

# Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-ECI, W-8exp, and W-8IMY (Rev. July 2014)

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Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to the Forms W-8 and their instructions for requesters, such as legislation enacted after

they were published, go to *Form-W-8,-  
Certificate-of-Foreign-Status*.

## **What's New**

In 2010, Congress passed the Hiring Incentives to Restore Employment Act of 2010, P.L. 111-147 (the HIRE Act), which added chapter 4 of Subtitle A to the Code, consisting of sections 1471 through 1474 of the Code and commonly referred to as “FATCA” or “chapter 4.” Under chapter 4 and the regulations thereunder, a withholding agent that makes withholdable payments on or after July 1, 2014, to a payee that is a foreign financial institution (FFI) generally must withhold 30% on the payment unless the withholding agent is able to treat the FFI as a participating FFI, deemed-compliant FFI, or an exempt beneficial owner. Additionally, a participating FFI or registered deemed-compliant FFI is generally required to perform due diligence procedures to identify its account holders for purposes of chapter 4 and to report or withhold, as appropriate, on such account holders that are U.S. account holders, recalcitrant account holders, or

nonparticipating FFIs. A withholding agent is also required to withhold on withholdable payments made on or after July 1, 2014, to a nonfinancial foreign entity (NFFE), unless it is able to treat the NFFE as other than a passive NFFE that fails to identify its substantial U.S. owners (or certify that it does not have any substantial U.S. owners). In January 2013, final regulations were published that provide due diligence, withholding, and reporting rules for both U.S. withholding agents and FFIs under chapter 4 (T.D. 9610, available at [www.irs.gov/irb/2013-15\\_IRB/ar16.html](http://www.irs.gov/irb/2013-15_IRB/ar16.html)). Additionally, temporary and proposed regulations were released in February 2014, providing updated regulations under chapter 4 (T.D. 9657, available at [www.irs.gov/irb/2014-13\\_IRB/ar06.html](http://www.irs.gov/irb/2014-13_IRB/ar06.html)) as well as guidance amending certain of the regulations under chapters 3 and 61 of the Code to coordinate with the requirements of chapter 4 (T.D. 9658, available at [www.irs.gov/irb/2014-13\\_IRB/ar07.html](http://www.irs.gov/irb/2014-13_IRB/ar07.html)). Additional guidance was provided in Notice 2014-33, 2014-21 I.R.B. 1033, available at [www.irs.gov/irb/2014-13\\_IRB/ar04.html](http://www.irs.gov/irb/2014-13_IRB/ar04.html).

In order to document an account holder or other payee, a withholding agent or an FFI may need to obtain a withholding certificate (i.e., Form W-8 series) to establish the chapter 4 status of a payee or an account holder or the payee's chapter 3 status, or to validate a payee's or an account holder's claim of foreign status when there are U.S. indicia associated with the payee or the account. See *Due Diligence Requirements*, later outlined in these instructions. Forms W-8ECI, W-8EXP, and W-8IMY have been updated to reflect the documentation requirements of chapter 4. Additionally, Form W-8BEN has been divided into two versions — Form W-8BEN for use by individuals and Form W-8BEN-E for use by entities. Form W-8BEN will continue to be used to document nonresident alien individuals, while Form W-8BEN-E will be used to document foreign entities, for purposes of chapters 3 and 4, and under certain other sections of the Code in order to establish their status for withholding or reporting purposes. If you are a withholding agent making a payment of U.S. source fixed or determinable, annual or

periodical (FDAP) income, you should continue to fulfill your chapter 3 reporting and withholding obligations (as required) using these forms in addition to using these forms to satisfy any withholding or reporting obligations you may have under chapter 4. These updated forms replace prior versions of Forms W-8.

