI as described in this section if the FFI that

is a QI meets the conditions of a limited FFI under paragraph (e)(3)(ii) of this section.

(f) Verification--(1) In general. This paragraph (f) describes the requirement for a participating FFI to establish and implement a compliance program for satisfying its requirements under this section. Paragraph (f)(2) of this section provides the requirement for a participating FFI to establish a compliance program and the option for a group of FFIs to adopt a consolidated compliance program. Paragraph (f)(3) describes the periodic certification that the participating FFI must make to the IRS regarding the participating FFI's compliance with the requirements of an FFI agreement. Paragraph (f)(4) describes IRS information requests related to compliance with an FFI agreement.

(2) Compliance program--(i) In general. The participating FFI must appoint a responsible officer to oversee the participating FFI's compliance with the requirements of the FFI agreement. The responsible officer must (either personally or through designated persons) establish a compliance program that includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement. The responsible officer (or designee) must periodically review the sufficiency of the FFI's compliance program and the FFI's compliance with the requirements of an FFI agreement during the certification period described in paragraph (f)(3) of this section. The results of the periodic review must be considered by the responsible officer in making the periodic certifications required under paragraph (f)(3) of this section.

(ii) Consolidated compliance program--(A) In general. A participating FFI that is a member of an expanded affiliated group that includes one or more FFIs may elect to be part of a consolidated compliance program (and perform a consolidated periodic review) under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) that is a member of the electing FFI's expanded affiliated group, regardless of whether all such members so elect. A sponsoring entity is required to act as the compliance FI for the sponsored FFI group. In addition, when an FFI elects to be part of a consolidated compliance program, each branch that it maintains (including a limited branch or a branch described in §1.1471-5(f)(1)) must be subject to periodic review as part of such program.

(B) Requirements of compliance FI. A participating FFI, reporting Model 1 FFI, or U.S. financial institution that agrees to establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of one or more FFIs (the compliance group), must agree to identify itself as the compliance FI and identify each FFI for which it acts (an electing FFI) to the extent required by the IRS as part of the FFI registration process or certification procedures. The agreement between the compliance FI and each electing FFI must permit either the compliance FI or the electing FFI to terminate the agreement upon a finding by the IRS or by either party that the other party to the agreement is not fulfilling its obligations under the agreement or is no longer able to fulfill such obligations.

(3) Certification of compliance--(i) In general. In addition to the certifications required under paragraph (c)(7) of this section, six months following the end of each certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three calendar year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has failed to remediate any material failures (defined in paragraph (f)(3)(iv) of this section) as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section.

(ii) Certification of effective internal controls. The responsible officer must certify to the following statements–

(A) The responsible officer (or designee) has established a compliance program that is in effect as of the date of the certification and that has been subjected to the review as described in paragraph (f)(2)(i) of this section;

(B) With respect to material failures—

(1) There are no material failures for the certification period; or

(2) If there are any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and

(C) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).

(iii) Qualified certification. If the responsible officer has identified an event of default or a material failure that the participating FFI has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(A) With respect to the event of default or material failure—

(1) The responsible officer (or designee) has identified an event of default as defined in paragraph (g)(1) of this section; or

(2) The responsible officer has determined that as of the date of the certification, there are one or more material failures with respect to the participating FFI's compliance with the FFI agreement and that appropriate actions will be taken to prevent such failures from reoccurring;

(B) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(C) The responsible officer (or designee) will respond to any notice of default (if applicable) or will provide to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

(iv) Material failures defined. A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement if the failure was the result of a deliberate action on the part of one or more employees of the participating FFI (its agent, sponsor, or compliance FI) to avoid the requirements of the FFI agreement or was an error attributable to a failure of the participating FFI to implement internal controls sufficient for the participating FFI to meet the requirements of this section. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a participating FFI has not substantially complied with the requirements of an FFI agreement. Material failures include the following—

(A) The deliberate or systemic failure of the participating FFI to report accounts that it was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld, or accurately report recalcitrant account holders or payees that are nonparticipating FFIs as required;

(B) A criminal or civil penalty or sanction imposed on the participating FFI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over the participating FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures; and

(C) A potential future tax liability related to the participating FFI's compliance (or lack thereof) with the FFI agreement for which the FFI establishes, for financial statement purposes, a tax reserve or provision.

(4) IRS review of compliance--(i) General inquiries. The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vi), or (d)(6)(iv) of this section filed with the IRS for each calendar year, may request additional information with respect to the information reported on the forms or may request the account statements described in paragraph (d)(4)(v) of this section.

(ii) Inquiries regarding substantial non-compliance. If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vi), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the participating FFI may not have substantially complied with the requirements of an FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures

given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement.

(g) Event of default--(1) Defined. An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following—

(i) Failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under paragraph (d) of this section, valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under paragraph (i) of this section;

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs;

(iii) Failure, in any case in which foreign law prevents or otherwise limits withholding to the extent required under paragraph (b) of this section, to fulfill the requirements of paragraph (i) of this section;

(iv) Failure to establish or maintain a compliance program for fulfilling the requirements of the FFI agreement or to perform a periodic review of the participating FFI's compliance;

(v) Failure to take timely corrective actions to remedy a material failure described in paragraph (f)(3)(iv) of this section after making the qualified certification described in paragraph (f)(3)(iii) of this section;

(vi) Failure to make the initial certification required under paragraph (c)(7) of this section or to make the periodic certification required under paragraph (f)(3) of this section within the specified time period;

(vii) Making incorrect claims for refund under the collective refund procedures described in paragraph (h) of this section;

(viii) Failure to cooperate with an IRS request for additional information or making any fraudulent statement or misrepresentation of material fact to the IRS; or

(ix) Any transaction relating to sponsorship, promotion, or noncustodial distribution for or on behalf of any Local FFI, as described in §1.1471-5(f)(1)(i)(A), that is an investment entity.

(2) Notice of event of default. Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within a specified time period. The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its

sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. A participating FFI may request, within a reasonable period of time, reconsideration of a notice of default or notice of termination by written request to the LB&I, Assistant Deputy Commissioner (International).

(3) Remediation of event of default. A participating FFI will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a participating FFI to remediate an event of default described in paragraph (g)(1)(iii) of this section by providing specific information regarding its U.S. accounts when the FFI has been unable to report all of the information with respect to such accounts as required under paragraph (d) of this section and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the FFI or the performance of the specified review procedures described in paragraph (f)(4)(ii) of this section.

(h) Collective credit or refund procedures for overpayments--(1) In general. Except as otherwise provided in the FFI agreement, if there has been an overpayment of tax with respect to an account holder or payee of a participating FFI or reporting Model 1 FFI resulting from tax withheld under chapter 4 by either the participating FFI or reporting Model 1 FFI or by its withholding agent during a calendar year and the amount withheld has not been recovered under the reimbursement or set-off procedures described in §1.1474-2(a) (applied by either the withholding agent or the participating FFI or reporting Model 1 FFI), the participating FFI or reporting Model 1 FFI may request a credit

or refund from the IRS of the overpayment to the extent permitted under this paragraph (h) on behalf of such account holder or payee. For purposes of this paragraph (h), an overpayment means an amount withheld in excess of the account holder or payee's U.S. tax liability with respect to the payment (including overwithholding as defined §1.1474-2(a)(2)). If a participating FFI or reporting Model 1 FFI does not elect the procedure provided in this paragraph (h) to request a credit or refund, the participating FFI or reporting Model 1 FFI is required to (or must request that its withholding agent) file and furnish within a reasonable period a Form 1042-S (or such other form as the IRS may prescribe) and Form 1042 (or amended forms) to report to any account holder or payee that has requested such form with regard to the tax withheld by the participating FFI or reporting Model 1 FFI or its withholding agent.

(2) Persons for which a collective refund is not permitted. A participating FFI or reporting Model 1 FFI cannot include in its collective refund claim any payments made to an account holder or payee that is a nonparticipating FFI, a participating FFI or reporting Model 1 FFI that is a flow-through entity (including a WP or WT) or that is acting as an intermediary (including a QI), a U.S. person, or a passive NFFE that is a flow-through entity with respect to taxes allocated to its substantial U.S. owners. A participating FFI or reporting Model 1 FFI must follow the procedures set forth under sections 6402 and 6414 and the regulations thereunder, as modified by this paragraph (h), to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511.

(3) Payments for which a collective refund is permitted. A collective refund is permitted only for payments withheld upon under chapter 4.

(4) Procedural and other requirements for collective refund. A participating FFI or reporting Model 1 FFI may use the collective refund procedures of this paragraph (h) under the following conditions—

(i) All account holders and payees for which the participating FFI or reporting Model 1 FFI seeks a refund must have been included on a Form 1042-S in a reporting pool of nonparticipating FFIs or recalcitrant account holders described in §1.1474-1(d)(4)(iii) with respect to the payments for which refund is sought and the participating FFI or reporting Model 1 FFI (or the withholding agent) has not filed or furnished a Form 1042-S to any such account holder or payee with respect to which the refund is sought;

(ii) If a refund is sought on the grounds that the account holder or payee of a payment that is U.S. source FDAP income subject to withholding under chapter 3 is entitled to a reduced rate of tax by reason of any treaty obligation of the United States, the participating FFI or reporting Model 1 FFI has also obtained valid documentation that meets the requirements of chapter 3 for a reduced rate of tax and such documentation is available to the IRS upon request with respect to each such account holder or payee; and

(iii) In filing a claim for refund with the IRS under this paragraph (h), the participating FFI or reporting Model 1 FFI submits the following, together with its Form 1042 (or amended Form 1042) on which it provides a reconciliation of amounts withheld and claims a credit or refund, a schedule identifying the taxes

withheld with respect to each account holder or payee to which the claim relates, and, if applicable, a copy of the Form 1042-S (or such other form as the IRS may prescribe) furnished to the participating FFI or reporting Model 1 FFI by its withholding agent reporting the taxes withheld to which the claim relates, and a statement that includes the following representations and explanation—

(A) The reason(s) for the overpayment;

(B) A representation that the participating FFI or reporting Model 1 FFI or its withholding agent deposited the tax for which a refund is being sought under section 6302 and has not applied the reimbursement or set-off procedure of §1.1474-2 to adjust the tax withheld to which the claim relates;

(C) A representation that the participating FFI or reporting Model 1 FFI has repaid or will repay the amount for which refund is sought to the appropriate account holders or payees;

(D) A representation that the participating FFI or reporting Model 1 FFI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by the participating FFI or reporting Model 1 FFI, adjustments for underwithholding, and reimbursements for overwithholding as its relates to each account holder and payee and also showing the repayment to such account holders or payees for the amount of tax for which a refund is being sought;

(E) A representation that the participating FFI or reporting Model 1 FFI retains valid documentation that meets the requirements of chapters 3 (if applicable) and 4 to substantiate the amount of overwithholding with respect to

each account holder and payee for which a refund is being sought and that such documentation is available to the IRS upon request; and

(F) A representation that the participating FFI or reporting Model 1 FFI will not issue a Form 1042-S (or such other form as the IRS may prescribe) to any account holder or payee for which a refund is being sought.

(i) Legal prohibitions on reporting U.S. accounts and withholding--(1) In general. A participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. A participating FFI (or branch thereof) that is prohibited by law from withholding with respect to a recalcitrant account holder or nonparticipating FFI as required under paragraph (b) of this section is required to perform the procedures of paragraph (i)(3) of this section to obtain an authorization to withhold on payments made to the account holder or payee to the extent required under paragraph (b) of this section, close the account or terminate the obligation (as applicable), or to sell the assets in the account that produce (or could produce) withholdable payments and, if such authorization is not obtained within a reasonable period of time, to transfer or block such account or obligation. An FFI that cannot comply with any of the requirements of this paragraph (i) is not eligible to enter into an FFI agreement with the IRS, but may obtain status as a limited FFI if the FFI meets the requirements and agrees to the conditions of

paragraph (e)(3) of this section. If a branch of an FFI cannot comply with the requirements of this paragraph (i), then the FFI must agree to the conditions of a limited branch as described in paragraph (e)(2) of this section to obtain status as a participating FFI.

(2) Requesting waiver or closure of a U.S. account--(i) In general. If a participating FFI (or branch thereof) is prohibited by law from reporting the information required under paragraph (d) of this section with respect to a U.S. account that it maintains unless a valid and effective waiver of such law is obtained, the participating FFI must request a valid and effective waiver (including by obtaining waivers from all relevant account holders if necessary). For accounts other than preexisting accounts, the participating FFI must obtain a valid and effective waiver upon opening the account or, if prohibitions on disclosure cannot by law be waived, the participating FFI must refrain from opening accounts that are U.S. accounts or must transfer such accounts as described in paragraph (i)(2)(iii) of this section. Beginning on the date provided in §1.1471-5(g)(3) and until such time as the holder of a U.S. account either consents to disclosure or closure of the account or until the account is transferred, the participating FFI is required to treat the account as held by a recalcitrant account holder.

(ii) Valid and effective waiver for a U.S. account. For purposes of this paragraph (i)(2), a valid and effective waiver is a waiver that, under the applicable law governing the participating FFI's agreement with the account holder, permits the participating FFI (or branch thereof) to report to the IRS all of

the information specified in paragraph (d) of this section with respect to the U.S. account and permits the FFI to provide the IRS with additional information concerning such account as specified in paragraph (f) or (g) of this section.

(iii) Closure or transfer of U.S. account. If the participating FFI (or branch thereof) is prohibited by law from reporting a U.S. account to the IRS under paragraph (d) of this section and the participating FFI either does not obtain a valid and effective waiver (and Form W-9) or prohibitions on disclosure cannot by law be waived, the participating FFI (or branch thereof) must close or transfer the account within a reasonable time. If the participating FFI cannot close or transfer the account absent the account holder consenting to closure, the participating FFI must request such a consent from such account holder and, if obtained, close or transfer the account within a reasonable period of time.

(3) Legal prohibitions preventing withholding--(i) In general. If the participating FFI (or branch thereof) is prohibited by law from withholding with respect to payments subject to withholding under paragraph (b) of this section, the participating FFI (or a branch thereof) must obtain the authorization described in this paragraph (i)(3)(i) from each account holder or payee receiving such payments to either withhold, close the account or terminate the obligation, or sell all of the assets in the account that produce (or could produce) withholdable payments. If the participating FFI does not receive such authorization from the account holder or payee within a reasonable period of time, the participating FFI must block or transfer such accounts or obligations as described in paragraph (i)(3)(ii) of this section.

(ii) Block or transfer accounts or obligations. If the participating FFI does not receive the authorization described in paragraph (i)(3)(i) of this section from the account holder or payee within a reasonable period of time and is prohibited by law from closing accounts or terminating obligations with account holders or payees as described in paragraph (i)(3)(i) of this section, the participating FFI must either block or transfer such accounts or obligations prior to the date on which the participating FFI would otherwise be required to withhold under paragraph (b) of this section. See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked. A transfer of an account or obligation must be made to a branch of the FFI that may so withhold or to a participating FFI or reporting Model 1 FFI.

(j) Effective/applicability date. This section generally applies on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability, see §§1.1471-4(b)(1), (4); 1.1471-4(d)(7); 1.1471-4(e)(2)(v); 1.1471-4(e)(3)(iv).

Par. 9. Section 1.1471-5 is added to read as follows:

§1.1471-5 Definitions applicable to section 1471.

(a) U.S. accounts--(1) In general. This paragraph (a) defines the term U.S. account and describes when a person is treated as the holder of a financial account (account holder). This paragraph also provides rules for determining when an exception to U.S. account status applies for certain depository accounts, including account aggregation requirements relevant to applying the exception.

(2) Definition of U.S. account. Subject to the exception described in paragraph (a)(4)(i) of this section, a U.S. account is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities. For the definition of the term financial account, see paragraph (b) of this section. For the definition of the term specified U.S. person, see §1.1473-1(c). For the definition of the term U.S. owned foreign entity, see paragraph (c) of this section. For reporting requirements of participating FFIs with respect to U.S. accounts, see §1.1471-4(d).

(3) Account holder--(i) In general. Except as otherwise provided in this paragraph (a)(3), the account holder is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraphs (a)(3)(ii) and (iii) of this section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under §301.7701-2(c)(2)(i) of this chapter, the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would

be treated as made to an exempt beneficial owner. See §1.1471-6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

(ii) Grantor trust. A trust is not treated as an account holder if a person is treated as the owner of the entire trust under sections 671 through 679. In that case, the account is held by the person that is treated as the owner of the trust under such sections. In the case of a person that is treated as the owner of a portion of the trust under sections 671 through 679—

(A) If such person is treated as owning all the assets in the account under sections 671 through 679, the account is treated as held by such person;

(B) If such person is treated as owning a portion of the account or the assets in the account under sections 671 through 679, the account is treated as held by both such person and the trust; and

(C) If such person is not treated as owning any portion of the account or any of the assets in the account under sections 671 through 679, the account is treated as held by the trust.

(iii) Financial accounts held by agents that are not financial institutions. A person, other than a financial institution, that holds a financial account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as an account holder with respect to such account for purposes of this section. Instead, such other person is treated as the account holder.

(iv) Jointly held accounts. With respect to a jointly held account, each joint holder is treated as an account holder for purposes of determining whether the account is a U.S. account. Thus, an account is a U.S. account if any of the account holders is a specified U.S. person or a U.S. owned foreign entity and the account is not otherwise excepted from U.S. account status under paragraph (a)(4) of this section. When more than one U.S. person is a joint holder, each U.S. person will be treated as an account holder and will be attributed the entire balance of the jointly held account, including for purposes of applying the aggregation rules set forth in paragraph (b)(4)(iii) of this section.

(v) Account holder for insurance and annuity contracts. An insurance or annuity contract is held by each person that is entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or change a beneficiary under the contract. If no person can access the contract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

(vi) Examples. The following examples illustrate the provisions of paragraph (a)(3) of this section:

Example 1. Account held by agent. F, a nonresident alien, holds a power of attorney from U, a specified U.S. person, that authorizes F to open, hold, and make deposits and withdrawals with respect to a depository account on behalf of U. The balance of the account for the calendar year is $100,000. F is listed as the holder of the depository account at a participating FFI, but because F holds the account as an agent for the benefit of U, F is not ultimately entitled to the

funds in the account. Because the depository account is treated as held by U, a specified U.S. person, the account is a U.S. account.

Example 2. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance of the account for the calendar year is $100,000. The account is jointly held with A, an individual who is a nonresident alien. Because one of the joint holders is a specified U.S person, the account is a U.S. account.

Example 3. Jointly held accounts. U and Q, both specified U.S. persons, hold a depository account in a participating FFI. The balance of the account for the calendar year is $100,000. The account is a U.S. account and both U and Q are treated as holders of the account.

(4) Exceptions to U.S. account status--(i) Exception for certain individual accounts of participating FFIs. Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this paragraph (a)(4)(i), the term U.S. account shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed $50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iv) and (b)(4) of this section.

(ii) Election to forgo exception. A participating FFI may elect to disregard the exception described in paragraph (a)(4)(i) of this section by reporting all U.S. accounts, including those accounts that would otherwise meet the conditions of the exception.