## **Purpose of Instructions**

These instructions supplement the instructions for the following forms and provide, for each form, notes to assist withholding agents and FFIs in validating the forms for chapter 3 and 4 purposes in addition to outlining the due diligence requirements applicable to withholding agents for establishing a beneficial owner's foreign status and claim for reduced withholding under an income tax treaty. These notes for chapters 3 and 4 are not inclusive of all requirements that may apply to a withholding agent for validating Forms W-8. A withholding agent should also reference the instructions for each Form W-8 and applicable regulations

under chapter 3 and chapter 4 describing the requirements for withholding certificates.

- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals).
- Form W-BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities).
- 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.
- Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting.
- Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

For general information and the purpose of each of the forms described in these



instructions, see those forms and their accompanying instructions. For definitions of terms used and not defined in these instructions, see the Forms W-8 and their accompanying instructions for definitions that also apply for purposes of these instructions.



*Throughout these instructions, a reference to or mention of “Form W-8” includes Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.*

## **Requirements to Withhold**

For purposes of sections 1441 and 1442, a withholding agent must withhold 30% of any payment of an amount subject to chapter 3 withholding made to a payee that is a foreign person unless it can associate the payment with documentation (for example, Form W-8 or Form W-9, Request for Taxpayer Identification Number and Certification) upon which it is permitted to rely to treat the payment as made to (a) a payee that is a U.S. person or (b) a beneficial owner that is a foreign person entitled to a reduced rate of or exemption from withholding. See, however,

Regulations section 1.1441-1(c)(17), allowing a payment to be associated with documentary evidence rather than a Form W-8 for a payment made outside the United States with respect to an offshore obligation under Regulations section 1.6049-5(c)(1). A withholding agent must also withhold under section 1443 on certain payments to foreign tax-exempt organizations that constitute unrelated business taxable income or are subject to the 4% excise tax imposed by section 4948. However, a withholding agent making a payment to a foreign person need not withhold if the foreign person assumes responsibility for withholding on the payment as a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust and has provided a valid Form W-8IMY certifying to such status. Withholding is also not required if the payment is made to a U.S. branch of a foreign insurance company or foreign bank or a territory financial institution that agrees to be treated as a U.S. person under the requirements of Regulations section 1.1441-1(b)(2)(iv)(A) and provides a valid Form W-8IMY certifying to such status.

Generally, an amount is subject to withholding for purposes of chapter 3 if it is an amount from sources within the United States that is FDAP income. FDAP income is all income included in gross income, including interest (and original issue discount), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums). FDAP income also does not include items of income excluded from gross income without regard to the U.S. or foreign status of the owner of the income, such as interest under section 103(a).

Generally, under section 1446, a partnership that allocates effectively connected taxable income (ECTI) to a foreign person must withhold at the highest tax rate applicable to that person for the type of income allocated (for example, ordinary income or capital gains). Unless the partnership is a publicly traded partnership, the partnership must withhold in the year the ECTI is allocable to the foreign partner, rather than the year in which the distribution is made. The

partnership may rely on documentation (for example, Form W-8BEN, Form W-8BEN-E, or Form W-9) to determine if the partner is foreign or domestic and the type of partner (for example, individual or corporate). A partnership that does not receive valid documentation or knows or has reason to know that the documentation is incorrect or unreliable must presume the partner is foreign.

For purposes of chapter 4, a withholding agent must withhold 30% of any payment of U.S. source FDAP income that is a withholdable payment (defined in Regulations section 1.1473-1(a)) made to a nonparticipating FFI under Regulations section 1.1471-2(a), an NFFE that is not an excepted NFFE (defined in Regulations section 1.1472-1(c)(1)) and does not disclose its substantial U.S. owners (or certify that it has no substantial U.S. owners) under Regulations section 1.1472-1(b), or an exempt beneficial owner under Regulations section 1.1471-6. In addition, a withholding agent that is a participating FFI must withhold to the extent required under Regulations