(iii) Example. Aggregation rules for exception to U.S. account status for certain depository accounts. In Year 1, a U.S. resident individual, U, holds a depository account with CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also

holds a custodial account with CB's brokerage business. The custodial account has a $45,000 balance as of the end of Year 1. CB's retail banking and brokerage businesses share computerized information management systems that associate U's depository account and U's custodial account with U and with one another within the meaning of paragraph (b)(4)(iii)(A) of this section. For purposes of applying the $50,000 threshold described in paragraph (a)(4)(i) of this section, however, a depository account is aggregated only with other depository accounts. Therefore, U's depository account is eligible for the paragraph (a)(4)(i) exception to U.S. account status because the balance of the depository account does not exceed $50,000.

(b) Financial accounts--(1) In general. Except as otherwise provided in this paragraph (b), the term financial account means—

(i) Depository account. Any depository account (as defined in paragraph (b)(3)(i) of this section) maintained by a financial institution;

(ii) Custodial account. Any custodial account (as defined in paragraph (b)(3)(ii) of this section) maintained by a financial institution;

(iii) Equity or debt interest--(A) Equity or debt interests in an investment entity. Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an investment entity described in paragraph (e)(4)(i)(B) or (C) of this section (including an entity that is also a depository institution, custodial institution, insurance company, or investment entity described in paragraph (e)(4)(i)(A) of this section);

(B) Certain equity or debt interests in a holding company or treasury center. Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in a holding company or treasury center described in paragraph (e)(1)(v) of this section if—

(1) The expanded affiliated group of which the entity is a member includes one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs and the income derived by such investment entities or passive NFFEs is 50 percent or more of the aggregate income earned by the expanded affiliated group;

(2) The redemption or retirement amount or return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity's expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

(3) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v)) of this section); or

(4) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4;

(C) Equity or debt interests in other financial institutions. Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an entity that is a depository institution, custodial institution, investment entity described in paragraph (e)(4)(i)(A) of this section, or insurance company if—

(1) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v) of this section); or

(2) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4.

(iv) Insurance and annuity contracts. A contract issued or maintained by an insurance company, a holding company (as described in paragraph (e)(5)(i)(C) of this section) of an insurance company, or a financial institution described in paragraphs (e)(1)(i), (ii), (iii), or (v) of this section, if the contract is a cash value insurance contract (as defined in paragraph (b)(3)(vii) of this section) or an annuity contract.

(2) Exceptions. A financial account does not include an account described in this paragraph (b)(2).

(i) Certain savings accounts--(A) Retirement and pension accounts. A retirement or pension account that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(1) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(2) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(3) Annual information reporting is required to the relevant tax authorities with respect to the account;

(4) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(5) Either—

(i) Annual contributions are limited to $50,000 or less, or

(ii) There is a maximum lifetime contribution limit to the account of $1,000,000 or less.

(B) Non-retirement savings accounts. An account (other than an insurance or annuity contract) that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(1) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

(2) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(3) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(4) Annual contributions are limited to $50,000 or less;

(C) Rollovers. A financial account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section or from one or more retirement or pension funds that meet the requirements of paragraph (f)(2)(ii) of this section or §1.1471-6(f).

(D) Coordination with section 6038D. The exclusions provided under paragraph (b)(2)(i) of this section shall not apply for purposes of determining whether an account or other arrangement is a financial account for purposes of section 6038D.

(E) Account that is tax-favored. For purposes of this paragraph (b)(2)(i), an account is tax-favored under the laws of a jurisdiction where the account is maintained if—

(1) Contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the account holder or taxed at a reduced rate; or

(2) Taxation of investment income from the account is deferred or taxed at a reduced rate.

(ii) Certain term life insurance contracts. A life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following conditions—

(A) Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(B) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(C) The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or

not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(D) The contract is not held by a transferee for value.

(iii) Account held by an estate. An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

(iv) Certain escrow accounts. An escrow account that is established in connection with—

(A) A court order or judgment; or

(B) A sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—

(1) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

(2) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

(3) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or

lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

(4) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

(5) The account is not associated with a credit card account.

(v) Certain annuity contracts. A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) of this section.

(vi) Account or product excluded under an intergovernmental agreement. An account or product that is excluded from the definition of financial account under the terms of an applicable Model 1 IGA or Model 2 IGA.

(3) Definitions. The following definitions apply for purposes of chapter 4—

(i) Depository account--(A) In general. Except as otherwise provided in this paragraph (b)(3)(i), the term depository account means any account that is—

(1) A commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, passbook, certificate of indebtedness, or any other instrument for placing money in the custody of an entity engaged in a banking or similar business for which such institution is obligated to give credit (regardless of whether such instrument is interest bearing or non-interest bearing), including, for example, a credit balance with respect to a credit card account issued by a credit card company that is engaged in a banking or similar business; or

(2) Any amount held by an insurance company under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon or to return the amount held.

(B) Exceptions. A depository account does not include—

(1) A negotiable debt instrument that is traded on a regulated market or over-the-counter market and distributed and held through financial institutions; or

(2) An advance premium or premium deposit described in paragraph (b)(3)(vii)(C)(5) of this section.

(ii) Custodial account. The term custodial account means an arrangement for holding a financial instrument, contract, or investment (including, but not limited to, a share of stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract as defined in §1.446-3(c), an insurance or annuity contract, and any option or other derivative instrument) for the benefit of another person.

(iii) Equity interest in certain entities--(A) Partnership. In the case of a partnership that is a financial institution, the term equity interest means either a capital or profits interest in the partnership.

(B) Trust. In the case of a trust that is a financial institution, an equity interest means an interest held by—

(1) A person who is an owner of all or a portion of the trust under sections 671 through 679;

(2) A beneficiary who is entitled to a mandatory distribution from the trust as defined in §1.1473-1(b)(3); or

(3) A beneficiary who may receive a discretionary distribution as defined in §1.1473-1(b)(3) from the trust but only if such person receives a distribution in the calendar year.

(iv) Regularly traded on an established securities market. Debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded on an established securities market if the requirements of §1.1472-1(c)(1)(i)(A) and (C) are met. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder's interest is registered prior to January 1, 2014, on the books of the investment entity .

(v) Value of interest determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments--

(A) Equity interest. The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if--

(1) The amount payable upon redemption by the issuer of the interest is secured primarily by reference to assets that give rise (or could give rise) to withholdable payments; or

(2) In the case of an unsecured interest, the amount payable upon redemption is determined primarily by reference to assets that give rise (or could give rise) to withholdable payments.

(B) Debt interest. The value of a debt interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if—

(1) Debt is convertible into stock of a U.S. person;

(2) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to profits or assets of a U.S person; or

(3) The debt is secured by assets of a U.S. person.

(vi) Redemption or retirement amount or return earned on the interest determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs--(A) Equity interest. The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(B) Debt interest. The redemption or retirement amount or return earned on a debt interest is determined, directly or indirectly, primarily by reference to

one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of entity's expanded affiliated group if—

(1) Debt is convertible into stock of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group;

(2) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group; or

(3) The debt is primarily secured by the assets of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group or is guaranteed by one or more such entities.

(vii) Cash value insurance contract--(A) In general. The term cash value insurance contract means an insurance contract (other than an indemnity reinsurance contract between two insurance companies and a term life insurance contract described in paragraph (b)(2)(ii) of this section) that has an aggregate cash value greater than $50,000 at any time during the calendar year, applying the rules set forth in paragraph (b)(4)(iii) of this section. A participating FFI may elect to disregard the $50,000 threshold in the preceding sentence by reporting all contracts with a cash value greater than zero.

(B) Cash value. Except as otherwise provided in paragraph (b)(3)(vii)(C) of this section, the term cash value means any amount (determined without reduction for any charge or policy loan) that—

(1) Is payable under the contract to any person upon surrender, termination, cancellation, or withdrawal; or

(2) Any person can borrow under or with regard to (for example, by pledging as collateral) the contract.

(C) Amounts excluded from cash value. Cash value does not include an amount payable—

(1) Solely by reason of the death of an individual insured under a life insurance contract;

(2) As a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(3) As a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than a life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract; or

(4) As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph (b)(3)(vii)(C)(2) of this section.

(5) As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

(D) Policyholder dividend—(1) For purposes of paragraph (b)(3)(vii)(C)(4) of this section and except as otherwise provided in this paragraph, a policyholder dividend means any dividend or similar distribution to policyholders in their capacity as such, including—

(i) An amount paid or credited (including as an increase in benefits) if the amount is not fixed in the contract but rather depends on the experience of the insurance company or the discretion of management;

(ii) A reduction in the premium that, but for the reduction, would have been required to be paid; and

(iii) An experience rated refund or credit based solely upon the claims experience of the contract or group involved.

(2) A policyholder dividend cannot exceed the premiums previously paid for the contract, less the sum of the cost of insurance and expense charges (whether or not actually imposed) during the contract's existence and the aggregate amount of any prior dividends paid or credited with regard to the contract.

(3) A policyholder dividend does not include any amount that is in the nature of interest that is paid or credited to a contract holder to the

extent that such amount exceeds the minimum rate of interest required to be credited with respect to contract values under local law.

(4) Account balance or value. This paragraph (b)(4) provides rules for determining the balance or value of a financial account for purposes of chapter 4. For example, the rules of this paragraph apply for purposes of determining whether an FFI meets the requirements of paragraph (f)(2)(i), (f)(2)(ii) or (f)(3) of this section to certify to a deemed-compliant FFI status. The rules of this paragraph also apply to a participating FFI's due diligence and reporting obligations to the extent required under §1.1471-4(c) or (d) and to a U.S. withholding agent's due diligence obligations to the extent required under §1.1471-3.

(i) In general. Except as otherwise provided in paragraph (b)(4)(ii) of this section with respect to immediate annuities, the balance or value of a financial account is the balance or value calculated by the financial institution for purposes of reporting to the account holder. In the case of an account described in paragraph (b)(1)(iii) of this section, the balance or value of an equity interest is the value calculated by the financial institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. Except as provided in paragraph (b)(3)(vii) of this section, the balance or value of an insurance or annuity contract is the balance or value as of either the calendar year end or the most recent contract anniversary date. The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of

the assets held in the account and is not to be reduced by any fees, penalties, or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating, or withdrawing cash from the account. Each holder of a jointly held account is attributed the entire balance or value of the joint account. See §1.1473-1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (b)(4)(i) to determine the value of trust interests that are financial accounts.

(ii) Special rule for immediate annuity--(A) Immediate annuities without minimum benefit guarantees. If the value of an immediate annuity contract with no minimum benefit guarantee is not reported to the account holder, the account balance or value of the contract is the sum of the net present values on the valuation date of the amounts reasonably expected to be payable in future periods under the contract.

(B) Immediate annuities with a minimum benefit guarantee. The account balance or value of an annuity contract with a minimum guarantee is the sum of the net present values on the valuation date of—

(1) The non-guaranteed amounts reasonably expected to be payable in future periods; and

(2) The guaranteed amounts payable in future periods.

(C) Net present value of amounts payable in future periods. The net present value of an amount payable in a future period shall be determined using—

(1) A reasonable actuarial valuation method, and

(2) The mortality tables and interest rate(s)—

(i) Prescribed pursuant to section 7520 and the regulations thereunder; or

(ii) Used by the issuer of the contract to determine the amounts payable under the contract.

(iii) Account aggregation requirements--(A) In general. To the extent a financial institution is required under chapter 4 to determine the aggregate balance or value of an account, the financial institution is required to aggregate the account balance or value of all accounts that are held (in whole or in part) by the same person and that are maintained by the financial institution or members of its expanded affiliated group, but only to the extent that the financial institution's computerized systems link the accounts by reference to a data element, such as client number, EIN, or foreign tax identifying number, and allow the account balances of such accounts to be aggregated. Notwithstanding the rules set forth in this paragraph (b)(4)(iii), a financial institution is required to aggregate the balance or value of accounts that it treats as consolidated obligations.

(B) Aggregation rule for relationship managers. To the extent a financial institution is required under chapter 4 to apply the aggregation rules of this paragraph (b)(4)(iii), the financial institution also is required to aggregate all accounts that a relationship manager knows are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, as well as all accounts that the relationship manager has associated with one another through a relationship code, customer identification number, TIN, or

similar indicator, or that the relationship manager would typically associate with each other under the procedures of the financial institution (or the department, division, or unit with which the relationship manager is associated).

(C) Examples. The following examples illustrate the account aggregation requirements of this paragraph (b)(4)(iii):

Example 1. FFI not required to aggregate accounts for U.S. account exception. A U.S. resident individual, U, holds a depository account with Branch 1 of CB, a commercial bank that is a participating FFI. The balance in U's Branch 1 account at the end of Year 1 is $35,000. U also holds a depository account with Branch 2 of CB, with a $45,000 balance at the end of Year 1. CB's retail banking businesses share computerized information management systems across its branches, but U's accounts are not associated with one another in the shared computerized information system. In addition, CB has not assigned a relationship manager to U or U's accounts. Because the accounts are not associated in CB's system or by a relationship manager, CB is not required to aggregate the accounts under paragraph (b)(4)(iii) and both accounts are eligible for the exception to U.S. account status described in paragraph (a)(4)(i) of this section as neither account exceeds the $50,000 threshold.

Example 2. FFI required to aggregate accounts for U.S. account exception. Same facts as Example 1, except that both of U's depository accounts are associated with U and with one another by reference to CB's internal identification number. The system shows the account balances for both accounts, and such balances may be electronically aggregated, though the system does not show a combined balance for the accounts. In determining whether such accounts meet the exception to U.S. account status described in paragraph (a)(4)(i) of this section for certain depository accounts with an aggregate balance or value of $50,000 or less, CB is required to aggregate the account balances of all depository accounts under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as holding depository accounts with CB with an aggregate balance of $80,000. Accordingly, neither account is eligible for the exception to U.S. account status, because the accounts, when aggregated, exceed the $50,000 threshold.

Example 3. Aggregation rules for joint accounts maintained by a participating FFI. In Year 1, a U.S. resident individual, U, holds a custodial account that is a preexisting account at custodial institution CI, a participating FFI. The balance in U's CI custodial account at the end of Year 1 is $35,000. U also holds a joint custodial account that is a preexisting account with her sister, A, a nonresident alien for U.S. federal income tax purposes, with another custodial institution, CI2. The balance in the joint account at the end of Year 1 is

also $35,000. CI and CI2 are part of the same expanded affiliated group and share computerized information management systems. Both U's custodial account at CI and U and A's custodial account at CI2 are associated with U and with one another by reference to CI's internal identification number and the system allows the balances to be aggregated. In determining whether such accounts meet the documentation exception described in §1.1471-4(c)(4)(iv) for certain preexisting individual accounts with an aggregate balance or value of $50,000 or less, CI is required to aggregate the account balances of accounts held in whole or in part by the same account holder under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as having financial accounts with C1 and CI2, each with an aggregate balance of $70,000. Accordingly, neither account is eligible for the documentation exception.

Example 4. Aggregation for applying indefinite validity periods. In Year 1, an owner-documented FFI, O, holds an offshore account with Branch 1 of CB, a commercial bank that is a U.S. withholding agent. The balance in O's CB account at the end of Year 1 is $600,000. In Year 1, O also holds an account in the United States with Branch 2 of CB. The Branch 2 account has a $450,000 balance at the end of Year 1. CB's banking businesses share computerized information management systems across its branches. O's accounts are associated with one another in the shared computerized information system and the system allows the balances to be aggregated. In determining whether CB is permitted to apply an indefinite validity period for the documentation submitted for O's account at Branch 1 pursuant to §1.1471-3(c)(6)(ii)(C)(4) (permitting indefinite validity for a withholding statement of an owner-documented FFI if the balance or value of all accounts held by the owner-documented FFI does not exceed $1,000,000), CB is required to aggregate the account balance of O's accounts at Branch 1 and Branch 2 to the extent required under the rules of paragraph (b)(4)(iii) of this section. Accordingly, O is treated as holding financial accounts with CB with an aggregate balance of $1,050,000 and the documentation submitted for O's account at Branch 1 is not eligible for the indefinite validity period described under §1.1471-3(c)(6)(ii)(C)(4).

(iv) Currency translation of balance or value. If the balance or value of a financial account, other obligation, or the aggregate amount payable under a group life or group annuity contract described in §1.1471-4(c)(4) is denominated in a currency other than U.S. dollars, a withholding agent must calculate the balance or value by applying a spot rate determined under §1.988-1(d) to translate such balance or value into the U.S. dollar equivalent. For the purpose of a participating or registered deemed-compliant FFI reporting an account under

§1.1471-4(d), the spot rate must be determined as of the last day of the calendar year (or, in the case of an insurance contract or annuity contract, the most recent contract anniversary date, when applicable) for which the account is being reported or, if the account was closed during such calendar year, the date the account was closed. In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in §1.1471-4(c)(3)(iii), (c)(4)(iv), or (c)(4)(v) or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

(5) Account maintained by financial institution. A custodial account is maintained by the financial institution that holds custody over the assets in the account (including a financial institution that holds assets in street name for an account holder in such institution). A depository account is maintained by the financial institution that is obligated to make payments with respect to the account (excluding an agent of a financial institution regardless of whether such agent is a financial institution under paragraph (e)(1) of this section). Any equity or debt interest in a financial institution that constitutes a financial account under paragraph (b)(1)(iii) of this section is maintained by such financial institution. A cash value insurance contract or an annuity contract described in paragraph (b)(1)(iv) of this section is maintained by the financial institution that is obligated to make payments with respect to the contract.

(c) U.S. owned foreign entity. The term U.S. owned foreign entity means any foreign entity that has one or more substantial U.S. owners (as defined in §1.1473-1(b)), including a foreign entity described in paragraph (c)(2) of this section. See §1.1473-1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and indirect ownership in an entity, see §1.1473-1(b)(2).

(d) Definition of FFI. The term FFI means, with respect to any entity that is not resident in a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. With respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, an FFI is any entity that is treated as a Financial Institution pursuant to such Model 1 IGA or Model 2 IGA. A territory financial institution is not an FFI under this paragraph (d).

(e) Definition of financial institution--(1) In general. Except as otherwise provided in paragraph (e)(5) of this section, the term financial institution means any entity that—

(i) Accepts deposits in the ordinary course of a banking or similar business (as defined in paragraph (e)(2) of this section) (depository institution);

(ii) Holds, as a substantial portion of its business (as defined in paragraph (e)(3) of this section), financial assets for the benefit of one or more other persons (custodial institution);

(iii) Is an investment entity (as defined in paragraph (e)(4) of this section);

(iv) Is an insurance company or a holding company (as described in paragraph (e)(5)(i)(C) of this section) that is a member of an expanded affiliated group that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract described in paragraph (b)(1)(iv) of this section (specified insurance company); or

(v) Is an entity that is a holding company or treasury center (as described in paragraphs (e)(5)(i)(C) and (e)(5)(i)(D)(1) of this section) that—

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity described in paragraphs (e)(4)(i)(B) and (C) of this section; or

(B) Is formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(2) Banking or similar business--(i) In general. Except as otherwise provided in paragraph (e)(2)(ii) of this section, an entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities—

(A) Makes personal, mortgage, industrial, or other loans or provides other extensions of credit;

(B) Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(C) Issues letters of credit and negotiates drafts drawn thereunder;

(D) Provides trust or fiduciary services;

(E) Finances foreign exchange transactions; or

(F) Enters into, purchases, or disposes of finance leases or leased assets.

(ii) Exception for certain lessors and lenders. An entity is not considered to be engaged in a banking or similar business for purposes of this paragraph (e)(2) if the entity solely accepts deposits from persons as collateral or security pursuant to a sale or lease of property or pursuant to a similar financing arrangement between such entity and the person holding the deposit with the entity.

(iii) Application of section 581. Entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks as defined in section 581 and any corporation to which section 581 would apply but for the fact that it is a foreign corporation).

(iv) Effect of local regulation. Whether an entity is subject to the banking and credit laws of a foreign country, the United States, a State, a U.S. territory, or a subdivision thereof, or is subject to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to, but not necessarily determinative of, whether that entity qualifies as a financial

institution under section 1471(d)(5)(A). Whether an entity conducts a banking or similar business is determined based upon the character of the actual activities of such entity.

(3) Holding financial assets for others as a substantial portion of its business--(i) Substantial portion--(A) In general. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to holding financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence before the determination is made.

(B) Special rule for start-up entities. An entity with no operating history as of the date of the determination is considered to hold financial assets for the account of others as a substantial portion of its business if the entity expects to meet the gross income threshold described in paragraph (e)(3)(i)(B) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(ii) Income attributable to holding financial assets and related financial services. For purposes of this paragraph (e)(3), income attributable to holding financial assets and related financial services means custody, account

maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; and fees for providing financial advice and for clearance and settlement services.

(iii) Effect of local regulation. Whether an entity is subject to the banking and credit, broker-dealer, fiduciary, or other similar laws and regulations of the United States, a State, a U.S. territory, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banks, credit issuers, or other financial institutions, is relevant to, but not necessarily determinative of, whether that entity holds financial assets for the account of others as a substantial portion of its business.

(4) Investment entity--(i) In general. The term investment entity means any entity that is described in paragraph (e)(4)(i)(A), (B), or (C) of this section.

(A) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—

(1) Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures;

(2) Individual or collective portfolio management; or

(3) Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons.

(B) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets (as defined in paragraph (e)(4)(ii) of this section) and the entity is managed by another entity that is described in paragraph (e)(1)(i), (ii), (iv), or (e)(4)(i)(A) of this section. For purposes of this paragraph (e)(4)(i)(B), an entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of the managed entity.

(C) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(ii) Financial assets. For purposes of this paragraph, the term financial asset means a security (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interest, commodity (as defined in section 475(e)(2)), notional principal contract (as defined in §1.446-3(c)), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract.

(iii) Primarily conducts as a business--(A) In general. An entity is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if the entity's gross income attributable to

such activities equals or exceeds 50 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence.

(B) Special rule for start-up entities. An entity with no operating history as of the date of the determination is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if such entity expects to meet the gross income threshold described in paragraph (e)(4)(iii)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(iv) Primarily attributable to investing, reinvesting, or trading in financial assets--(A) In general. An entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if the entity's gross income attributable to investing, reinvesting, or trading in financial assets equals or exceeds 50 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence.

(B) Special rule for start-up entities. An entity with no operating history as of the date of the determination will be considered to have income that is

primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if such entity expects to meet the income threshold described in paragraph (e)(4)(iv)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(v) Examples. The following examples illustrate the provisions of paragraph (e)(4) of this section:

Example 1. Investment advisor. Fund Manager is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Fund Manager, among its various business operations, organizes and manages a variety of funds, including Fund A, a fund that invests primarily in equities. Fund Manager hires Investment Advisor, a foreign entity, to provide advice about the financial assets in which Fund A invests. Investment Advisor earned more than 50% of its gross income for the last three years from providing services as an investment advisor. Because Investment Adviser primarily conducts as a business providing investment advice on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 2. Entity that is managed by an FFI. The facts are the same as in Example 1. In addition, in every year since it was organized, Fund A has earned more than 50% of its gross income from investing in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by Fund Manager and Investment Advisor and its gross income is primarily attributable to investing, reinvesting, or trading in financial assets.

Example 3. Investment manager. Investment Manager, a U.S. entity, is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Investment Manager organizes and registers Fund A in Country A. Investment Manager is authorized to facilitate purchases and sales of financial assets held by Fund A in accordance with Fund A's investment strategy. In every year since it was organized, Fund A has earned more than 50% of its gross income from investing, reinvesting, or trading in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 4. Foreign real estate investment fund that is managed by an FFI. The facts are the same as in Example 3, except that Fund A's assets consist solely of non-debt, direct interests in real property located within and without the United States. Fund A is not an investment entity under paragraph (e)(4)(i)(B) of this section, even though it is managed by Investment Manager, because less than 50% of its gross income is attributable to investing, reinvesting, or trading in financial assets.

Example 5. Trust managed by an individual. On January 1, 2013, X, an individual, establishes Trust A, a nongrantor foreign trust for the benefit of X's children, Y and Z. X appoints Trustee A, an individual, to act as the trustee of Trust A. Trust A's assets consists solely of financial assets, and its income consists solely of income from those financial assets. Pursuant to the terms of the trust instrument, Trustee A manages and administers the assets of the trust. Trustee A does not hire any entity as a third-party service provider to perform any of the activities described in paragraph (e)(4)(i)(A) of this section. Trust A is not an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed solely by Trustee A, an individual.

Example 6. Trust managed by a trust company. The facts are the same as in Example 5, except that X hires Trust Company, an FFI, to act as trustee on behalf of Trust A. As trustee, Trust Company manages and administers the assets of Trust A in accordance with the terms of the trust instrument for the benefit of Y and Z. Because Trust A is managed by an FFI, Trust A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 7. Individual introducing broker. IB, an individual introducing broker, provides investing advice to her clients, and uses the services of a foreign entity to conduct and execute trades on behalf of her clients. IB has earned 50% or more of her gross income for the past three years from her services as an investment advisor. Because IB is an individual, she is not an investment entity within the meaning of paragraph (e)(4) of this section.

Example 8. Entity introducing broker. The facts are the same as in Example 7, except that IB is a foreign entity and not an individual. Because IB is an entity that conducts investment activities and its gross income is primarily attributable to such investment activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

(5) Exclusions. A financial institution does not include an entity described in this paragraph, provided that the entity is not also described in paragraph

(e)(1)(iv) of this section. For the treatment of foreign entities described in this paragraph under section 1472, see §1.1472-1(c)(1)(vi).

(i) Excepted nonfinancial group entities--(A) In general. A foreign entity that is a member of a nonfinancial group (as defined in paragraph (e)(5)(i)(B) of this section) if—

(1) The entity is not a depository institution or custodial institution (other than for members of its expanded affiliated group);

(2) The entity is a holding company, treasury center, or captive finance company and substantially all the activities of such entity are to perform one or more of the functions described in paragraphs (e)(5)(i)(C), (D), or (E) of this section; and

(3) The entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes.

(B) Nonfinancial group. An expanded affiliated group is a nonfinancial group if, taking into account the application of this section,—

(1) For the three-year period preceding the year for which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section) consists of passive

income (as defined in §1.1472-1(c)(1)(v)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFIs (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the fair market value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section) are assets that produce or are held for the production of passive income; and

(2) Any member of the expanded affiliated group that is an FFI is either a participating FFI or deemed-compliant FFI.

(C) Holding company. For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group.

(D) Treasury center--(1) Except as otherwise provided in this paragraph, an entity is a treasury center for purposes of this paragraph (e)(5)(i) if the primary activity of such entity is to enter into investment, hedging, and financing transactions with or for members of its expanded affiliated group for purposes of—

(i) Managing the risk of price changes or currency fluctuations with respect to property that is held or to be held by the expanded affiliated group (or any member thereof);

(ii) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to borrowings made or to be made by the expanded affiliated group (or any member thereof);

(iii) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to assets or liabilities to be reflected in financial statements of the expanded affiliated group (or any member thereof);

(iv) Managing the working capital of the expanded affiliated group (or any member thereof) by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(v) Acting as a financing vehicle for borrowing funds for use by the expanded affiliated group (or any member thereof).

(2) An entity is not a treasury center if any equity or debt interest in the entity is held by a person that is not a member of the entity's expanded affiliated group and the redemption or retirement amount or return earned on such interest is determined primarily by reference to—

(i) The investment, hedging, and financing activities of the treasury center with members outside of its expanded affiliated group; or

(ii) Any member of the group that is an investment entity described in (e)(4)(i)(B) or passive NFFE (as described in paragraph (b)(3)(vi) of this section with respect to either such entity).

(E) Captive finance company. For purposes of this paragraph (e)(5)(i), an entity is a captive finance company if the primary activity of such entity is to enter into financing (including the extension of credit) or leasing transactions with or for

suppliers, distributors, dealers, franchisees, or customers of such entity or of any member of such entity's expanded affiliated group that is an active NFFE.

(ii) Excepted nonfinancial start-up companies or companies entering a new line of business—(A) In general. A foreign entity that is investing capital in assets with the intent to operate a new business or line of business other than that of a financial institution or passive NFFE for a period of—

(1) In the case of an entity intending to operate a new business, 24 months from the initial organization of such entity; and

(2) In the case of an entity with the intent to operate a new line of business, 24 months from the date of the board resolution (or its equivalent) approving the new line of business, provided that such entity qualified as an active NFFE for the 24 months preceding the date of such approval.

(B) Exception for investment funds. An entity is not described in this paragraph (e)(5)(ii) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and hold interests in those companies as capital assets for investment purposes.

(iii) Excepted nonfinancial entities in liquidation or bankruptcy. A foreign entity that was not a financial institution or passive NFFE at any time during the past five years and that is in the process of liquidating its assets or reorganizing with the intent to continue or recommence operations as a nonfinancial entity.

(iv) Excepted inter-affiliate FFI. A foreign entity that is a member of a participating FFI group if—

(A) The entity does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);

(B) The entity does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) The entity does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and

(D) The entity has not agreed to report under §1.1471-4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

(v) Section 501(c) entities. A foreign entity that is described in section 501(c) other than an insurance company described in section 501(c)(15).

(vi) Non-profit organizations. A foreign entity that is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes if—

(A) The entity is exempt from income tax in its country of residence;

(B) The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(C) Neither the laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, an individual or noncharitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered or the use of property, or as

payment representing the fair market value of property that the entity has purchased; and

(D) The laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that meets the requirements of §1.1471-6(b) or another organization that meets the requirements of this paragraph (e)(5)(vi) or escheat to the government of the entity's country of residence or any political subdivision thereof.

(6) Reserving activities of an insurance company. The reserving activities of an insurance company will not cause the company to be a financial institution described in (e)(1)(i), (ii), or (iii) of this section.

(f) Deemed-compliant FFIs. The term deemed-compliant FFI includes a registered deemed-compliant FFI (as defined in paragraph (f)(1) of this section), a certified deemed-compliant FFI (as defined in paragraph (f)(2) of this section), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b). A deemed-compliant FFI that complies with the due diligence and withholding requirements applicable to such entity as provided in this paragraph (f) will also be deemed to have met its withholding obligations under sections 1471(a) and 1472(a). For this purpose, an intermediary or flow-through entity that has a residual withholding obligation under §1.1471-2(a)(2)(ii) must fulfill such obligation to be considered a deemed-compliant FFI.

(1) Registered deemed-compliant FFIs. A registered deemed-compliant FFI means an FFI that meets the procedural requirements described in paragraph (f)(1)(ii) of this section and that either is described in any of paragraphs (f)(1)(i)(A) through (F) of this section or is treated as a registered deemed-compliant FFI under a Model 2 IGA. A registered deemed-compliant FFI also includes any FFI, or branch of an FFI, that is a reporting Model 1 FFI that complies with the registration requirements of a Model 1 IGA.

(i) Registered deemed-compliant FFI categories--(A) Local FFIs. An FFI is described in this paragraph (f)(1)(i)(A) if the FFI meets the following requirements.

(1) The FFI is licensed and regulated as a financial institution under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status).

(2) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(3) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a website, provided that the website does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents, and does not otherwise target or solicit U.S.

customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(4) The FFI is required under the laws of its country of incorporation or organization to identify resident account holders for purposes of either information reporting or withholding of tax with respect to accounts held by residents or is required to identify resident accounts for purposes of satisfying such country's AML due diligence requirements.

(5) At least 98 percent of the accounts by value maintained by the FFI as of the last day of the preceding calendar year are held by residents (including residents that are entities) of the country in which the FFI is incorporated or organized. An FFI that is incorporated or organized in a member state of the European Union may treat account holders that are residents (including residents that are entities) of other member states of the European Union as residents of the country in which the FFI is incorporated or organized for purposes of this calculation.

(6) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent

with those set forth for a participating FFI under §1.1471-4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under §1.1471-4(b) and (d) if the FFI were a participating FFI.

(7) With respect to each preexisting account held by a nonresident of the country in which the FFI is organized or held by an entity, the FFI reviews those accounts in accordance with the procedures described in §1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and certifies to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified or transferred them to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or that it agrees to withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI.

(8) In the case of an FFI that is a member of an expanded affiliated group, each FFI in the group is incorporated or organized in the same country and, with

the exception of any member that is a retirement plan described in §1.1471-6(f), meets the requirements set forth in this paragraph (f)(1)(i)(A) and the procedural requirements of paragraph (f)(1)(ii) of this section.

(9) The FFI does not have policies or practices that discriminate against opening or maintaining accounts for individuals who are specified U.S. persons and who are residents of the FFI's country of incorporation or organization.

(B) Nonreporting members of participating FFI groups. An FFI that is a member of a participating FFI group is described in this paragraph (f)(1)(i)(B) if it meets the following requirements.

(1) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(2) The FFI reviews its accounts that were opened prior to the time it implements the policies and procedures (including time frames) described in paragraph (f)(1)(i)(B)(1) of this section, using the procedures described in §1.1471-4(c) applicable to preexisting accounts of participating FFIs, to identify any U.S. account or account held by a nonparticipating FFI. Within six months of the identification of any account described in this paragraph, the FFI transfers the

account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(3) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) Qualified collective investment vehicles. An FFI is described in this paragraph (f)(1)(i)(C) if it meets the following requirements.

(1) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund either in its country of incorporation or organization or in all of the countries in which it is registered and all of the countries in which it operates. A fund will be considered to be regulated as an investment fund under this paragraph if its manager is regulated with respect to the investment fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

(2) Each holder of record of direct debt interests in the FFI in excess of $50,000, direct equity interests in the FFI (for example the holders of its units or global certificates), and any other account holder of the FFI is a participating FFI,

registered deemed-compliant FFI, retirement plan described in §1.1471-6(f), non-profit organization described in paragraph (e)(5)(vi) of this section, U.S. person that is not a specified U.S. person, nonreporting IGA FFI, or exempt beneficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in §1.1471-4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term “U.S. person” for “FFI” and “member”), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(3) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(1)(i)(F)(1) or (2) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(D) Restricted funds. An FFI is described in this paragraph (f)(1)(i)(D) if it meets the following requirements.

(1) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status) or in all of the countries in which it is registered and in all of the countries in which it operates. A fund will be considered to be regulated as an investment fund for purposes of this paragraph if its manager is regulated with respect to the fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

(2) Interests issued directly by the fund are redeemed by or transferred by the fund rather than sold by investors on any secondary market. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a restricted fund solely because it issued interests in bearer form provided that the FFI ceased issuing interests in bearer form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in §1.1471-4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(D), interests in the FFI that are issued by the fund through a transfer

agent or distributor that does not hold the interests as a nominee of the account holder will be considered to have been issued directly by the fund.

(3) Interests that are not issued directly by the fund are sold only through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks described in paragraph (f)(2)(i) of this section, or restricted distributors described in paragraph (f)(4) of this section. For purposes of this paragraph (f)(1)(i)(D) and paragraph (f)(4) of this section, a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement with the FFI, in the distribution of securities and holds interests in the FFI as a nominee.

(4) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(5) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement entered

into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(3) of this section, the FFI will terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(3) of this section within six months of the distributor's change in status.

(6) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in §1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals. An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in §1.1471-4(c) applicable to

accounts other than preexisting accounts. By the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, the FFI will be required to certify to the IRS either that it did not identify any U.S. account or account held by a nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI.

(7) By the later of December 31, 2013, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in §1.1471-4(c) to ensure that it either—

(i) Does not open or maintain an account for, or make a withholdable payment to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the FFI had reason to know the account holder became such a person; or

(ii) Withholds and reports on any account held by, or any withholdable payment made to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners to the extent and in the manner that would be required under §1.1471-4(b) and (d) if the FFI were a participating FFI.

(8) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-

compliant FFIs, sponsored FFIs described in paragraph (f)(2)(iii)(B) or (C) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(E) Qualified credit card issuers. An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(1) The FFI is an FFI solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer.

(2) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) Sponsored investment entities and controlled foreign corporations. An FFI is described in this paragraph (f)(1)(i)(F) if the FFI is described in paragraph (f)(1)(i)(F)(1) or (2) of this section and the sponsoring entity meets the requirements of paragraph (f)(1)(i)(F)(3) of this section.

(1) An FFI is a sponsored investment entity described in this paragraph (f)(1)(i)(F)(1) if—

(i) It is an investment entity that is not a QI, WP, or WT; and

(ii) An entity has agreed with the FFI to act as a sponsoring entity for the FFI.

(2) An FFI is a sponsored controlled foreign corporation described in this paragraph (f)(1)(i)(F)(2) if the FFI meets the following requirements--

(i) The FFI is a controlled foreign corporation as defined in section 957(a) that is not a QI, WP, or WT;

(ii) The FFI is wholly owned, directly or indirectly, by a U.S. financial institution that agrees with the FFI to act as a sponsoring entity for the FFI; and

(iii) The FFI shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account holders and payees of the FFI and to access all account and customer information maintained by the FFI including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the account holder or payee.

(3) A sponsoring entity described in paragraph (f)(1)(i)(F)(1)(ii) or (f)(1)(i)(F)(2)(ii) of this section meets the requirements of this paragraph (f)(1)(i)(F)(3) if the sponsoring entity–

(i) Is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner);

(ii) Has registered with the IRS as a sponsoring entity;

(iii) Has registered the FFI with the IRS;

(iv) Agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI;

(v) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§1.1471-4(d)(2)(ii)(C) and 1.1474-1; and

(vi) Has not had its status as a sponsor revoked.

(4) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(1)(i)(F)(3) of this section with respect to any sponsored FFI.

(5) A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(ii) Procedural requirements for registered deemed-compliant FFIs. A registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section may use one or more agents to perform the necessary due diligence to identify its account holders and to take any required action associated with obtaining and maintaining its deemed-compliant status. The FFI, however, remains responsible for ensuring that the requirements for its deemed-compliant status are met. Unless otherwise provided in this section, a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section is required to—

(A) Register with the IRS pursuant to procedures prescribed by the IRS and agree to comply with the terms of its registered deemed-compliant status.

(B) Have its responsible officer certify every three years to the IRS, either individually or collectively for the FFI's expanded affiliated group, that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registers as a deemed-compliant FFI or December 31, 2013;

(C) Maintain in its records the confirmation from the IRS of the FFI's registration as a deemed-compliant FFI and GIIN or such other information as the IRS specifies in forms or other guidance; and

(D) Agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for the deemed-compliant status for which it has registered, and to do so within six months of the change in circumstances unless the FFI is able to resume its eligibility for its registered-deemed compliant status within the six month notification period.