section 1.1471-4(b) and its FFI agreement, which, in addition to the requirements mentioned in the previous sentence, requires withholding on withholdable payments made to recalcitrant account holders of the FFI. A similar requirement applies in certain cases to certain classes of registered deemed-compliant FFIs. See Regulations section 1.1471-5(f)(1). A participating FFI (or registered deemed-compliant FFI) may use a Form W-8 to document and establish the foreign status of an account holder. See Regulations section 1.1471-5(g) for when a participating FFI or registered deemed-compliant FFI must treat an account holder as a recalcitrant account holder. An FFI that is considered a reporting FFI under a Model 1 or Model 2 intergovernmental agreement (IGA) may apply the requirements of the applicable IGA to document its account holders for purposes of FATCA.

## **Who Is a Withholding Agent?**

Any person, U.S. or foreign, in whatever capacity acting, that has control, receipt, custody, disposal, or payment of an amount

subject to withholding for chapter 3 purposes or a withholdable payment for chapter 4 purposes is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. If several persons qualify as withholding agents for a single payment, the tax required to be withheld must only be withheld once. Generally, the person who pays (or causes to be paid) an amount subject to withholding under chapter 3 or a withholdable payment to the foreign person (or to its agent) must withhold. See the Instructions for 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, for return filing and information reporting obligations with respect to payments made to foreign persons.

For ECTI allocable to a foreign partner, the partnership is generally the withholding agent and must file Form 8804, Annual Return for

Partnership Withholding Tax (Section 1446), Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, and Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446).

## **Responsibilities of a Withholding Agent**

### **Chapter 3 and Form 1099 Responsibilities**

If you are a withholding agent making a payment of U.S. source interest, dividends, rents, royalties, commissions, nonemployee compensation, other FDAP gains, profits, or income, and certain other amounts (including broker and barter exchange transactions, and certain payments made by fishing boat operators), you are generally required to obtain from the payee either a Form W-9 or a Form W-8. These forms are also used to establish a person's status for purposes of domestic information reporting (for example, on a Form 1099) and backup withholding, including to determine, for purposes of

section 6050W, whether a participating payee is a foreign person. If you receive a Form W-9, you must generally make an information return on a Form 1099 (unless the payee has provided a valid code on the form to indicate it is an exempt recipient). If you receive a Form W-8, you are exempt from reporting on Form 1099, but you may have to file Form 1042-S and withhold under the rules applicable to payments made to foreign persons. See the Instructions for Form 1042-S for more information. See, however, Regulations section 1.1441-1(c)(17), allowing a payment to be associated with documentation other than a Form W-8 for a payment made outside the United States with respect to an offshore obligation under Regulations section 1.6049-5(c)(1).

Generally, for purposes of chapter 3, you must withhold 30% from the gross amount of FDAP income paid to a foreign person that is an amount subject to chapter 3 withholding under Regulations section 1.1441-2(a) unless you can reliably associate the payment with a Form W-8 or other permitted documentation. You can reliably associate a payment with a



Form W-8 if you hold a valid form, you can reliably determine how much of the payment relates to the form, and you have no actual knowledge or reason to know that any of the information or certifications on the form are unreliable or incorrect. In addition, a partnership that has ECTI allocable to a foreign partner is a withholding agent with respect to that income and must withhold in accordance with the provisions of Regulations sections 1.1446-1 through 1.1446-6. See the Instructions for Forms 8804, 8805, and 8813.

Generally, a foreign person that is a partner in a partnership that submits a Form W-8 for purposes of section 1441 or 1442 will satisfy the documentation requirements under section 1446. However, in some cases the documentation requirements for sections 1441 and 1442 do not match the documentation requirements of section 1446. For example, a partner may generally submit Form W-8BEN-E to establish itself as a foreign person for purposes of section 1446, but a foreign partnership or foreign grantor trust must submit Form W-8IMY and accompanying documentation as provided by Regulations

sections 1.1446-1 through 1.1446-6. Also, the owner of a disregarded entity, rather than the entity itself, must submit the appropriate Form W-8 for purposes of section 1446.

## **Failure to Obtain Form W-8 or Form W-9 — Presumption Rules**

If you do not receive a Form W-8 or Form W-9 that you may rely upon, or cannot otherwise determine whether a payment should be treated as made to a U.S. person or to a foreign person, use the presumption rules provided in the Regulations under sections 1441, 1446, 1471, 6045, and 6049. However, you may not withhold at a reduced rate by applying the presumption rules if you have actual knowledge that a higher withholding rate is applicable.

## **Chapter 4 Responsibilities**

For purposes of chapter 4, if you are a withholding agent making a withholdable payment to an entity payee, you must establish the chapter 4 status of the entity payee (as required for chapter 4 purposes) to determine if withholding applies by generally

obtaining a Form W-8 that you can reliably associate with the payment. If you are not making a withholdable payment, a valid chapter 4 status is generally not required on the form for the payee, but see the additional requirements for providing a chapter 4 status by an entity providing a Form W-8IMY. You can reliably associate a payment with a Form W-8 for purposes of establishing a payee's chapter 4 status if, prior to the payment, you obtain a valid form that contains the information required for chapter 4 purposes, you can reliably determine how much of the payment relates to the documentation, and you have no actual knowledge or reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect for chapter 4 purposes. See Regulations section 1.1471-3(e)(4) for "reason to know" standards for purposes of chapter 4.

Thus, a withholding agent must also determine if a payment is a withholdable payment without regard to exceptions from withholding applicable under chapter 3 and,

for each such withholdable payment, must obtain a Form W-8 upon which it is permitted to rely under chapter 4 to determine the chapter 4 status of a payee that is a foreign person for purposes of whether withholding applies under chapter 4. See, however, Regulations section 1.1471-3(d) for cases in which a withholding agent may obtain other documentation to determine an entity payee's chapter 4 status. For a participating FFI or registered deemed-compliant FFI, see the requirements under Regulations section 1.1471-4 or the requirements of an applicable IGA for the documentation permitted to be used to document an account holder for purposes of FATCA.

If you determine that you are making a withholdable payment to an entity and cannot reliably associate the payment with a Form W-8 or other permitted documentation that is valid for chapter 4 purposes, you are required to treat the entity payee as a nonparticipating FFI such that withholding applies under Regulations section 1.1471-2(a). If you are making a withholdable payment to an NFFE, you must withhold under Regulations section

1.1472-1 unless the NFFE (or other entity that is the beneficial owner of the payment) certifies on Form W-8 that it does not have any substantial U.S. owners or identifies its substantial U.S. owners or is a class of NFFE that certifies its status on Form W-8 to obtain an exemption from these requirements. See also Regulations sections 1.1471-2(a)(4)(ii) and 1.1472-1(b)(2) for transition rules for withholdable payments made to entities prior to July 1, 2016, for which withholding (and establishing a payee's chapter 4 status) is not generally required before that date. If you are a withholding agent that is a participating FFI, you are required to withhold on withholdable payments made to accounts held by recalcitrant account holders as well as to nonparticipating FFIs (including entities treated as nonparticipating FFIs under the chapter 4 presumption rules) under Regulations section 1.1471-4(b). See Regulations section 1.1471-4(c) for the standards of knowledge applicable to participating FFIs when documenting their account holders. A participating FFI acting as a withholding agent with respect to a

withholdable payment made to an NFFE that is not an account holder of the participating FFI must also withhold to the extent required under Regulations section 1.1472-1 and, as applicable, based on the chapter 4 presumption rules. If you make a withholdable payment to a payee (including a payee that is not an account holder), you may be required to report the payment on Form 1042-S or on Form 8966, FATCA Report, or both, to the extent required in the instructions for those forms. See the Instructions for Form 1042-S and Form 8966 for more information.