(iii) Deemed-compliant FFI that is merged or acquired. A deemed-compliant FFI that becomes a participating FFI or a member of a participating FFI group as a result of a merger or acquisition will not be required to redetermine the chapter 4 status of any account maintained by the FFI prior to the date of the merger or acquisition unless that account has a subsequent change in circumstances.

(2) Certified deemed-compliant FFIs. A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section

that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in §1.1471-3(d)(6) applicable to the relevant deemed-compliant category. An FFI that is described in paragraph (f)(2)(iv) of this section (a limited life debt investment entity) will be treated as a certified deemed-compliant FFI prior to January 1, 2017. A certified deemed-compliant FFI also includes any nonreporting IGA FFI. A certified deemed-compliant FFI is not required to register with the IRS.

(i) Nonregistering local bank. An FFI is described in this paragraph (f)(2)(i) if the FFI meets the following requirements.

(A) The FFI operates solely as (and is licensed and regulated under the laws of its country of incorporation or organization as)--

(1) A bank; or

(2) A credit union or similar cooperative credit organization that is operated without profit.

(B) The FFI's business consists primarily of receiving deposits from and making loans to unrelated retail customers.

(C) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(D) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of

incorporation or organization merely because it operates a website, provided that the website does not permit account opening, does not indicate that the FFI maintains accounts for or provides services to nonresidents, and does not otherwise target or solicit U.S. customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the FFI maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(E) The FFI does not have more than $175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group does not have more than $500 million in total assets on its consolidated or combined balance sheets.

(F) With respect to an FFI that is part of an expanded affiliated group, each member of the expanded affiliated group is incorporated or organized in the same country and does not have a fixed place of business outside of that country. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions. Further, each FFI in the group, other than an FFI described in paragraph (f)(2)(ii) of this section or §1.1471-6(f), meets the requirements set forth in this paragraph (f)(2)(i). For this purpose, a fixed place

of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(ii) FFIs with only low-value accounts. An FFI is described in this paragraph (f)(2)(ii) if the FFI meets the following requirements:

(A) The FFI is not an investment entity.

(B) No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (b)(4) of this section, substituting the term financial account for the term depository account and the term person for the term individual.

(C) The FFI does not have more than $50 million in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group does not have more than $50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

(iii) Sponsored, closely held investment vehicles. Subject to the provisions of paragraph (f)(2)(iii)(F) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (E) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QI, WP, or WT.

(B) The FFI has a contractual arrangement with a sponsoring entity that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution and that is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a professional manager, trustee, or managing partner), under which the sponsoring entity agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) The FFI does not hold itself out as an investment vehicle for unrelated parties.

(D) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(E) The sponsoring entity complies with the following requirements—

(1) The sponsoring entity has registered with the IRS as a sponsoring entity;

(2) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(3) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§1.1471-4(d)(2)(ii)(C) and 1.1474-1; and

(4) The sponsoring entity has not had its status as a sponsor revoked.

(F) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(2)(iii)(E) of this section with respect to any sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(E) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(iv) Limited life debt investment entities (transitional). An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements. An FFI that meets the requirements of this paragraph (f)(2)(iv) will be treated as a certified deemed-compliant FFI prior to January 1, 2017.

(A) The FFI is a collective investment vehicle formed pursuant to a trust indenture or similar fiduciary arrangement that is an FFI solely because it is an investment entity that offers interests primarily to unrelated investors.

(B) The FFI was in existence as of December 31, 2011, and the FFI's organizational documents require that the entity liquidate on or prior to a set date, and do not permit amendments to the organizational documents, including the trust indenture, without the agreement of all of the FFI's investors.

(C) The FFI was formed for the purpose of purchasing (and did in fact purchase) specific types of indebtedness and holding those assets (subject to

reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle.

(D) All payments made to the investors of the FFI are cleared through a clearing organization that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a trustee that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(E) The FFI's trust indenture or similar fiduciary arrangement only authorizes the trustee or fiduciary to engage in activities specifically designated in the trust indenture, and the trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations that a participating FFI is subject to under §1.1471-4 absent a legal requirement to fulfill them, even if the consequence of the trustee failing to fulfill these obligations is to cause the FFI to be withheld upon. Further, no other person has the authority to fulfill the obligations that a participating FFI is subject to under §1.1471-4 on behalf of the FFI.

(3) Owner-documented FFIs--(i) In general. An owner-documented FFI means an FFI that meets the requirements of paragraph (f)(3)(ii) of this section. An FFI may only be treated as an owner-documented FFI with respect to payments received from and accounts held with a designated withholding agent (or with respect to payments received from and accounts held with another FFI that is also treated as an owner-documented FFI by such designated withholding agent). A designated withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees to undertake the additional

due diligence and reporting required under paragraphs (f)(3)(ii)(D) and (E) of this section in order to treat the FFI as an owner-documented FFI. An FFI meeting the requirements of this paragraph (f)(3) will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary.

(ii) Requirements of owner-documented FFI status. An FFI meets the requirements of this paragraph (f)(3)(ii) only if—

(A) The FFI is an FFI solely because it is an investment entity;

(B) The FFI is not owned by or in an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company;

(C) The FFI does not maintain a financial account for any nonparticipating FFI;

(D) The FFI provides the designated withholding agent with all of the documentation described in §1.1471-3(d)(6) and agrees to notify the withholding agent if there is a change in circumstances; and

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information described in §1.1471-4(d) or §1.1474-1(i) (as appropriate) with respect to any specified U.S. persons that are identified in §1.1471-3(d)(6)(iv)(A)(1). Notwithstanding the previous sentence, the designated withholding agent is not required to report information with respect to an indirect owner of the FFI that holds its interest through a participating FFI, a

deemed-compliant FFI (other than an owner-documented FFI), an entity that is a U.S. person, an exempt beneficial owner, or an excepted NFFE.

(4) Definition of a restricted distributor. An entity is a restricted distributor for purposes of paragraph (f)(1)(i)(D) of this section (relating to registered deemed-compliant restricted funds) if it operates as a distributor that holds debt or equity interests in a restricted fund as a nominee and meets the following requirements.

(i) The distributor provides investment services to at least 30 unrelated customers and less than half of the distributor's customers are related persons.

(ii) The distributor is required to perform AML due diligence procedures under the anti-money laundering laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction).

(iii) The distributor operates solely in its country of incorporation or organization, does not have a fixed place of business outside that country, and, if such distributor belongs to an expanded affiliated group, has the same country of incorporation or organization as all other members of its expanded affiliated group. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(iv) The distributor does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, a distributor will not be considered to have solicited customers or account holders outside its country of organization merely because it operates a website, provided that the website

does not permit account opening by persons identified as nonresidents, does not specifically state that nonresidents may acquire securities from the distributor, and does not otherwise target U.S. customers or account holders. A distributor will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the distributor maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(v) The distributor does not have more than $175 million in total assets under management and has no more than $7 million in gross revenue on its income statement for the most recent financial accounting year and, if the distributor belongs to an expanded affiliated group, the entire group does not have more than $500 million in total assets under management or more than $20 million in gross revenue for its most recent financial accounting year on a combined or consolidated income statement.

(vi) The distributor provides the restricted fund (or another distributor of the restricted fund that is a participating FFI or registered deemed-compliant FFI, and with which the distributor has entered into its distribution agreement) with a valid Form W-8 indicating that the distributor satisfies the requirements to be a restricted distributor.

(vii) The agreement governing the distributor's distribution of debt or equity interests of the restricted fund—

(A) Prohibits the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs;

(B) Requires that if the distributor does distribute securities to any of the persons described in this paragraph (f)(4)(vii), it will cause the restricted fund to redeem or retire those interests, or it will transfer those interests to a distributor that is a participating FFI or reporting Model 1 FFI, within six months and the commission paid to the distributor will be forfeited to the restricted fund or to the participating FFI to which those interests are transferred; and

(C) Requires the distributor to notify the restricted fund (or another distributor of the restricted fund that is a participating FFI, reporting Model 1 FFI, or registered deemed-compliant FFI and with which the distributor has entered into its distribution agreement) of a change in the distributor's chapter 4 status within 90 days of the change in status.

(viii) With respect to sales after December 31, 2011, and prior to the time the restrictions described in paragraph (f)(4)(vii) of this section were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI contained a prohibition of the sale of such securities to U.S. entities or U.S. resident individuals, or the distributor reviews all accounts relating to such sales in accordance with the procedures (and time frames) described in §1.1471-4(c) applicable to preexisting

accounts and certifies that it has caused the restricted fund to redeem or retire, or it has transferred all securities sold to any of the persons described in paragraph (f)(4)(vii) of this section. If the distribution agreement addressed in the prior sentence contained only a prohibition on the sale of securities to U.S. resident individuals, the distributor will not be required to review the individual accounts relating to such sales but must review and make certifications with respect to all entity accounts in the manner described in the previous sentence.

(g) Recalcitrant account holders--(1) Scope. This paragraph (g) provides rules for determining when an account holder of a participating FFI or registered deemed-compliant FFI is a recalcitrant account holder. Paragraph (g)(2) of this section defines the term recalcitrant account holder. Paragraphs (g)(3) and (4) of this section provide timing rules for when an account holder will begin to be treated as a recalcitrant account holder by a participating FFI and when an account holder will cease to be treated as a recalcitrant account holder by such institution. For rules for determining the holder of an account, see paragraph (a)(3) of this section. For the withholding requirements of an FFI with respect to its recalcitrant account holders, see paragraph (f) of this section and §1.1471-4(b). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see §1.1471-4(d)(6), and, for the reporting required with respect to payments made to such account holders, see §1.1474-1(d)(4)(iii). The rules provided in this paragraph (g) to classify certain account holders as recalcitrant account holders shall not, however, apply to a U.S. branch of a participating FFI. Instead, a U.S. branch of a participating FFI or registered deemed-compliant FFI

that is treated as a U.S. person shall apply the presumption rules of §1.1471-3(f) (for foreign entity account holders) and chapter 3 or 61 (for individual payees) to determine the status of a payee if it cannot reliably associate a reportable payment made to the payee with valid documentation.

(2) Recalcitrant account holder. The term recalcitrant account holder means any holder of an account maintained by an FFI if such account holder is not an FFI (or presumed to be an FFI under §1.1471-3(f)), the account does not meet the requirements of the exception to U.S. account status described in paragraph (a)(4) of this section (for depository accounts with a balance of $50,000 or less) and does not qualify for any of the exceptions from the documentation requirements described in §1.1471-4(c)(3)(iii), (c)(4)(iii), (c)(5)(iii), (c)(5)(iv)(E) (or the participating FFI elects to forego such exceptions) and—

(i) The account holder fails to comply with requests by the FFI for the documentation or information that is required under §1.1471-4(c) for determining the status of such account as a U.S. account or other than a U.S. account;

(ii) The account holder fails to provide a valid Form W-9 upon request from the FFI or fails to provide a correct name and TIN combination upon request from the FFI when the FFI has received notice from the IRS indicating that the name and TIN combination reported by the FFI for the account holder is incorrect;

(iii) If foreign law would (but for a waiver) prevent reporting by the FFI (or branch or division thereof) of the information described in §1.1471-4(d)(3) or (5) with respect to such account, the account holder (or substantial U.S. owner of an

account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver to permit such reporting; or

(iv) The account holder provides the documentation described in §1.1471-3(d)(12) to establish its status as a passive NFFE (other than a WP or WT) but fails to provide the information regarding its owners required under §1.1471-3(d)(12)(iii).

(3) Start of recalcitrant account holder status--(i) Preexisting accounts identified under the procedures described in §1.1471-4(c) for identifying U. S. accounts--(A) In general. An account holder of a preexisting account described in paragraph (g)(2) of this section maintained by a participating FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraphs (g)(3)(B) through (D) of this section. An account holder of a preexisting account described in paragraph (g)(2) of this section that is maintained by a registered deemed-compliant FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraph (f) of this section (setting forth the time by which the FFI must identify its accounts in accordance with the requirements of §1.1471-4(c) in order to meet the requirements of its applicable registered deemed-compliant status).

(B) Accounts other than high-value accounts. Account holders of preexisting accounts maintained by a participating FFI that are not high-value accounts (as described in §1.1471-4(c)(8)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is two years after the effective date of the FFI agreement.

(C) High-value accounts. Account holders of preexisting accounts maintained by a participating FFI that are high-value accounts (as described in §1.1471-4(c)(5)(iv)(D)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is one year after the effective date of the FFI agreement.

(D) Preexisting accounts that become high-value accounts. With respect to a calendar year beginning after the later of the effective date of the FFI agreement and December 31, 2014, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to §1.1471-4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following the calendar year end in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) Accounts that are not preexisting accounts and accounts requiring name/TIN correction. An account holder of an account that is not a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment is made to the account or 90 days after the date the account is opened by the participating FFI. An account holder for which the participating FFI received a notice from the IRS indicating that the name and TIN combination provided for the account holder is incorrect will be

treated as a recalcitrant account holder following the date of such notice within the time prescribed in §31.3406(d)-5(a) of this chapter.

(iii) Accounts with changes in circumstances. An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment is made to the account or the date that is 90 days after the change in circumstances. For the definition of a change in circumstances with respect to an account, see §1.1471-4(c)(2)(iii).

(4) End of recalcitrant account holder status. An account holder that is treated as a recalcitrant account holder under paragraphs (g)(2) and (3) of this section will cease to be so treated as of the date on which the account holder is no longer described in paragraph (g)(2) of this section.

(h) Passthru payment--(1) Defined. The term passthru payment means any withholdable payment and any foreign passthru payment.

(2) Foreign passthru payment. [Reserved].

(i) Expanded affiliated group--(1) Scope of paragraph. This paragraph (i) defines the term expanded affiliated group for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see §1.1471-4(e).

(2) Expanded affiliated group defined—(i) In general. Except as otherwise provided in this paragraph (i), an expanded affiliated group means an affiliated group as defined in section 1504(a), determined—

(A) By substituting “more than 50 percent” for “at least 80 percent” each place it appears;

(B) Without regard to paragraphs (2) and (3) of section 1504(b);

(C) Without application of section 1504(a)(3); and

(D Without application of §1.1504-4(b)(2)(i)(A).

(ii) Partnerships and entities other than corporations. A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3), without regard to whether such entity is foreign or domestic) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) Exception for FFIs holding certain capital investments. Notwithstanding paragraph (i)(2) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to unrelated investors;

(ii) The investment entity is created in the ordinary course of such other FFI’s business described in paragraph (i)(3)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(3)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(4) Seed capital. For purposes of this paragraph (i), the term seed capital means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

(5) Anti-abuse rule. A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(2) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid reporting or

withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(5), a change in voting rights includes a separation of voting rights and value.

(j) Effective/applicability date. This section generally applies on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability, see §1.1471-5(f)(2)(iv).

Par. 10. Section 1.1471-6 is added to read as follows:

§1.1471-6 Payments beneficially owned by exempt beneficial owners.

(a) In general. This section describes classes of beneficial owners that are identified in section 1471(f) (exempt beneficial owners). Except as otherwise provided in paragraphs (d) (regarding securities held by foreign central banks of issue) and (f) (regarding retirement funds) of this section, a person must be a beneficial owner of a payment to be treated as an exempt beneficial owner with respect to the payment. The following classes of persons are exempt beneficial owners: any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing described in paragraph (b) of this section; any international organization or any wholly owned agency or instrumentality thereof described in paragraph (c) of this section; any foreign central bank of issue described in paragraph (d) of this section; any government of a U.S. territory described in paragraph (e) of this section; certain foreign retirement funds described in paragraph (f) of this section; and certain entities described in paragraph (g) of this section that are wholly owned by one or more other exempt beneficial

owners. In addition, an exempt beneficial owner includes any person treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA. See §§1.1471-2(a)(4)(v) and 1.1472-1(c)(2) for the exemptions from withholding for payments beneficially owned by an exempt beneficial owner; §1.1471-3(d)(9) for the documentation requirements applicable to a withholding agent for purposes of determining when a withholdable payment is beneficially owned by an exempt beneficial owner; and §1.1471-3(d)(8)(ii) for when a withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner.

(b) Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing. Solely for purposes of this section and except as provided in paragraph (h) of this section, the term any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing means only the integral parts, controlled entities, and political subdivisions of a foreign sovereign.

(1) Integral part. Solely for purposes of this paragraph (b), an integral part of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person as defined in paragraph (b)(3) of this section. An integral part does not include any

individual who is a sovereign, official, or administrator acting in a private or personal capacity. All the facts and circumstances will be taken into account in determining whether an individual is acting in a private or personal capacity.

(2) Controlled entity. Solely for purposes of this paragraph (b), a controlled entity means an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, provided that—

(i) The entity is wholly owned and controlled by one or more foreign sovereigns directly or indirectly through one or more controlled entities;

(ii) The entity's net earnings are credited to its own account or to other accounts of one or more foreign sovereigns, with no portion of its income inuring to the benefit of any private person as defined in paragraph (b)(3) of this section; and

(iii) The entity's assets vest in one or more foreign sovereigns upon dissolution.

(3) Inurement to the benefit of private persons. Solely for purposes of this paragraph (b)—

(i) Income does not inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program carried on by a foreign sovereign, and the program activities constitute governmental functions under the regulations under section 892.

(ii) Income is considered to inure to the benefit of private persons if such income benefits—

(A) Private persons through the use of a governmental entity as a conduit for personal investment;

(B) Private persons through the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons; or

(C) Private persons who divert such income from its intended use by exerting influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(c) Any international organization or any wholly owned agency or instrumentality thereof. Except as provided in paragraph (h) of this section, the term any international organization or any wholly owned agency or instrumentality thereof means any entity described in section 7701(a)(18). The term also includes any intergovernmental or supranational organization—

(1) That is comprised primarily of foreign governments;

(2) That is recognized as an intergovernmental or supranational organization under a foreign law similar to 22 U.S.C. 288-288f or that has in effect a headquarters agreement with a foreign government; and

(3) Whose income does not inure to the benefit of private persons under the principles of paragraph (b)(3)(ii) of this section, as applied to the intergovernmental or supranational organization in place of the government or governmental entity.

(d) Foreign central bank of issue--(1) In general. Solely for purposes of this section and except as provided in paragraph (h) of this section, the term foreign central bank of issue means a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) Separate instrumentality. A foreign central bank of issue may include an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section.

(3) Bank for International Settlements. The Bank for International Settlements is a foreign central bank of issue for purposes of this section.

(4) Income on certain collateral. Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on securities, including securities held as collateral or in connection with a securities lending transaction, held by the foreign central bank of issue in the normal course of its operations as a central bank of issue.

(e) Governments of U.S. territories. Except as provided in paragraph (h) of this section, whether a person or entity constitutes a government of a U.S.

territory for purposes of this section is determined by applying principles analogous to those set forth in paragraph (b) of this section.

(f) Certain retirement funds. A fund is described in this paragraph (f) if it is described in paragraphs (f)(1) through (6) of this section. In addition, if a withholding agent may treat a withholdable payment as made to a payee that is a retirement fund in accordance with §1.1471-3, then the withholding agent may also treat such retirement fund as the beneficial owner of the payment. See §1.1471-3(d)(9)(ii).