You may use the Form W-8 received from a payee or an account holder documenting the payee or account holder in connection with your withholding and reporting obligations under chapter 4 (in addition to those under chapter 3).

Do not send Forms W-8 to the IRS. Instead, keep the forms in your records for as long as they may be relevant to the determination of your tax liability under section 1461 (for payments subject to withholding under

chapter 3), section 1474 (for withholdable payments under chapter 4), or Regulations section 1.1471-4(c)(2)(iv) (for an FFI documenting account holders).

## **Requesting Form W-8**

Request a Form W-8 described in these instructions from any person to whom you are making a payment that you presume or otherwise believe to be a foreign person. You should request the form before making a payment so that you have the form when you make the payment. A withholding agent or payer that fails to obtain a Form W-8 or Form W-9 and fails to withhold as required under the presumption rules may be assessed tax at the 30% rate or backup withholding rate of 28%, as well as interest and penalties for lack of compliance. See later in the discussion of Form W-8IMY as to the extent that form is required to be collected by a withholding agent making a payment to a qualified securities lender.

A partnership should request a Form W-8 or W-9 from any partner that is allocated income

that is effectively connected with the conduct of the partnership's U.S. trade or business. A partnership that fails to withhold as required under section 1446 is liable for the tax required to be withheld. In addition, the partnership may be liable for interest, penalties, and additions to the tax even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI.

When you receive a completed Form W-8, you must review it for completeness and accuracy with respect to the claims made on the form. This responsibility extends to the information attached to Form W-8, including for Form W-8IMY, withholding statements, beneficial owner withholding certificates, or other documentation and information to the extent such documentation is required to be associated with the Form W-8IMY. See below for specific requirements for each type of Form W-8. You may accept a valid Form W-8 for chapter 3 or 61 (for Form 1099 reporting) purposes that does not contain a valid chapter 4 status for an entity payee with respect to payments that you determine are



not withholdable payments. Otherwise, you must request a chapter 4 status be provided in accordance with these instructions. See *Notes for Validating Form W-8IMY*, later in these instructions, for when a chapter 4 status is required on Form W-8IMY.

If you are a withholding agent making a withholdable payment or a payment subject to chapter 3 withholding and you make the payment to an intermediary, you must obtain documentation (for example, Form W-8IMY) from such intermediary (including the intermediary's chapter 4 status if the payment is also a withholdable payment), as well as any required documentation from the beneficial owner or owners of the payment.

## **Requesting Prior Form W-8 Versions**

For purposes of chapter 3, a withholding agent can request the prior version of Form W-8 if the form is executed before the end of the six month period beginning with the month after the revision date shown on the form, and may rely on the form until the

form's period of validity expires. See Regulations sections 1.1441-1(e)(4)(ii) and (viii)(C). For purposes of chapter 4, a withholding agent may request the prior version of Form W-8 but may rely on the prior version of the form only to the extent permitted under the allowance for reliance on a pre-FATCA Form W-8. See Regulations section 1.1471-3(d)(1) regarding reliance on a pre-FATCA Form W-8 for chapter 4 purposes and the period of validity for a form used for this purpose. Notwithstanding the above, for purposes of both chapters 3 and 4, a withholding agent making a payment to, or documenting, an entity payee or account holder can request the prior version of a Form W-8BEN-E, W-8IMY, W-8EXP, or W-8ECI prior to January 1, 2015, and with respect to chapter 3 may rely on the form to the extent otherwise permitted until the form's period of validity expires (subject to a change in circumstances), but with respect to chapter 4 may rely on the form only to the extent permitted under the allowance for reliance on a pre-FATCA Form W-8. A withholding agent may rely on a prior version of a Form W-8

described in the preceding sentence only if it is provided to the withholding agent prior to January 1, 2015. Also see Notice 2014-33, 2014-21 I.R.B. 1033, available at [www.irs.gov/irb/2014-13\\_IRB/ar07.html](http://www.irs.gov/irb/2014-13_IRB/ar07.html) for when a withholding agent may treat an obligation open before January 1, 2015, as a preexisting obligation for purposes of applying the due diligence procedures under chapter 4.

## **FFI's Requirement To Request Form W-8 To Document Account Holders**

If you are an FFI maintaining an account for an account holder, you may be required to perform due diligence procedures to identify and document a U.S. account holder or entity account holder even if you are not making a payment that is a withholdable payment (or an amount subject to chapter 3 withholding) to the account holder. You may also use Forms W-8 to document the chapter 4 status of a foreign account holder regardless of whether you make a payment that is a withholdable payment or an amount subject to chapter 3 withholding to the account

holder, and to validate a claim of foreign status made by the account holder when the account has certain U.S. indicia. For example, an FFI may treat an individual account holder that has U.S. indicia (as described in Regulations section 1.1471-4(c)(5)(iv)(B)) as a foreign person for purposes of its U.S. account reporting requirements when the individual provides a withholding certificate (Form W-8BEN) and certain documentary evidence establishing foreign status. Similar documentation rules apply to a registered deemed-compliant FFI for chapter 4 purposes. See Regulations section 1.1471-5(f)(1).

In the case of an FFI documenting an account holder of an account that the FFI determines is excepted as a financial account under Regulations section 1.1471-5(b)(2), a Form W-8 (or other permitted documentation for chapter 4 purposes) need not be provided unless the form is associated with amounts subject to withholding under chapter 3. In such a case, a valid chapter 4 status need not be provided on the form (only the information

needed for chapter 3 purposes with respect to the account holder).

## **Requirements for Payment Settlement Entities (PSEs)**

Under section 6050W, a PSE is required to report certain payments on Form 1099-K made to a participating payee if the PSE does not establish the foreign status of the payee. A Form W-8BEN, W-8BEN-E, or W-8ECI (as applicable) may be used for this purpose. See the requirements of section 6050W for when other documentation may be used for this purpose.

## **Special Rules for Requesting Specific Types of Forms W-8**

### **Form W-8BEN**

Request Form W-8BEN from any foreign individual to whom you are making a payment subject to chapter 3 withholding or a withholdable payment if he or she is the beneficial owner of the income, whether or not he or she is claiming a reduced rate of, or

exemption from, withholding (including under an applicable income tax treaty). In addition, if you are a partnership, request Form W-8BEN for purposes of section 1446 from any foreign partner that is an individual who is allocated ECTI. A beneficial owner is required to enter a U.S. taxpayer identification number (TIN) on line 5 if he or she is submitting the form to a partnership that conducts a trade or business in the United States.

Also request Form W-8BEN when an individual payee may claim an exception from domestic information reporting on Form 1099 (including section 6050W) and backup withholding under section 3406 as a foreign person for certain types of income, including broker proceeds, short-term original issue discount, bank deposit interest, foreign source interest, dividends, rents, or royalties.

Finally, request Form W-8BEN if you are a participating FFI or registered deemed-compliant FFI required to establish the foreign status of an individual account holder for chapter 4 purposes or under the requirements of an applicable IGA, absent obtaining other

applicable documentation that may be used for this purpose under chapter 4 or the IGA.

**TIN requirements for Forms W-8BEN.** You should request the individual payee's foreign TIN to be completed on line 6 of the Form W-8BEN if the payee is providing the Form W-8BEN with respect to an obligation held at your U.S. office and you are a financial institution. If a foreign TIN is not provided for the payee in this case, you may not treat the Form W-8BEN as valid if you know that the payee has a foreign TIN that it has not provided, unless you have a record of the TIN in your account files that you are able to report on Form 1042-S. In any other case in which the foreign TIN is not provided, you must obtain the individual payee's date of birth on line 8 in order to treat the Form W-8BEN as valid unless you otherwise have the individual payee's date of birth in your account files for the payee that you are able to report on a Form 1042-S. Note that a future revision to Form W-8BEN may require you to obtain both a foreign TIN and date of birth for a payee described in this paragraph.