(1) Treaty-qualified retirement fund. A fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits;

(2) Broad participation retirement fund. A fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund—

(i) Does not have a single beneficiary with a right to more than five percent of the fund's assets;

(ii) Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates; and

(iii) Satisfies one or more of the following requirements—

(A) The fund is generally exempt from tax on investment income under the laws of the country in which it is established or operates due to its status as a retirement or pension plan;

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts) or from other plans described in this paragraph (f)) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts) or other retirement funds described in this paragraph (f)), or penalties apply to distributions or withdrawals made before such specified events; or

(D) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed $50,000 annually.

(3) Narrow participation retirement funds. A fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former

employees (or persons designated by such employees) of one or more employers in consideration for prior services rendered, provided that—

(i) The fund has fewer than 50 participants;

(ii) The fund is sponsored by one or more employers that are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other funds described in paragraph (f)(1) of this section or accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts)) are limited by reference to earned income and compensation of the employee, respectively;

(iv) Participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; and

(v) The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates.

(4) Fund formed pursuant to a plan similar to a section 401(a) plan. A fund formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

(5) Investment vehicles exclusively for retirement funds. A fund established exclusively to earn income for the benefit of one or more retirement

funds described in paragraphs (f)(1) through (5) of this section or accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts).

(6) Pension fund of an exempt beneficial owner. A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

(7) Example. FP, a foreign pension fund established in Country X, is generally exempt from income taxation in Country X, and is operated principally to provide retirement benefits in such country. The U.S.-Country X income tax treaty is identical in all material respects to the 2006 U.S. model income tax convention. FP is a resident of Country X under Article 4(2)(a) and a qualified person under Article 22(2)(d) of the U.S.-Country X income tax treaty. Therefore, FP is a pension fund described in paragraph (f)(1) of this section.

(g) Entities wholly owned by exempt beneficial owners. A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment company is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section.

(h) Exception for commercial activities--(1) General rule. An exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section will not

be treated as an exempt beneficial owner with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by an insurance company, custodial institution, or depository institution (including the accepting of deposits). Thus, for example, a central bank of issue that conducts a commercial financial activity, such as acting as an intermediary on behalf of persons other than in the bank's capacity as a central bank of issue, is not an exempt beneficial owner under paragraph (d)(1) of this section with respect to payments received in connection with an account held in connection with such activity.

(2) Limitation. Paragraph (h)(1) of this section will not apply if—

(i) An entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under §1.1471-5(b)(1)(iii); and

(iii) The entity otherwise maintains financial accounts only for exempt beneficial owners.

(i) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 11. Section 1.1472-1 is added to read as follows:

§1.1472-1 Withholding on NFFEs.

(a) In general. This section provides rules that a withholding agent must apply to determine its obligations to withhold under section 1472 on withholdable payments made to a payee that is an NFFE. A participating FFI that complies with its withholding obligations under §1.1471-4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. The rules of this section will apply, however, in the case of a participating FFI acting as a withholding agent with respect to a payment made to an NFFE that is not an account holder (for example, a payment with respect to a contract that does not constitute a financial account). See §1.1473-1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation.

(b) Withholdable payments made to an NFFE--(1) In general. Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

(i) The beneficial owner of such payment is the NFFE or any other NFFE;

(ii) The withholding agent can, pursuant to paragraph (d) of this section, treat the beneficial owner of the payment as an NFFE that does not have any substantial U.S. owners, or as an NFFE that has identified its substantial U.S. owners; and

(iii) The withholding agent reports the information described in §1.1474-1(i)(2) relating to any substantial U.S. owners of the beneficial owner of such payment.

(2) Transitional relief. For any withholdable payment made prior to January 1, 2015, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE with one or more substantial U.S. owners, the withholding agent is not required to withhold under this section or report under §1.1474-1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) Exceptions--(1) Beneficial owner that is an excepted NFFE. A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as beneficially owned by an excepted NFFE. An excepted NFFE means an NFFE that is—

(i) Publicly traded corporation. A corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) Regularly traded. For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets for a calendar year if—

(1) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes

of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and

(2) With respect to each class relied on to meet the more-than-50-percent listing requirement of paragraph (c)(1)(i)(A)(1) of this section—

(i) Trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the prior calendar year; and

(ii) The aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10 percent of the average number of shares outstanding in that class during the prior calendar year.

(B) Special rules regarding the regularly traded requirement--(1) Year of initial public offering. For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more established securities markets, as defined in paragraph (c)(1)(i)(C) of this section, such class of stock meets the requirements of this paragraph (c)(1)(i) for such year if the stock is regularly traded in more than de minimis quantities on 1/6 of the days remaining after the date of the offering in the quarter during which the offering occurs, and on at least 15 days during each remaining quarter of the calendar year. If a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of this paragraph (c)(1)(i) in the calendar year of the offering if the stock is regularly

traded on such established securities market, other than in de minimis quantities, on the greater of 1/6 of the days remaining after the date of the offering in the quarter during which the offering occurs, or 5 days.

(2) Classes of stock treated as meeting the regularly traded requirement. A class of stock meets the trading requirements of this paragraph (c)(1)(i) for a calendar year if the stock is traded during such year on an established securities market located in the United States and is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) Anti-abuse rule. Any trade conducted with a principal purpose of meeting the regularly traded requirements of this paragraph (c)(1)(i) shall be disregarded. Further, a class of stock shall not be treated as regularly traded if there is a pattern of trades conducted to meet the requirements of this paragraph (c)(1)(i). Similarly, paragraph (c)(1)(i)(B)(1) of this section shall not apply to a public offering of stock that has as one of its principal purposes qualification of the class of stock as regularly traded under the reduced regularly traded requirements for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the regularly traded requirements of this paragraph (c)(1)(i) are satisfied in the calendar year immediately following the initial public offering.

(C) Established securities market--(1) In general. For purposes of this paragraph (c)(1)(i), the term established securities market means, for any calendar year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the foreign country in which the market is located, and has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding $1 billion during each of the three calendar years immediately preceding the calendar year in which the determination is being made;

(ii) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f) with the Securities and Exchange Commission;

(iii) Any exchange designated under a Limitation on Benefits article of an income tax treaty with the United States that is in force; or

(iv) Any other exchange that the Secretary may designate in published guidance.

(2) Foreign exchange with multiple tiers. If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) Computation of dollar value of stock traded. For purposes of paragraph (c)(1)(i)(C)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the World Federation of Exchanges located

in Paris (or a successor institution), or, if not so reported, by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(ii) Certain affiliated entities related to a publicly traded corporation. Any corporation that is a member of the same expanded affiliated group (as defined in §1.1471-5(i)) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) Certain territory entities. Any territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized. The term bona fide resident of a U.S. territory means an individual who qualifies as a bona fide resident under section 937(a) and §1.937-1.

(iv) Active NFFEs. Any entity (an active NFFE) if less than 50 percent of its gross income for the preceding calendar year is passive income and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are held for the production of passive income, as determined after the application of paragraph (c)(1)(iv)(B) of this section (passive assets).

(A) Passive income. Except as provided in paragraph (c)(1)(iv)(B) of this section, the term passive income means the portion of gross income that consists of—

(1) Dividends, including substitute dividend amounts;

(2) Interest;

(3) Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool;

(4) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;

(5) Annuities;

(6) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in paragraphs (c)(1)(iv)(A)(1) through (5) of this section;

(7) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including—

(i) Any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the entity as a controlled foreign corporation; or

(ii) Active business gains or losses from the sale of commodities, but only if substantially all the foreign entity's commodities are property described in paragraph (1), (2), or (8) of section 1221(a);

(8) The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction;

(9) Net income from notional principal contracts as defined in §1.446-3(c)(1);

(10) Amounts received under cash value insurance contracts; or

(11) Amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts.

(B) Exceptions from passive income treatment. Notwithstanding paragraph (c)(1)(iv)(A) of this section, the term passive income does not include—

(1) Any income from interest, dividends, rents, or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income. For purposes of this paragraph (c)(1)(iv)(B)(1), the term "related person" has the meaning given such term by section 954(d)(3) determined by substituting "foreign entity" for "controlled foreign corporation" each place it appears in section 954(d)(3); or

(2) In the case of a foreign entity that regularly acts as a dealer in property described in paragraph (c)(1)(iv)(A)(6) of this section (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities)—

(i) Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and

(ii) If such dealer is a dealer in securities (within the meaning of section 475(c)(2)), any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

(C) Methods of measuring assets. For purposes of this paragraph (c)(1)(iv), the value of an NFFE's assets is determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet.

(v) Excepted nonfinancial entities. Any entity described in §1.1471-5(e)(5) (referring to holding companies, treasury centers, and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating or emerging from bankruptcy; and non-profit organizations).

(2) Payments made to a WP, WT, or an exempt beneficial owner. A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may—

(i) Treat the payee as an NFFE that is a WP or WT; or

(ii) Treat the payment as made to an exempt beneficial owner.

(d) Rules for determining payee and beneficial owner--(1) In general. For purposes of this section, except in the case of a payee that is a WP or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under §1.1471-3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of §1.1471-3(d).

(2) Payments made to an NFFE that is a WP or WT. A withholding agent may treat the payee of a withholdable payment as an NFFE that is a WP or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as such under the rules of §1.1471-3(b)(3) and (d).

(3) Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT. A withholding agent may treat a partner or beneficiary of an NFFE that is an NWP or NWT, respectively, as the payee of a withholdable payment under this section if the withholding agent can reliably associate the payment with a valid Form W-8 or written notification that the NFFE is a flow-through entity as described in §1.1471-3(c)(2), including valid documentation sufficient to establish the chapter 4 status of each payee of the payment that is a partner or beneficiary, respectively, by applying the rules described in §1.1471-3(d).

(4) Payments made to a beneficial owner that is an NFFE. A withholding agent may treat the beneficial owner of a withholdable payment as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners if it can reliably associate the payment with valid documentation identifying the beneficial owner as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners by applying the rules described in §1.1471-3(d).

(5) Absence of valid documentation. A withholding agent that cannot reliably associate the payment with documentation as described in any of

paragraphs (d)(2) through (4) of this section must treat the payment as made to a payee in accordance with the presumption rules under §1.1471-3(f).

(e) Information reporting requirements--(1) Reporting on withholdable payments. A withholding agent that treats a withholdable payment as made to any payee described in paragraph (d) of this section must provide information about such payee on Form 1042-S and file a withholding income tax return on Form 1042 to the extent required under §1.1474-1(d) and (c), respectively.

(2) Reporting on substantial U.S. owners. A withholding agent that receives information about any substantial U.S. owners of an NFFE that is not an excepted NFFE must report information about the NFFE's substantial U.S. owners in accordance with §1.1474-1(i)(2). See §1.1471-4(d) for the reporting requirements of a participating FFI with respect to the substantial U.S. owners of account holders that are NFFEs.

(f) Effective/applicability date. This section generally applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability, see §1.1472-1(b).

Par. 12. Section 1.1473-1 is added to read as follows:

§1.1473-1 Section 1473 definitions.

(a) Definition of withholdable payment--(1) In general. Except as otherwise provided in this paragraph (a) and §1.1471-2(b) (regarding grandfathered obligations), the term withholdable payment means—

(i) Any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section); and

(ii) For any sales or other dispositions occurring after December 31, 2016, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i) of this section) of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

(2) U.S. source FDAP income defined--(i) In general--(A) FDAP income defined. For purposes of chapter 4, the term FDAP income means fixed or determinable annual or periodic income that is described in §1.1441-2(b)(1) or §1.1441-2(c) (excluding income described in paragraph (a)(2)(vi) of this section or §1.1441-2(b)(2) (such as gains derived from the sale of certain property)) and including the types of income enumerated in paragraphs (a)(2)(iii) through (v) of this section.

(B) U.S. source. The term U.S. source means derived from sources within the United States. A payment is derived from sources within the United States if it is income treated as derived from sources within the United States under sections 861 through 865 and other relevant provisions of the Code. In the case of a payment of FDAP income for which the source cannot be determined at the time of payment, see §1.1471-2(a)(5).

(C) Exceptions to withholding on U.S. source FDAP income not applicable under chapter 4. Except as otherwise provided in paragraph (a)(4) of this section, no exception to withholding on U.S. source FDAP income for purposes other than chapter 4 applies for purposes of determining whether a payment of such income is a withholdable payment under chapter 4. Thus, for example, an exclusion from an amount subject to withholding under §1.1441-2(a) or an

exclusion from taxation under section 881 does not apply for purposes of determining whether such income constitutes a withholdable payment.

(ii) Special rule for certain interest. Interest that is described in section 861(a)(1)(A) (relating to interest paid by foreign branches of domestic corporations and partnerships) is treated as U.S. source FDAP income.

(iii) Original issue discount. The rules described in §1.1441-2(b)(3)(ii) for determining when an amount representing original issue discount is subject to withholding for chapter 3 purposes apply for purposes of determining when original issue discount from sources within the United States is U.S. source FDAP income.

(iv) REMIC residual interests. U.S. source FDAP income includes an amount described in §1.1441-2(b)(5).

(v) Withholding liability of payee that is satisfied by withholding agent. If a withholding agent satisfies a withholding liability arising under chapter 4 with respect to a withholdable payment from the withholding agent's own funds, the satisfaction of such liability is treated as an additional payment of U.S. source FDAP income to the payee to the extent that the withholding agent's satisfaction of such withholding liability also satisfies a tax liability of the payee under section 881 or 871 with respect to the same payment, and the satisfaction of the tax liability constitutes additional income to the payee under §1.1441-3(f) that is U.S. source FDAP income. In such case, the amount of any additional payment treated as made by the withholding agent for purposes of this paragraph (a)(2)(v) and any tax liability resulting from such payment shall be determined under

§1.1441-3(f). See §1.1474-6 regarding the coordination of the withholding requirements under chapters 3 and 4 in the case of a withholdable payment that is also subject to withholding under chapter 3.

(vi) Special rule for sales of interest bearing debt obligations. Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates.

(vii) Payment of U.S. source FDAP income--(A) Amount of payment of U.S. source FDAP income. The amount of U.S. source FDAP income is the gross amount of the payment of such income, unreduced by any deductions or offsets. The rules of §1.1441-3(b)(1) shall apply to determine the amount of an interest payment on an interest-bearing obligation. In the case of a corporate distribution, the distributing corporation or intermediary shall determine the portion of the distribution that is treated as U.S. source FDAP income under this paragraph (a)(2) in the same manner as the distributing corporation or intermediary determines the portion of the distribution subject to withholding under §1.1441-3(c). Any portion of a payment on a debt instrument or a corporate distribution that does not constitute U.S. source FDAP income under this paragraph (a)(2) solely because of a provision other than the source rules of sections 861 through 865 shall be taken into account as gross proceeds under paragraph (a)(3) of this section. For rules regarding the determination of the amount of a payment of U.S. source FDAP income under paragraph (a)(2) of this

section made in a medium other than U.S. dollars, see §1.1441-3(e). For determining the amount of a payment of a dividend equivalent, see section 871(m) and the regulations thereunder.

(B) When payment of U.S. source FDAP income is made. A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash method of accounting. If an FFI acts as an intermediary with respect to a payment of U.S. source FDAP income, the FFI will be treated as making a payment of such U.S. source FDAP income to the person with respect to which the FFI acts as an intermediary when it pays or credits such amount to such person. The following rules also apply for purposes of this paragraph (a)(2)(vii)(B): §§1.1441-2(e)(2) (regarding when a payment is considered made in the case of income allocated under section 482); 1.1441-2(e)(3) (regarding blocked income); 1.1441-2(e)(4) (regarding when a dividend is considered paid); and 1.1441-2(e)(5) (regarding when interest is considered paid if a foreign person has made an election under §1.884-4(c)(1)).

(3) Gross proceeds defined--(i) Sale or other disposition--(A) In general. Except as otherwise provided in this paragraph (a)(3)(i), the term sale or other disposition means any sale, exchange, or disposition of property described in paragraph (a)(3)(ii) of this section that requires recognition of gain or loss under section 1001(c), determined without regard to whether the owner of such property is subject to U.S. federal income tax with respect to such sale, exchange, or disposition. The term sale or other disposition includes (but is not

limited to) sales of securities; redemptions of stock; retirements and redemptions of indebtedness; entering into short sales; and a closing transaction under a forward contract, option, or other instrument that is otherwise a sale. Such term further includes a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment. Such term does not include grants or purchases of options, exercises of call options for physical delivery, transfers of securities for which gain or loss is excluded from recognition under section 1058, or mere executions of contracts that require delivery of personal property or an interest therein. For purposes of this section only, a constructive sale under section 1259 or a mark to fair market value under section 475 or 1296 is not a sale or disposition.

(B) Special rule for sales effected by brokers. In the case of a sale effected by a broker (with the term effect defined in §1.6045-1(a)(10)), a sale means a sale as defined in §1.6045-1(a)(9) with respect to property described in paragraph (a)(3)(ii) of this section.

(C) Special rule for gross proceeds from sales settled by a clearing organization. In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from sales or dispositions are limited to the net amount paid or credited to a member's account that is associated with sales or other dispositions of property described in paragraph (a)(3)(ii) of this section by such member as of the time that such transactions are settled under the settlement procedures of such organization.

(ii) Property of a type that can produce interest or dividend payments that would be U.S. source FDAP income--(A) In general. Property is of a type that can produce interest or dividends payments that would be U.S. source FDAP income if the property is of a type that ordinarily gives rise to the payment of interest or dividends that would constitute U.S. source FDAP income, regardless of whether any such payment is made during the period such property is held by the person selling or disposing of such property. Thus, for example, stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States if a dividend from such corporation would be from sources within the United States, regardless of whether the stock pays dividends at regular intervals and regardless of whether the issuer has any plans to pay dividends or has ever paid a dividend with respect to the stock.

(B) Contracts producing dividend equivalent payments. In the case of any contract that results in the payment of a dividend equivalent as defined in section 871(m) and the regulations thereunder (including as part of a termination payment), such contract shall be treated as property that is described in paragraph (a)(3)(ii)(A) of this section, without regard to whether the taxpayer is a foreign person subject to U.S. federal income tax with respect to such transaction. To the extent that the proceeds from a termination payment include the payment of a dividend equivalent, the gross amount of such proceeds will not include the amount of such dividend equivalent.

(C) Regulated investment company distributions. The amount of a distribution that is designated as a capital gain dividend under section

852(b)(3)(C) or 871(k)(2) is a payment of gross proceeds to the extent attributable to property described in paragraph (a)(3)(ii)(A) of this section.

(iii) Payment of gross proceeds--(A) When gross proceeds are paid. With respect to a sale that is effected by a broker that results in a payment of gross proceeds as defined in this paragraph (a)(3), the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment. If gross proceeds are paid to a financial institution or other entity acting as an intermediary for the person selling or otherwise disposing of the property, the gross proceeds are considered paid to such person on the date that the proceeds are credited to the account of or otherwise made available to such institution.

(B) Amount of gross proceeds. Except as otherwise provided in this paragraph (a)(3)—

(1) The amount of gross proceeds from a sale or other disposition means the total amount realized as a result of a sale or other disposition of property described in paragraph (a)(3)(ii) under section 1001(b);

(2) In the case of a sale effected by a broker, the amount of gross proceeds from a sale or other disposition means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans. The broker may (but is not required to) take commissions with respect to the sale into account in determining the amount of gross proceeds;

(3) In the case of a corporate distribution, the amount treated as gross proceeds excludes the amount described in paragraph (a)(2)(vii)(A) of this section that is treated as U.S source FDAP income;

(4) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates; and

(5) In the case of a sale, retirement, or redemption of a debt obligation, gross proceeds excludes the amount of original issue discount treated as U.S. source FDAP income under paragraph (a)(2)(iii) of this section.