## Form W-8BEN-E

Request Form W-8BEN-E from any foreign entity to which you are making a payment of an amount subject to chapter 3 withholding or a withholdable payment if the entity is the beneficial owner of the income, whether or not it is claiming a reduced rate of, or exemption from, withholding (including under an applicable income tax treaty). A foreign reverse hybrid entity claiming treaty benefits on its own behalf should submit to you a Form W-8BEN-E with respect to the income for which treaty benefits are being claimed even though it is not the beneficial owner of the income under U.S. tax principles. See *Special Requirements for Hybrid and Reverse Hybrid Entities*, later in these instructions, for further requirements for chapter 4 purposes. In addition, if you are a partnership, request Form W-8BEN-E for purposes of section 1446 from any foreign partner that is an entity that is allocated ECTI (other than a foreign partner that is a partnership, grantor trust, or person or organization that qualifies to file Form W-8EXP). A beneficial owner is required to enter



a U.S. TIN for section 1446 purposes on line 8 if it is submitting the form to a partnership that conducts a trade or business in the United States. Also request Form W-8BEN-E when an entity payee may claim an exception from domestic information reporting as a foreign person (including for section 6050W purposes) or to establish that certain income from notional principal contracts is not effectively connected with the conduct of a U.S. trade or business for purposes of the reporting requirements on Form 1042-S for such payments. See Regulations section 1.1441-4.

For a Form W-8BEN-E that is associated with a withholdable payment to a foreign entity, you must obtain a valid chapter 4 status for the entity to the extent required for chapter 4 purposes to determine if withholding applies under chapter 4, and must obtain an applicable certification in Parts IV through XXVIII unless provided otherwise in the instructions for Form W-8BEN-E (see *Alternative Certifications Under an Applicable IGA*, below). Also, see Regulations section 1.1471-1(b)(19) (defines chapter 4 status). A

valid chapter 4 status is not required to be provided when the form is associated with a payment subject to chapter 3 withholding that is not a withholdable payment, when the payment is made with respect to a preexisting obligation before January 1, 2016, to the extent provided in Regulations section 1.1471-2(a)(4)(ii) or 1.1472-1(b)(2), or the payment is made to an account that is excepted as a financial account under Regulations section 1.1471-5(b)(2).

If you are a participating FFI or registered deemed-compliant FFI, request Form W-8BEN-E (or other permitted documentation) to document the chapter 4 status of an entity account holder, regardless of whether you make a withholdable payment or an amount subject to chapter 3 withholding to such entity when you are required to do so under your chapter 4 due diligence requirements or under the requirements of an applicable IGA.

## **Alternative Certifications Under an Applicable IGA**

If you are an FFI covered under a Model 1 IGA or Model 2 IGA using Form W-8BEN-E to document account holders pursuant to the due diligence requirements of Annex I of an applicable IGA, you may be permitted to request alternative certifications from your account holders in accordance with the requirements of and definitions applicable to the IGA to which you are subject instead of the certifications in Parts IV through XXVIII of the Form W-8BEN-E (which are based on the regulations under chapter 4). You should provide those certifications to account holders that provide you with a Form W-8BEN-E, and the account holder should attach the completed certification to the Form W-8BEN-E in lieu of completing a certification otherwise required in Parts IV through XXVIII of the form. In such a case, you must provide a written statement to the account holder stating that you have provided the alternative certification to meet your due diligence requirements under an applicable IGA and

must associate the certification with the Form W-8BEN-E.