(4) Payments not treated as withholdable payments. The following payments are not withholdable payments under paragraph (a)(1) of this section—

(i) Certain short-term obligations. A payment of interest or original issue discount on short-term obligations described in section 871(g)(1)(B)(i).

(ii) Effectively connected income. Any payment to the extent it gives rise to an item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year. An item of income is taken into account under section 871(b)(1) or 882(a)(1) when the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year. An amount of income shall not be treated as taken into account under section 871(b)(1) or 882(a)(1) if the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner

claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States.

(iii) Excluded nonfinancial payments. Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services. Notwithstanding the preceding sentence and except as otherwise provided in §1.1471-2(b) (regarding grandfathered obligations), withholdable payments include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in §1.861-2(a)(7)) other than interest described in the preceding sentence; investment advisory fees; custodial fees; and bank or brokerage fees.

(iv) Gross proceeds from sales of excluded property. Gross proceeds from the sale or other disposition of any property that can produce U.S. source FDAP income if all such U.S. source FDAP income would be excluded from the definition of withholdable payment under paragraphs (a)(4)(i) through (iii) of this section.

(v) Fractional shares. Payments arising in sales described in §1.6045-1(c)(3)(ix).

(vi) Offshore payments of U.S. source FDAP income prior to 2017 (transitional). A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary with respect to the payment. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentence shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under §1.1471-2(a)(2)(ii). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3.

(5) Special payment rules for flow-through entities, complex trusts, and estates--(i) In general. This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat U.S. source FDAP income as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) Partnerships. An amount of U.S. source FDAP income is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in §1.1441-5(b)(2)(i)(A).

(iii) Simple trusts. An amount of U.S. source FDAP income is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in §1.1441-5(b)(2)(ii).

(iv) Complex trusts and estates. An amount of U.S. source FDAP income is treated as paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in §1.1441-5(b)(2)(iii).

(v) Grantor trusts. If an amount of U.S. source FDAP income is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) Special rule for an NWP or NWT. In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income is treated as paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) Special rule for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity. [Reserved].

(6) Reporting of withholdable payments. See §1.1474-1(c) and (d) for a description of the income tax return and information reporting requirements applicable to a withholding agent that has made a withholdable payment.

(7) Example. Satisfaction of payee's chapter 4 liability by withholding agent. Recalcitrant account holder (RA) is entitled to receive a payment of $100 of U.S. source interest from withholding agent, WA. The payment is subject to withholding under chapter 4, but is not subject to withholding under section 1442, and RA has no substantive tax liability under section 881 with respect to this payment. WA pays the full $100 to RA and, after the date of payment, pays the $30 of tax due under chapter 4 to the IRS from its own funds. Because no underlying tax liability of RA is satisfied, and further because WA and RA did not execute any agreement for WA to pay this tax and WA did not have an obligation to pay this tax apart from the requirements of chapter 4, WA's payment of the tax

does not give rise to a deemed payment of U.S. source FDAP income to RA under paragraph (a)(2)(v) of this section. Thus, WA is not required to pay any additional tax with respect to this payment for purposes of chapter 4.

(b) Substantial U.S. owner--(1) Definition. Except as otherwise provided in paragraph (b)(4) or (5) of this section, the term substantial United States owner (or substantial U.S. owner) means:

(i) With respect to any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value);

(ii) With respect to any foreign partnership, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership; and

(iii) In the case of a trust–

(A) Any specified U.S. person treated as an owner of any portion of the trust under sections 671 through 679; and

(B) Any specified U.S. person that holds, directly or indirectly, more than 10 percent of the beneficial interests of the trust.

(2) Indirect ownership of foreign entities. For purposes of determining a person's interest in a foreign entity, the following rules shall apply.

(i) Indirect ownership of stock. Stock of a foreign corporation that is owned directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or

an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, and the beneficiaries of the trust. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) Indirect ownership in a foreign partnership or ownership of a beneficial interest in a foreign trust. A capital or profits interest in a foreign partnership or an ownership or beneficial interest (as described in paragraph (b)(3) of this section) in a foreign trust that is owned or held directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned or held proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the partnership or beneficial trust interest, and the beneficiaries of the trust. Partnership or beneficial trust interests considered to be owned or held by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned or held by such person.

(iii) Ownership and holdings through options. If a specified U.S. person holds, directly or indirectly (applying the principles of paragraphs (b)(2)(i) and (ii) of this section) an option to acquire stock in a foreign corporation, a capital or profits interest in a foreign partnership, or an ownership or beneficial interest in a foreign trust, such person is considered to own the underlying equity or other ownership interest in such foreign entity for purposes of this paragraph (b). For purposes of the preceding sentence, an option to acquire such an option, and each one of a series of such options, shall be considered an option to acquire such stock or other ownership interest described in this paragraph (b)(2)(iii).

(iv) Determination of proportionate interest. For purposes of this paragraph (b), and except as otherwise provided in paragraph (b)(3) of this section, the determination of a person's proportionate interest in a foreign corporation, partnership, or trust is based on all of the relevant facts and circumstances. In making this determination, any arrangement that artificially decreases a specified U.S. person's proportionate interest in any such entity will be disregarded in determining whether such person is a substantial U.S. owner. In lieu of applying the rules of this paragraph (b)(2) to determine whether an owner's proportionate interest in a foreign entity meets the 10 percent threshold described in paragraph (b)(1) of this section, the entity or its withholding agent may opt to treat the owner as a substantial U.S. owner.

(v) Interests owned or held by a related person. For purposes of determining whether a person has more than a 10 percent interest in a foreign corporation, foreign partnership, or foreign trust, the person must aggregate the

ownership or beneficial interests in the foreign corporation, foreign partnership, or foreign trust that are owned or held by any person related to such person. For purposes of the preceding sentence, a person is related to another person if the relationship between such persons would result in a disallowance of losses under §§1.267(a)-1 through 1.267(f)-1 or §1.707-1(b). Section 1.267(c)-1(a)(4) is applied as if the family of an individual includes the spouses of the members of the individual's family.

(3) Beneficial interest in a foreign trust--(i) In general. For purposes of paragraph (b)(1)(iii)(B) of this section, a person holds a beneficial interest in a foreign trust if such person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For purposes of this section, a mandatory distribution means a distribution that is required to be made pursuant to the terms of the trust document. A discretionary distribution means a distribution that is made to a person at the discretion of the trustee or a person with a limited power of appointment of such trust.

(ii) Determining the 10 percent threshold in the case of a beneficial interest in a foreign trust. A person will be treated as holding directly or indirectly more than 10 percent of the beneficial interest in a foreign trust if--

(A) The beneficiary receives, directly or indirectly, only discretionary distributions from the trust and the fair market value of the currency or other property distributed, directly or indirectly, from the trust to such person during the prior calendar year exceeds 10 percent of the value of either all of the

distributions made by the trust during that year or all of the assets held by the trust at the end of that year;

(B) The person is entitled to receive, directly or indirectly, mandatory distributions from the trust and the value of the person's interest in the trust, as determined under section 7520, exceeds 10 percent of the value of all the assets held by the trust; or

(C) The person is entitled to receive, directly or indirectly, mandatory distributions and may receive, directly or indirectly, discretionary distributions from the trust, and the value of the person's interest in the trust, determined as the sum of the fair market value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the person and the value of the person's interest in the trust as determined under section 7520 at the end of that year, exceeds either 10 percent of the value of all distributions made by such trust during the prior calendar year or 10 percent of the value of all the assets held by the trust at the end of that year.

(4) Exceptions--(i) De minimis amount or value exception. A specified U.S. person is not treated as a substantial U.S. owner if—

(A) The fair market value of the currency or other property distributed, directly or indirectly, from the trust to such specified U.S. person during the prior calendar year is $5,000 or less and,

(B) In the case of a specified U.S. person that is entitled to receive mandatory distributions, the value of such person's interest in the trust is $50,000 or less.

(ii) Trusts wholly owned by certain U.S. persons. A trust that is treated as owned only by U.S. persons under sections 671 through 679 is not required to treat any of its beneficiaries as substantial U.S. owners.

(5) Special rule for certain financial institutions. In the case of any financial institution described in §1.1471-5(e)(1)(iii) or (iv) (referring to investment entities and specified insurance companies), this section shall be applied by substituting "0 percent" for "10 percent" in each place that it appears. Additionally, in the case of a financial institution described in §1471-5(e)(1)(iii) that is a trust, the rules of paragraph (b)(3) and (4) of this section (referring to beneficial interests in a trust) shall be applied by substituting "calendar year" for "prior calendar year" in each place that it appears.

(6) Determination dates for substantial U.S. owners. A foreign entity may make the determination of whether it has one or more direct or indirect substantial U.S. owners as of the last day of such entity's accounting year or as of the date on which such foreign entity provides the documentation described in §1.1471-3(d) to the withholding agent for which such determination is required to be made. See §1.1471-4(c) for when a participating FFI is required to obtain documentation with respect to its account holders.

(7) Examples. The following examples illustrate the provisions of paragraph (b) of this section:

Example 1. Indirect ownership. U, a specified U.S. person, owns directly 100% of the sole class of stock of F1, a foreign corporation. F1 owns directly 90% of the sole class of stock of F2, a foreign corporation, and U owns directly the remaining 10% of the sole class of stock of F2. F2 owns directly 10% of the sole class of stock of F3, a foreign corporation, and U owns directly 3% of the sole class of stock of F3. U is treated as owning 13% (3% directly and 10% indirectly) of the sole class of stock of F3 and 100% (10% directly and 90% indirectly) of the sole class of stock of F2 for purposes of this paragraph (b). U is a substantial U.S. owner of F1, F2, and F3.

Example 2. Indirect ownership through entities that are specified U.S. persons. U, a specified U.S. person, owns directly 100% of the sole class of stock of US1, a U.S. corporation that is a specified U.S. person. US1 owns directly 100% of the sole class of stock of US2, a U.S. corporation that is a specified U.S. person. US2 owns directly 15% of the sole class of stock of FC, a foreign corporation. For purposes of this paragraph (b), U, US1, and US2 are all substantial U.S. owners of FC.

Example 3. Determining the 10% threshold in the case of a beneficial interest in a foreign trust. U, a U.S. citizen, holds an interest in FT1, a foreign trust, under which U may receive discretionary distributions from FT1. U also holds an interest in FT2, a foreign trust, and FT2, in turn, holds an interest in FT1 under which FT2 may receive discretionary distributions from FT1. U receives $25,000 from FT1 in Year 1. FT2 receives $120,000 from FT1 in Year 1 and distributes the entire amount to its beneficiaries in Year 1. The distribution from FT1 is FT2's only source of income and FT2's distributions in Year 1 total $120,000. U receives $40,000 from FT2 in Year 1. FT1's distributions in Year 1 total $750,000. U's discretionary interest in FT1 is valued at $65,000 at the end of Year 1 and therefore does not meet the 10% threshold as determined under paragraph (b)(3)(ii)(A). U's discretionary interest in FT2, however, is valued at $40,000 at the end of Year 1 and therefore meets the 10% threshold as determined under paragraph (b)(3)(ii)(A).

Example 4. Determining ownership (determination date). F, a foreign corporation that is an NFFE, has a calendar year accounting year. On December 31 of Year 1, U, a specified U.S. person, owns 12% of the sole class of outstanding stock of F. In March of Year 2, F redeems a portion of U's stock and reduces U's ownership of F to 9%. In May of Year 2, F opens an account with P, a participating FFI, and delivers to P the documentation required under §1.1471-3(d). At the time F opens its account with P, U is the only specified U.S. person that directly or indirectly owns stock in F. Because of the redemption, U's interest in F is 9% on the date F opens its account with P. Pursuant to paragraph (b)(6) of this section, F may determine whether it has a substantial U.S. owner as of the date it provides the documentation required under §1.1471-3(d) to P,

which would be the day it opens the account. As a result, F may indicate in its §1.1471-3(d) documentation that it has no substantial U.S. owners.

(c) Specified U.S. person. The term specified United States person (or specified U.S. person) means any U.S. person other than—

(1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in §1.1472-1(c)(1)(i);

(2) Any corporation that is a member of the same expanded affiliated group as a corporation described in §1.1472-1(c)(1)(i);

(3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);

(4) The United States or any wholly owned agency or instrumentality thereof;

(5) Any State, the District of Columbia, any U.S. territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(6) Any bank as defined in section 581;

(7) Any real estate investment trust as defined in section 856;

(8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);

(9) Any common trust fund as defined in section 584(a);

(10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);

(11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;

(12) A broker; and

(13) Any tax exempt trust under a section 403(b) plan or section 457(g) plan.

(d) Withholding agent--(1) In general. Except as provided in this paragraph (d), the term withholding agent means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment or foreign passthru payment.

(2) Participating FFIs and registered deemed-compliant FFIs as withholding agents. The term withholding agent includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in §1.1471-5(h)). The term withholding agent also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under §1.1471-5(f)(1)(ii). For the withholding requirements of a participating FFI, including the requirement to withhold with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see §§1.1471-4(b) and 1.1472-1(a).

(3) Grantor trusts as withholding agents. The term withholding agent includes a grantor trust with respect to a withholdable payment or a foreign passthru payment (in the case of a grantor trust that is a participating FFI) made

to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such a person, see §1.1473-1(a)(5)(v).

(4) Deposit and return requirements. See §1.1474-1(b) for a withholding agent's requirement to deposit any tax withheld, and §1.1474-1(c) and (d) for the requirement to file income tax and information returns (including the special allowance in §1.1474-1(b)(2) for participating FFIs with respect to dormant accounts).

(5) Multiple withholding agents. When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See §1.1474-1(a). A person who, as a nominee described in §1.6031(c)-1T, has furnished to a partnership all of the information required to be furnished under §1.6031(c)-1T(a) shall not be treated as a withholding agent if the person has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(6) Exception for certain individuals. An individual is not a withholding agent with respect to a withholdable payment made by the individual outside the course of such individual's trade or business (including as an agent with respect to making or receiving such payment).

(e) Foreign entity. The term foreign entity means any entity that is not a U.S. person and includes a territory entity.

(f) Effective/applicability date. This section generally applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability see §§1.1473-1(a)(1)(ii) and 1.1473-1(a)(4)(vi).

Par. 13. Section 1.1474-1 is added to read as follows:

§1.1474-1 Liability for withheld tax and withholding agent reporting.

(a) Payment and returns of tax withheld--(1) In general. A withholding agent is required to deposit any tax withheld pursuant to chapter 4 as provided under paragraph (b) of this section and to make the returns prescribed by paragraphs (c) and (d) of this section. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.

(2) Withholding agent liability. A withholding agent that is required to withhold with respect to a payment under §1.1471-2(a), 1.1471-4(b) (in the case of a participating FFI), or 1.1472-1(b) but fails either to withhold or to deposit any tax withheld with an authorized financial institution, as required under paragraph (b) of this section, is liable for the amount of tax not withheld and deposited.

(3) Use of agents--(i) In general. Except as otherwise provided in this paragraph (a)(3), a withholding agent may authorize an agent to fulfill its obligations under chapter 4. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts subject to withholding, the withholding and deposit of tax withheld, and the reporting required on the relevant form) are imputed to the withholding agent on whose behalf it is acting.

(ii) Authorized agent. An agent is authorized only if—

(A) There is a written agreement between the withholding agent and the person acting as agent;

(B) A Form 8655, "Reporting Agent Authorization," is filed with the IRS if the agent (including any sub-agent) is acting as a reporting agent for filing Form 1042 or making tax deposits and payments;

(C) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapter 4; and

(D) The withholding agent remains fully liable for the acts of its agent (or any sub-agent) and does not assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Code.

(iii) Liability of withholding agent acting through an agent. A withholding agent acting through an agent is liable for any failure of the agent, such as a failure to withhold an amount or make a payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the withholding agent. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding agent. Except as otherwise provided in the QI, WP, or WT agreement, an agent of a withholding agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 4 and does not benefit from the special procedures or

exceptions that apply to a QI, WP, or WT. If the agent is a foreign person, however, a U.S. withholding agent may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of chapter 4. The withholding agent's liability under paragraph (a)(2) of this section will exist even if the agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of chapter 4. The same tax, interest, or penalties, however, shall not be collected more than once.

(4) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions--(i) In general. A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under §1.1471-2(a), 1.1471-4(b), or 1.1472-1(b), or withholds at less than the 30 percent rate prescribed, is liable under this section for the tax required to be withheld under §1.1471-2(a), 1.1471-4(b), or 1.1472-1(b) (including interest, penalties, or additions to tax otherwise applicable in respect of the failure to deduct and withhold) unless—

(A) The withholding agent has appropriately relied on the presumptions described in §1.1471-3(f) in order to treat the payment as exempt from withholding; or

(B) The withholding agent obtained after the date of payment valid documentation that meets the requirements of §1.1471-3(c)(7) to establish that the payment was, in fact, exempt from withholding.

(ii) Withholding satisfied by another withholding agent. If a withholding agent fails to deduct and withhold any amount required to be deducted and

withheld under §1.1471-2(a), 1.1471-4(b), or 1.1472-1(b), and the tax is satisfied by another withholding agent or is otherwise paid, then the amount of tax required to be deducted and withheld shall not be collected from the first-mentioned withholding agent. However, the withholding agent is not relieved from liability in any such case for any interest or penalties or additions to tax otherwise applicable in respect of the failure to deduct and withhold.

(b) Payment of withheld tax--(1) In general. Except as otherwise provided in this paragraph (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax with an authorized financial institution as provided in §1.6302-2(a) or by electronic funds transfer as provided under §31.6302-1(h) of this chapter. If for any reason the total amount of tax required to be deposited for any calendar year pursuant to the income tax return described in paragraph (c) of this section has not been deposited pursuant to §1.6302-2, the withholding agent shall pay the balance of such tax due for such year at such place as the IRS shall specify. The tax shall be paid when filing the return described in paragraph (c)(1) of this section for such year, unless the IRS specifies otherwise. See §1.1471-4(b)(6) for the special rule allowing participating FFIs to set aside in escrow amounts withheld with respect to dormant accounts.

(2) Special rule for foreign passthru payments and payments of gross proceeds that include an undetermined amount of income subject to tax. [Reserved].

(c) Income tax return--(1) In general. Every withholding agent shall file an income tax return on Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," (or such other form as the IRS may prescribe) to report chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section). This income tax return shall be filed on the same income tax return used to report amounts subject to reporting for chapter 3 purposes as described in §1.1461-1(b). The return must show the aggregate amount of payments that are chapter 4 reportable amounts and must report the tax withheld for the preceding calendar year by the withholding agent, in addition to any information required by the form and its accompanying instructions. Withholding certificates and other statements or information provided to a withholding agent are not required to be attached to the return. A Form 1042 must be filed under this paragraph (c)(1) even if no tax was required to be withheld for chapter 4 purposes during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable period of limitations on assessment and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable period of limitations. Adjustments to the total amount of tax withheld described in §1.1474-2 shall be stated on the return as prescribed by the form and its accompanying instructions.

(2) Participating FFIs, registered deemed-compliant FFIs, and U.S. branches treated as U.S. persons. Except as otherwise provided under an FFI agreement, a participating FFI or registered deemed-compliant FFI shall file

Form 1042 in accordance with paragraph (c)(1) of this section to report chapter 4 reportable amounts for which the participating FFI or registered deemed-compliant FFI is required to file Form 1042-S, as described in paragraph (d)(4)(iii) of this section. A participating FFI or registered deemed-compliant FFI with a U.S. branch that is treated as a U.S. person must exclude from Form 1042 payments made and taxes withheld by such U.S. branch. A U.S. branch that is treated as a U.S. person shall file a separate Form 1042 in accordance with paragraph (c)(1) of this section and the instructions on the form to report chapter 4 reportable amounts.

(3) Amended returns. An amended return under this paragraph (c)(3) must be filed on Form 1042. An amended return must include such information as the form or its accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(d) Information returns for payment reporting--(1) Filing requirement--(i) In general. Every withholding agent must file an information return on Form 1042-S, “Foreign Person's U.S. Source Income Subject to Withholding,” (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. Except as otherwise provided in paragraphs (d)(4)(ii)(B) (certain unknown recipients) and (d)(4)(i)(B) and (d)(4)(iii)(A) of this section (describing payees includable in reporting pools of a participating FFI or registered deemed-compliant FFI), a separate Form 1042-S must be filed with

the IRS for each recipient of an amount subject to reporting under paragraph (d)(2)(i) of this section and for each separate type of payment made to a single recipient in accordance with paragraph (d)(4)(i) of this section. The Form 1042-S shall be prepared in such manner as the form and its accompanying instructions prescribe. One copy of the Form 1042-S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the form. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042-S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) and to any intermediary or flow-through entity described in paragraph (d)(3)(vii) of this section on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The copy provided to the persons described in the preceding sentence may show more than one type of income or other payment subject to reporting on the Form 1042-S. The withholding agent must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates (determined as set forth in paragraph (c)(1) of this section). See paragraph (d)(4)(iii) of this section for the additional reporting requirements of participating FFIs and deemed-compliant FFIs.

(ii) Recipient--(A) Defined. Except as otherwise provided in paragraph (d)(1)(ii)(B) of this section, the term recipient under this paragraph (d) means a person that is a recipient of a chapter 4 reportable amount, and includes—

(1) With respect to a payment of U.S. source FDAP income—

(i) A QI (including a QI that is a foreign branch of a U.S. person);

(ii) A WP or WT;

(iii) A participating FFI or a registered deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch that is not treated as a U.S. person) and that provides its withholding agent with sufficient information to determine the portion of the payment allocable to its reporting pools of recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons described in paragraph (d)(4)(i)(B) of this section;

(iv) An account holder or payee to the extent that the withholding agent issues a Form 1042-S to such account holder or payee;

(v) An FFI that is a beneficial owner of the payment (including a limited branch of the FFI);

(vi) A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person;

(vii) A territory financial institution treated as a U.S. person;

(viii) An excepted NFFE that is not acting as an agent or intermediary with respect to the payment;

(ix) A passive NFFE except to the extent described in paragraph (d)(1)(ii)(A)(1)(x) (certain flow-through NFFEs) of this section;

(x) A foreign person that is a partner or beneficiary in a flow-through entity that is an NFFE when the withholding agent treats such partner or beneficiary as a payee and beneficial owner because the requirements of §1.1472-1(d)(3) are met;

(xi) An exempt beneficial owner of a payment, including when the payment is made to such owner through an FFI (including a nonparticipating FFI) that provides documentation and information sufficient for a withholding agent to determine the portion of the payment allocable to such owner; and

(xii) Any person (including a flow-through entity) or U.S. branch of a participating FFI or reporting Model 1 FFI receiving such income that is (or is deemed to be) effectively connected with the conduct of its trade or business in the United States;

(2) With respect to a payment other than U.S. source FDAP income. [Reserved]; and

(3) Any other person required to be reported as a recipient by Form 1042-S, its accompanying instructions, under an FFI agreement, or paragraph (d)(4)(iii) of this section with respect to the Form 1042-S reporting requirements of a participating FFI.

(B) Persons that are not recipients. Persons that are not recipients include—

(1) With respect to a payment of U.S. source FDAP income—

(i) A participating FFI, registered deemed-compliant FFI, or certified deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch

that is not treated as a U.S. person) and that fails to provides its withholding agent with sufficient information to allocate the payment to its account holders and payees;

(ii) A financial institution (other than a nonparticipating FFI) to the extent that the withholding agent issues a Form 1042-S to the FFI's account holder or payee;

(iii) A participating FFI or a registered deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch that is not treated as a U.S. person) to the extent it provides its withholding agent with sufficient information to allocate the payment to its account holders and payees that are exempt from withholding under chapter 4;

(iv) An account holder or payee of a participating FFI or registered deemed-compliant FFI (including an account holder or payee of a U.S. branch of such FFI that is not treated as a U.S. person) that is included in the FFI's reporting pools described in paragraph (d)(4)(i)(B) of this section;

(v) A nonparticipating FFI that acts as an intermediary with respect to a payment or that is a flow-through entity (including a limited branch);

(vi) An account holder or payee of a nonparticipating FFI except to the extent described in paragraph (d)(1)(ii)(A)(1)(xi) of this section for an exempt beneficial owner;

(vii) Except as provided in paragraph (d)(1)(ii)(A)(1)(i) of this section (referring to a QI that is a foreign branch of a U.S. person), a wholly owned entity

that is disregarded under §301.7701-2(c)(2) of this chapter as an entity separate from its owner;

(viii) A territory financial institution to the extent provided in paragraph (d)(4)(i)(D)(2) and (3) of this section; and

(ix) A flow-through entity that is a passive NFFE to the extent that the withholding agent treats a foreign person that is a partner or beneficiary of the NFFE as a recipient pursuant to paragraph (d)(1)(ii)(A)(1)(x) of this section;

(2) With respect to a payment other than U.S. source FDAP income. [Reserved]; and

(3) Any other person not treated as a recipient on Form 1042-S, its accompanying instructions, or under an FFI agreement.

(2) Amounts subject to reporting--(i) In general. Subject to paragraph (d)(2)(iii) of this section, the term chapter 4 reportable amount means each of the following amounts reportable on a Form 1042-S for purposes of chapter 4 —

(A) U.S. source FDAP income that is reportable on Form 1042-S under §1.1461-1(c)(2)(i) or that is otherwise subject to withholding under chapter 4 paid on or after January 1, 2014;

(B) Gross proceeds subject to withholding under chapter 4;

(C) A foreign passthru payment subject to withholding under chapter 4; and

(D) A foreign reportable amount paid by a participating FFI to the extent reporting of such amount is required under paragraph (d)(4)(iii)(C) of this section. The term foreign reportable amount means a payment of FDAP income as

defined in §1.1473-1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person.

(ii) Exception to reporting. Except as otherwise provided in this paragraph (d)(2)(ii), a chapter 4 reportable amount does not include an amount paid to a U.S. person if the withholding agent treats such U.S. person as a payee for purposes of determining whether withholding is required under §§1.1471-2 and 1.1472-1. A chapter 4 reportable amount does, however, include an amount paid to a participating FFI or registered deemed-compliant FFI to the extent allocable to its reporting pool of payees that are U.S. persons as described in paragraph (d)(4)(i)(B) of this section.

(iii) Coordination with chapter 3. A payment that is not subject to reporting under this paragraph (d)(2) may be subject to chapter 3 reporting on Form 1042-S to the extent provided on such form and its accompanying instructions or under §1.1461-1(c)(2). The recipient information and other information required to be reported on Form 1042-S for purposes of chapter 4 shall be in addition to the information required to be provided on Form 1042-S for purposes of chapter 3.

(3) Required information. The information required to be furnished under this paragraph (d)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules provided under §1.1471-3(f) for a U.S. withholding agent and under §1.1471-4(c)(3)(ii) and (c)(4)(i) for a participating FFI. The Form 1042-S must include the following information, if applicable—

(i) The name, address, and EIN or GIIN (as applicable) of the withholding agent (as required on the instructions to the form) and the withholding agent's status for chapter 3 and chapter 4 purposes (as defined in the instructions to the form);

(ii) A description of each category of income or payment made based on the income and payment codes provided on the form (for example, interest, dividends, and gross proceeds) and the aggregate amount in each category expressed in U.S. dollars;

(iii) For the reporting required by a participating FFI under paragraph (d)(4)(iii)(C) of this section, the aggregate amount of foreign reportable amounts paid to a nonparticipating FFI in addition to the information described in this paragraph (d)(3);

(iv) The rate and amount of withholding applied or, in the case of a payment of U.S. source FDAP income not subject to withholding and reportable under paragraph (d)(2)(i)(A) of this section, the basis for exempting the payment from withholding under chapter 4 based on exemption codes provided on the form);

(v) The name and address of the recipient and its TIN or GIIN (as applicable) and foreign taxpayer identification number and date of birth (as required on the instructions to the form);

(vi) In the case of a payment to a person (including a flow-through entity or U.S. branch) for which the payment is reported as effectively connected with its conduct of a trade or business in the United States or, in the case of a U.S.

branch that is treated as a U.S. person, the EIN used by the person or U.S. branch to file its U.S. income tax returns;

(vii) The name, address of any FFI, flow-through entity that is an NFFE, or U.S. branch or territory financial institution that is not treated as a U.S. person when an account holder or owner of such entity (including an unknown recipient or owner) is treated as the recipient of the payment;

(viii) The EIN or GIIN (as applicable), status for chapter 3 and chapter 4 purposes (as required on the instructions to the form) of an entity reported under paragraph (d)(3)(vii) of this section;

(ix) The country of incorporation or organization (based on the country codes provided on the form) of any entity the name of which appears on the form; and

(x) Such information as the form or instructions may require in addition to, or in lieu of, information required under this paragraph (d)(3).

(4) Method of reporting--(i) Payments by U.S. withholding agent to recipients. Except as otherwise provided in this paragraph (d)(4) or on the Form 1042-S and its accompanying instructions, a withholding agent that is a U.S. person (including a U.S. branch that is treated as a U.S. person and excluding a foreign branch of a U.S. person that is a QI) and that makes a payment of a chapter 4 reportable amount must file a separate form for each recipient that receives such amount. Except as otherwise provided on Form 1042-S or its instructions, only payments for which the income or payment code, exemption code, withholding rate, and recipient code are the same may be reported on a

single form filed with the IRS. See paragraph (d)(4)(ii) of this section for reporting of payments made to a person that is not a recipient and that is otherwise required to be reported on Form 1042-S.

(A) Payments to certain entities that are beneficial owners. If the beneficial owner of a payment made by a U.S. withholding agent is an exempt beneficial owner, an FFI, an NFFE, or a territory entity, it must complete Form 1042-S treating such entity as the recipient of the payment.

(B) Payments to participating FFIs, deemed-compliant FFIs, and certain QIs. Except as otherwise provided in this paragraph (d)(4)(i)(B), a U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT must complete a Form 1042-S treating such FFI as the recipient. With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFI's account holders and payees, a U.S. withholding agent must complete a separate Form 1042-S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool of account holders or payees. See §1.1471-2(a)(2)(i) for the requirement of a withholding agent to withhold on payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also §1.1471-2(a)(2)(iii) in the case of payments made to a QI. See §1.1461-1(c)(4)(A) for the

extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042-S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under §1.1461-1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs, deemed-compliant FFIs, or QIs provide specific payee information for reporting to the recipient of the payment for Form 1042-S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) Amounts paid to a U.S. branch of a participating FFI or registered deemed-compliant FFI. A U.S. withholding agent making a payment of U.S. source FDAP income to a U.S. branch of a participating FFI or registered deemed-compliant FFI shall complete Form 1042-S as follows—

(1) If the U.S. branch is treated as a U.S. person, the withholding agent treats amounts paid as effectively connected with the conduct of the branch's trade or business in the United States, or the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042-S reporting the U.S. branch as the recipient;

(2) If the U.S. branch is not treated as a U.S. person and provides the withholding agent with a withholding certificate that transmits information regarding its reporting pools as described in paragraph (d)(4)(i)(B) of this section or information regarding each recipient that is an account holder or payee of the U.S. branch, the withholding agent must complete a separate Form 1042-S

issued to the U.S. branch for each such pool to the extent required on the form and its accompanying instructions or must complete a separate Form 1042-S issued to each recipient whose documentation is associated with the U.S. branch's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and report the U.S. branch as an entity not treated as a recipient; or

(3) If the U.S. branch is not treated as a U.S. person, to the extent its fails to provide sufficient information regarding its account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient to the extent recipient information is not provided and report the U.S. branch as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(D) Amounts paid to territory financial institutions that are flow-through entities or acting as intermediaries. A U.S. withholding agent making a withholdable payment to a territory financial institution that is a flow-through entity or that acts as an intermediary must complete Form 1042-S as follows—

(1) If the territory financial institution is treated as a U.S. person or is the beneficial owner of the payment, the withholding agent must file Form 1042-S treating the territory financial institution as the recipient;

(2) If the territory financial institution is not treated as a U.S. person and provides the withholding agent with a withholding certificate that transmits information regarding each recipient that is an partner, beneficiary, owner, account holder, or payee, the withholding agent must complete a separate Form 1042-S for each recipient whose documentation is associated with the territory

financial institution's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and must report the territory financial institution under that paragraph; or

(3) If the territory financial institution is not treated as a U.S. person, to the extent its fails to provide sufficient information regarding its partners, beneficiaries, owners, account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient and report the territory financial institution as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(E) Amounts paid to NFFEs. A U.S. withholding agent that makes payments of chapter 4 reportable amounts to a passive NFFE shall complete Forms 1042-S treating the passive NFFE as the recipient, except to the extent such withholding agent treats a partner, beneficiary, or owner in a flow-through entity that is a passive NFFE as a payee. In the case of an excepted NFFE that is a flow-through entity, see §1.1461-1(c)(4)(A) for the extent to which reporting is required with respect to the partners, beneficiaries, or owners of such entities.

(ii) Payments made by withholding agents to certain entities that are not recipients--(A) Entities that provide information for a withholding agent to perform specific payee reporting. If a U.S. withholding agent makes a payment of a chapter 4 reportable amount to a flow-through entity that is a passive NFFE, a nonparticipating FFI receiving a payment on behalf of an exempt beneficial owner, or a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT, except as otherwise provided in paragraph (d)(4)(i)(B) of this section, the

withholding agent must complete a separate Form 1042-S for each recipient that is a partner, beneficiary, owner, or account holder of such entity to the extent the withholding agent can reliably associate the payment with valid documentation (under the rules of §1.1471-3(c) and (d)) provided by such entity, as applicable, with respect to each such recipient. If a payment is made through tiers of such entities, the withholding agent must nevertheless complete Form 1042-S for the recipient to the extent it can reliably associate the payment with documentation provided with respect to that recipient. A withholding agent that is completing a Form 1042-S for a recipient described in this paragraph (d)(4)(ii)(A) must include on the form the information described in paragraph (d)(3)(vii) of this section for the entity through which the recipient directly receives the payment.

(B) Nonparticipating FFI that is a flow-through entity or intermediary. If a withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary with regard to a payment or as a flow-through entity under rules described in §1.1471-3(c)(2)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(1)(xi) of this section (relating to an exempt beneficial owner), the withholding agent must report the recipient of the payment as an unknown recipient and report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) Disregarded entities. If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid withholding certificate or other documentary evidence from a person that is the single owner of a disregarded

entity, the withholding agent must file a Form 1042-S treating the single owner as the recipient. The GIIN on the form, or TIN, if required, must be the single owner's reporting identification number or TIN.

(iii) Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs)--(A) In general. Except as otherwise provided in paragraphs (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(iii)(C) of this section (relating to transitional payee specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFIs that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI, must complete a Form 1042-S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT or U.S. branch of such FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in §1.1471-4(d)(6) and within a particular income code. Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042-S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFI that

is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform specific payee reporting to report a chapter 4 reportable amount made to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3). Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of such FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment, is not required to report the payment on Form 1042-S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042-S. Such FFI is required to report a payment, however, when the FFI knows or, has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042-S. In such case, the FFI must report on Form 1042-S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, §1.1471-4(d)(6) for the requirement to report certain aggregate information regarding accounts held by recalcitrant account holders on Form

8966, “FATCA Report,” regardless of whether withholdable payments are made to such accounts.

(C) Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional). Except as otherwise provided in the instructions to Form 1042-S, if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042-S on a payee specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI and any payment of U.S. source FDAP income made to such nonparticipating FFI for whom the FFI receives the payment (and tax withheld) for each of the calendar years 2015 and 2016.

(D) Reporting by U.S. branches of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person. A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must report amounts paid to recipients on Forms 1042-S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

(iv) Reporting by territory financial institutions. A territory financial institution that is not treated as a U.S. person will not be required to report on Form 1042-S if another withholding agent has reported the same amount with regard to the same recipient for which such entity would otherwise be required to file a return under this paragraph (d)(4)(iv) and such withholding agent has

withheld the entire amount required to be withheld from such payment. A territory financial institution must, however, report payments made to recipients for whom it has failed to provide the appropriate documentation to another withholding agent or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A territory financial institution that is treated as a U.S. person or is otherwise required under this paragraph (d)(4)(iv) to report amounts paid to recipients on Forms 1042-S must report in the same manner as a U.S. withholding agent.

(v) Nonparticipating FFIs. A nonparticipating FFI that is a flow-through entity or that acts as an intermediary with respect to a payment may file Forms 1042 and 1042-S only to report and allocate tax withheld to the account holders, partners, owners, or beneficiaries of the nonparticipating FFI.

(vi) Other withholding agents. Any person that is a withholding agent that is not described in any of paragraphs (d)(4)(i) through (v) of this section shall file Forms 1042-S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form.

(e) Magnetic media reporting. A withholding agent that is not a financial institution and that is required to file 250 or more Form 1042-S information returns for a taxable year must file Form 1042-S returns on magnetic media. See §301.6011-2(b) of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042-S on magnetic media. See §301.1474-1(a) of this chapter for the requirements

applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042-S on magnetic media.

(f) Indemnification of withholding agent. A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 4 and the regulations thereunder. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 4 and the regulations thereunder is treated for purposes of section 1474 and this paragraph (f) as having withheld tax in accordance with the provisions of chapter 4 and the regulations thereunder. This paragraph (f) does not relieve a withholding agent from tax liability under chapter 3 or chapter 4 or the regulations under those chapters.

(g) Extensions of time to file Forms 1042 and 1042-S. The IRS may grant an extension of time to file Form 1042 or 1042-S as described in §1.1461-1(g).

(h) Penalties. For penalties and additions to tax for failure to file returns or file and furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. For penalties and additions to tax for failure to timely pay the tax required to be withheld under chapter 4, see sections 6656, 6672, 7202, and the regulations under those sections.

(i) Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs--(1) Reporting by certain withholding agents with respect to owner-documented FFIs. Beginning in calendar year 2014, if a

withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under §1.1471-4(d)) makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under §1.1471-3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(i) The name of the owner-documented FFI;

(ii) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1);

(iii) The total of all payments made to the owner-documented FFI;

(iv) The account balance or value of the account held by the owner-documented FFI; and

(v) Any other information required on Form 8966 and its accompanying instructions provided for purposes of such reporting.

(2) Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs. Beginning in calendar year 2014, in addition to the reporting on Form 1042-S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under §1.1471-4(d)) that receives information about any substantial U.S.

owners of an NFFE that is not an excepted NFFE as defined in §1.1472-1(c) shall file a report with the IRS for such calendar year with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(i) Name of the NFFE that is owned by a substantial U.S. owner;

(ii) The name, address, and TIN of each substantial U.S. owner of such NFFE;

(iii) The total of all payments made to the NFFE; and

(iv) Any other information as required by the form and its accompanying instructions.

(3) Cross reference to reporting by participating FFIs. For the reporting requirements of a participating FFI with respect to an account holder that is a U.S. owned foreign entity or that it treats as an owner-documented FFI, see §1.1471-4(d).

(j) Effective/applicability date. This section generally applies on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. For other dates of applicability see §§1.1474-1(d)(4)(iii)(C) and 1.1474-1(i).

Par. 14. Section 1.1474-2 is added to read as follows:

§1.1474-2 Adjustments for overwithholding or underwithholding of tax.

(a) Adjustments of overwithheld tax--(1) In general. Except as otherwise provided by this section, a withholding agent that has overwithheld tax under

chapter 4 and made a deposit of the tax as provided in §1.6302-2(a) may adjust the amount of overwithheld tax either pursuant to the reimbursement procedure described in paragraph (a)(3) of this section or pursuant to the set-off procedure described in paragraph (a)(4) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(3) or (a)(4) of this section. After such time, a refund of the amount of overwithheld tax can only be claimed pursuant to the procedures described in §1.1474-5 and chapter 65 of the Code and the regulations thereunder.

(2) Overwithholding. For purposes of this section, the term overwithholding means an amount actually withheld (determined before application of the adjustment procedures under this section and regardless of whether such overwithholding was in error or appeared correct at the time it occurred) from an item of income or other payment pursuant to chapter 4 that is in excess of the greater of--

(i) The amount required to be withheld with respect to such item of income or other payment under chapter 4; and

(ii) The actual tax liability of the beneficial owner that is attributable to the income or payment from which the amount was withheld.

(3) Reimbursement of tax--(i) General rule. Under the reimbursement procedure, the withholding agent may repay the beneficial owner or payee for an amount of overwithheld tax. In such case, the withholding agent may reimburse itself by reducing, by the amount actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under §1.6302-

2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. A withholding agent must obtain valid documentation as described under §1.1471-3(c)(6) with respect to the beneficial owner or payee supporting a reduced rate of withholding before reducing the amount of any deposit of tax under this paragraph (a)(3)(i). Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment of the beneficial owner or payee occurs before the earlier of the due date (without regard to extensions) for filing the Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS;

(B) The withholding agent states on a timely filed (not including extensions) Form 1042-S the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding that the filing of the Form 1042 constitutes a claim for credit in accordance with §1.6414-1.

(ii) Record maintenance. If the beneficial owner or payee is repaid an amount of overwithheld tax under the provisions of this paragraph (a)(3), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment, and the withholding agent must provide a copy of such receipt to the beneficial owner or payee. For this purpose, a canceled check or

an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(4) Set-offs. Under the set-off procedure, the withholding agent may repay the beneficial owner or payee for an amount of overwithheld tax by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from the amount paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such payment under chapter 3 or 4, respectively.

(5) Examples. The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) Fund A is a unit investment trust that is an FFI and a resident of Country X. Fund A also qualifies for the benefits of the income tax treaty between the United States and Country X. On December 1, 2016, domestic corporation C pays a dividend of $100 to Fund A, at which time C withholds $30 of tax pursuant to §1.1471-2(a) and remits the balance of $70 to Fund A, because it does not hold valid documentation that Fund A is a participating FFI or deemed-compliant FFI. On February 10, 2017, prior to the time that C is obligated to file its Form 1042, Fund A furnishes a valid Form W-8BEN described in §§1.1441-1(e)(2)(i) and 1.1471-3(c)(3)(ii) upon which C may rely to treat Fund A as the beneficial owner of the income and as a participating FFI so that C may reduce the rate of withholding to 15% under the provisions of the United States-Country X income tax treaty with respect to the payment. C repays the excess tax withheld of $15 to Fund A.

(ii) During the 2016 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4; accordingly, its Form 1042 for

such year, filed on March 15, 2017, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30 for such year. Pursuant to §1.6414-1, C claims a credit for the overpayment of $15 shown on the Form 1042 for 2016. Accordingly, C is permitted to reduce by $15 any deposit required by §1.6302-2 to be made of tax withheld during the 2017 calendar year with respect to taxes due under chapter 3 or 4. The Form 1042-S required to be filed by C with respect to the dividend of $100 paid to Fund A in 2016 is required to show tax withheld of $30 and tax repaid of $15 to Fund A.

Example 2. (i) In November 2016, Bank A, a foreign bank organized in Country X that is an NQI, receives on behalf of one of its account holders, Z, an individual, a $100 dividend payment from C, a domestic corporation. At the time of payment, C withholds $30 pursuant to §1.1471-2(a) and remits the balance of $70 to Bank A, because it does not hold valid documentation that it may rely on to treat Bank A as a participating FFI or deemed-compliant FFI. In December 2016, prior to the time that C files its Forms 1042 and 1042-S, Bank A furnishes a valid Form W-8IMY and FFI withholding statement described in §1.1471-3(c)(3)(iii) that establishes Bank A's status as a participating FFI that is an NQI, as well as a valid Form W-8BEN that has been completed by Z as described in §1.1471-3(c)(3)(ii) and §1.1441-1(e)(2)(i) upon which C may rely to treat the payment as made to Z, a nonresident alien individual who is a resident of Country X eligible for a reduced rate of withholding of 15% under the income tax treaty between the United States and Country X. Although C has already deposited the $30 that was withheld, as required by §1.6302-2(a)(1)(iv), C remits the amount of $15 to Bank A for the benefit of Z.

(ii) During the 2016 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2017, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30. Pursuant to §1.6414-1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, it is permitted to reduce by $15 any deposit required by §1.6302-2 to be made of tax withheld during the 2017 calendar year. The Form 1042-S required to be filed by C for 2016 with respect to the dividend of $100 beneficially owned by Z is required to show tax withheld of $30 and tax repaid of $15 to Z.

(b) Withholding of additional tax when underwithholding occurs. A withholding agent that has underwithheld under chapter 4 may apply the procedures described in §1.1461-2(b) (by substituting the term "chapter 4" for "chapter 3") to satisfy its withholding obligations under chapter 4 with respect to a payee or beneficial owner.

(c) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 15. Section 1.1474-3 is added to read as follows:

§1.1474-3 Withheld tax as credit to beneficial owner of income.

(a) Creditable tax. The entire amount of the income, if any, attributable to a payment from which tax is required to be withheld under chapter 4 (including income deemed paid by a withholding agent under §1.1473-1(a)(2)(v)) shall be included in gross income in a return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) Amounts paid to persons that are not the beneficial owners. Amounts actually deducted and withheld under chapter 4 on payments made to a fiduciary, agent, partnership, trust, or intermediary are deemed to have been paid by the beneficial owner of the item of income or other payment subject to withholding under chapter 4, except when the fiduciary, agent, partnership, trust, or intermediary pays the tax from its own funds and does not in turn withhold with respect to the payment made to such person. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any amount of distributable net income or other taxable distribution received from a foreign trust, the part of any amount withheld at source under chapter 4 that is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return,

and any excess shall be refunded to the beneficiary in accordance with §1.1474-5 and chapter 65 of the Code.

(c) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 16. Section 1.1474-4 is added to read as follows:

§1.1474-4 Tax paid only once.

(a) Tax paid. If the tax required to be withheld under chapter 4 on a payment is paid by the payee, beneficial owner, or the withholding agent, it shall not be re-collected from any other, regardless of the original liability therefor. However, this section does not relieve a person that was required to, but did not, withhold tax from liability for interest or any penalties or additions to tax otherwise applicable.

(b) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 17. Section 1.1474-5 is added to read as follows:

§1.1474-5 Refunds or credits.

(a) Refund and credit--(1) In general. Except to the extent otherwise provided in this section, a refund or credit of tax which has actually been withheld at the source at the time of payment under chapter 4 shall be made to the beneficial owner of the payment to which the amount of withheld tax is attributable if the beneficial owner or payee meets the requirements of this paragraph (a) and any other requirements that may be required under chapter 65. To the extent that the amount withheld under chapter 4 is not actually

withheld at source, but is later paid by the withholding agent to the IRS, the refund or credit under chapter 65 of the Code shall be made to the withholding agent to the extent the withholding agent provides documentation with respect to the beneficial owner or payee described in paragraphs (a)(2) and (3) of this section sufficient for the beneficial owner or payee to have obtained a refund of the tax and sufficient for the withholding agent to have applied a reduced rate or exemption from withholding under chapter 4. The preceding sentence shall not, however, apply to a nonparticipating FFI that is acting as a withholding agent with respect to one or more of its account holders. In such a case, only the account holders of the nonparticipating FFI will be entitled to a credit or refund of an amount withheld under chapter 4, to the extent otherwise allowable under this section. Additionally, there are collective refund procedures for a participating FFI or reporting Model 1 FFI to claim a refund or credit on behalf of certain direct account holders that are beneficial owners of the payment under §1.1471-4(h) (in lieu of such account holders claiming refund or credit under this paragraph (a)(1)).

(2) Limitation to refund and credit for a nonparticipating FFI. Notwithstanding paragraph (a)(1) of this section, a nonparticipating FFI (determined as of the time of payment) that is the beneficial owner of an item of income or other payment that is subject to withholding under chapter 4 shall not be entitled to any credit or refund pursuant to section 1474(b)(2) and this section unless it is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States. If the

nonparticipating FFI is entitled to a reduced rate of tax with respect to an item of income or other payment by reason of any treaty obligation of the United States, the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate on the item of income or other payment, and no interest otherwise allowable under section 6611 shall be allowed or paid with respect to such credit or refund.

(3) Requirement to provide additional documentation for certain beneficial owners--(i) In general. Except as provided in paragraph (a)(3)(ii) of this section, no refund or credit shall be allowed under paragraph (a)(1) of this section to the beneficial owner of the income or other payment to which the amount of such withheld tax was attributable if such beneficial owner is an NFFE, unless the NFFE attaches to its income tax return the information described in paragraph (a)(3)(iii) of this section.

(ii) Claim of reduced withholding under an income tax treaty. Paragraph (a)(3)(i) of this section does not apply to the extent that the beneficial owner is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States.

(iii) Additional documentation to be furnished to the IRS for certain NFFEs. The information described in this paragraph (a)(3)(iii) is—

(A) A certification that the beneficial owner does not have any substantial U.S. owners;

(B) The form described in §1.1474-1(i)(2) relating to each substantial U.S. owner of such entity; or

(C) Other appropriate documentation to establish withholding was not required under chapter 4.

(b) Tax repaid to payee. For purposes of this section and §1.6414-1, any amount of tax withheld under chapter 4, which, pursuant to §1.1474-2(a)(1), is repaid by the withholding agent to the beneficial owner of the income or payment to which the withheld amount is attributable shall be considered as tax which, within the meaning of sections 1474 and 6414, was not actually withheld by the withholding agent.

(c) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 18. Section 1.1474-6 is added to read as follows:

§1.1474-6 Coordination of chapter 4 with other withholding provisions.

(a) In general. This section coordinates the withholding requirements of a withholding agent when a withholdable payment or foreign passthru payment is subject to withholding under both chapter 4 and another Code provision. See §1.1473-1(a) for the definition of withholdable payment and see §1.1471-5(h)(2) for the definition of foreign passthru payment.

(b) Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443--(1) In general. In the case of a withholdable payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under §1.1441-2(a), a withholding agent may credit the withholding applied under chapter 4 against its liability for any tax due under sections 1441, 1442, or 1443. See §1.1474-1(c) and (d) for the income tax

return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 that is also an amount subject to withholding under §1.1441-2(a).

(2) When withholding is applied. For purposes of paragraph (b)(1) of this section, withholding is applied by a withholding agent under section 1441 (or section 1442 or 1443) or chapter 4 (as applicable) when the withholding agent has withheld on the payment and has designated the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4 to the extent required in the reporting described in §1.1474-1(c) and (d). For purposes of allowing an offset of withholding and allowing a credit to a withholding agent against its liability for such tax as described in paragraph (b)(1) of this section, withholding is treated as applied for purposes of paragraph (a) of this section only when the withholding agent has actually withheld on a payment and has not made any adjustment for overwithheld tax applicable to the amount withheld that would otherwise be permitted with respect to the payment.

(3) Special rule for certain substitute dividend payments. In the case of a dividend equivalent under section 871(m) paid pursuant to a securities lending transaction described in section 1058 (or a substantially similar transaction), or pursuant to a sale-repurchase transaction, a withholding agent may offset its obligation to withhold under chapter 4 for amounts withheld by another withholding agent under chapters 3 and 4 with respect to the same underlying security in such a transaction, but only to the extent that there is sufficient evidence as required under chapter 3 that tax was actually withheld on a prior

dividend equivalent paid to the withholding agent or a prior withholding agent with respect to the same underlying security in such transaction.

(c) Coordination with amounts subject to withholding under section 1445--(1) In general. An amount subject to withholding under section 1445 is not subject to withholding under chapter 4 as described in paragraphs (c)(2)(i) and (ii) of this section.

(2) Determining the amount of the distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding--(i) Distribution from qualified investment entity. In the case of a passthru payment (including a withholdable payment) subject to withholding under chapter 4 that is a distribution with respect to the stock of a qualified investment entity as described in section 897(h)(4)(A), withholding under chapter 4 does not apply when withholding under section 1445 applies to such amounts. With respect to the portion of such distribution that is not subject to withholding under section 1445 but is subject to withholding under section 1441 (or section 1442 or 1443) and chapter 4, the coordination rule described in paragraph (b)(1) of this section shall apply.

(ii) Distribution from a United States real property holding corporation. A distribution (or portion of a distribution) from a United States real property holding corporation (or from a corporation that was a United States real property holding corporation at any time during the five-year period ending on the date of the distribution) with respect to its stock that is a United States real property interest under section 897(c) is subject to withholding under chapter 4 and is also subject

to the withholding provisions of section 1441 (or section 1442 or 1443) and section 1445. In such case, to the extent that the United States real property holding corporation chooses to withhold on a distribution only under section 1441 (or section 1442 or 1443) pursuant to §1.1441-3(c)(4)(i)(A), the coordination rule described in paragraph (b)(1) of this section shall apply to such distribution. Alternatively, to the extent that the United States real property holding corporation chooses to withhold under both section 1441 (or section 1442 or 1443) and section 1445 pursuant to §1.1441-3(c)(4)(i)(B), the coordination rule described in paragraph (b)(1) of this section shall apply to the portion of such distribution described in §1.1441-3(c)(4)(i)(B)(1), and withholding under section 1445 shall apply to the amount of such distribution described in §1.1441-3(c)(4)(i)(B)(2). A withholding agent other than a United States real property holding corporation may rely, absent actual knowledge or reason to know otherwise, on the representations of the United States real property holding corporation making the distribution regarding the portion of the distribution that is estimated to be a dividend under §1.1441-3(c)(2)(ii)(A), and in the case of a failure by the withholding agent to withhold under chapter 4 due to this reliance, the required amount shall be imputed to the United States real property holding corporation.

(d) Coordination with section 1446--(1) In general. Except as otherwise provided in paragraph (d)(2) of this section, a withholdable payment or a foreign passthru payment subject to withholding under section 1446 shall not be subject to withholding under chapter 4. See §1.1473-1(a)(4)(ii) for the exclusion from

withholdable payment and the requirements for such exclusion for any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(2) Determining the amount of distribution subject to section 1446. [Reserved].

(e) Example. Chapter 4 withholding satisfies chapter 3 withholding obligation. WA, a U.S. withholding agent, makes a payment consisting of a dividend from sources within the United States to NPFFI. NPFFI is a nonparticipating FFI that is a resident of Country X, a country that has an income tax treaty in force with the United States that would allow WA to reduce the rate of withholding for section 1442 purposes on a payment of U.S. source dividends paid to NPFFI to 15%. Because the payment is a withholdable payment and NPFFI is a nonparticipating FFI, WA withholds on the payment at the rate of 30% under chapter 4. WA does not make any adjustment for overwithholding that is otherwise permitted with respect to this payment. Although the payment is also an amount subject to withholding under section 1442, WA is not required to withhold any tax on this payment under section 1442. WA may credit its withholding applied under chapter 4 against the amount of tax otherwise required to be withheld on this payment under section 1442. See §1.1474-5(a)(2) for the credit and refund procedures for nonparticipating FFIs that are entitled to a reduced rate of tax with respect to an amount subject to withholding under chapter 4 by reason of any treaty obligation of the United States.

(f) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 19. Section 1.1474-7 is added to read as follows:

§1.1474-7 Confidentiality of information.

(a) Confidentiality of information. Pursuant to section 1474(c)(1), the provisions of §31.3406(f)-1(a) of this chapter shall apply (substituting “sections 1471 through 1474” for “section 3406”) to information obtained or used in connection with the requirements of chapter 4.

(b) Exception for disclosure of participating FFIs. Pursuant to section 1474(c)(2), the identity of a participating FFI or deemed-compliant FFI shall not be treated as return information for purposes of section 6103.

(c) Effective/applicability date. This section applies **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

PART 301 - PROCEDURE AND ADMINISTRATION

Paragraph 20. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 301.1474-1 also issued under 26 U.S.C. 1474(f). * * *

Par. 21. Section 301.1474-1 is added to read as follows:

§301.1474-1 Required use of magnetic media for financial institutions filing Form 1042-S or Form 8966.

(a) Financial institutions filing certain information returns. If a financial institution is required to file a Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," (or such other form as the IRS may prescribe) under §1.1474-1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules on magnetic media. Additionally, if a financial institution is required to file Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) to report certain information about U.S. accounts, substantial U.S. owners of foreign entities, or owner-documented FFIs as required under this chapter, the financial institution must file the required information on magnetic media or other machine-readable

form. Returns filed on magnetic media must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions, and the IRS.gov Internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media or other machine-readable form used for filing.

(b) Waiver. The Commissioner may grant waivers from the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) Failure to file. If a financial institution fails to file a Form 1042-S or a Form 8966 on magnetic media when required to do so by this section, the financial institution is deemed to have failed to comply with the information reporting requirements under section 6723 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) Meaning of terms. The following definitions apply for purposes of this section—(1) Magnetic media. The term magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, publications, forms, or instructions. These generally include magnetic tape, tape cartridge,

and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, revenue procedures, publications, forms, or instructions.

(2) Financial institution. The term financial institution has the meaning set forth in section 1471(d)(5) of the Code and the regulations thereunder.

(e) Effective/applicability date. This section applies to any Form 1042-S or Form 8966 (or any other form that the IRS may prescribe) filed with respect to calendar years ending after December 31, 2013.

Steven T. Miller
Deputy Commissioner for
Services and Enforcement

Approved: January 11, 2013

Mark J. Mazur
Assistant Secretary of the
Treasury (Tax Policy)

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