If you are a withholding agent (including an FFI), you may also request and rely upon an alternative certification from an entity account holder to establish that the account holder is an NFFE (rather than a financial institution) under an applicable IGA. An entity providing such a certification will still be required, however, to provide its chapter 4 status (i.e., the type of NFFE) in Part I, line 5, as determined under the regulations or IGA, whichever is applicable to the withholding agent. For example, if you are a U.S. withholding agent that receives a Form W-8BEN-E from an entity account holder certifying to its status as a publicly traded NFFE, you may request a written certification that the entity is not a financial institution as defined under the IGA applicable to the entity and document it under the regulations by obtaining the NFFE's certification of its chapter 4 status in Part I, line 5. However, a nonprofit organization treated as an active NFFE under Annex I of an applicable IGA may provide an alternative certification that it is

an NFFE that qualifies as a nonprofit organization under an applicable IGA. In such a case, the nonprofit organization will not be required to check a box in Part I, line 5, and the withholding agent may treat the entity as an excepted NFFE.

If you receive an alternative certification under an applicable IGA described in the preceding paragraphs, you may rely on such certification unless you know or have reason to know the certification is incorrect.

## **Requirements for Obtaining and Verifying a Global Intermediary Identification Number (GIIN)**

If you receive a Form W-8BEN-E from an entity payee that is identified in Part I, line 1, that is claiming chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI), or a nonreporting IGA FFI under a Model 2 IGA, provided that the nonreporting IGA FFI is treated as a registered deemed-compliant FFI under the Model 2 IGA, you must obtain and

verify the entity's GIIN against the published IRS FFI list. See Regulations sections 1.1471-3(d)(4)(i) and 1.1471-3(e)(3).

If you make a withholdable payment to a direct reporting NFFE, you must obtain and verify the direct reporting NFFE's GIIN against the published IRS FFI list.

For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI, or a direct reporting NFFE that is a sponsored direct reporting NFFE, must provide the GIIN of its sponsoring entity to you if it has not obtained its own GIIN. See Regulations section 1.1471-3(e)(3)(iv) for the requirements to verify the GIIN against the published IRS FFI list for withholdable payments made to direct reporting NFFEs and sponsored direct reporting NFFEs.

If you make a withholdable payment to a branch of an FFI identified in a box shown on Part II of the form that provides you a GIIN, you must verify against the FFI list the GIIN (if applicable) provided in Part II, line 13, rather than the GIIN for the entity provided in Part I, line 9a.

You may only accept a Form W-8BEN-E with Part II completed if the entity shown in Part II is an FFI that is a branch of the entity identified in line 1 and the branch is receiving a withholdable payment or if the entity shown in Part II is a disregarded entity that is identified in Part I, line 3, as receiving the payment. If you receive such a Form W-8BEN-E from a branch or disregarded entity described in the preceding sentence that is receiving such a payment associated with the form, you must verify the GIIN of the branch or disregarded entity against the published IRS FFI list and not that of the entity identified in Part I, line 1.

For a withholdable payment made to a certified deemed-compliant FFI that is a sponsored, closely held investment vehicle, you must obtain a GIIN for the sponsoring entity and verify it against the published IRS FFI list.

If you receive a Form W-8BEN-E from an entity payee that is claiming chapter 4 status as a participating FFI, reporting Model 1 FFI, reporting Model 2 FFI, registered deemed-

compliant FFI, direct reporting NFFE, sponsored direct reporting NFFE, or sponsoring entity of an NFFE that contains "Applied for" in the box for the GIIN, the payee must provide its GIIN within 90 days of providing the form. A Form W-8BEN-E from such a payee that does not include a GIIN, or includes a GIIN that does not appear on the published IRS FFI list, will be invalid for purposes of chapter 4 beginning on the date that is 90 days after the date the form is provided. See Regulations section 1.1471-3(e)(3)(iii) and (iv).

Prior to January 1, 2015, if you receive a Form W-8BEN-E from an entity payee that is claiming chapter 4 status as a reporting Model 1 FFI, you are not required to obtain the entity payee's GIIN. A form from such an entity without the GIIN is valid for payments made prior to January 1, 2015.

You may accept a GIIN that is indicated and clearly identified on the form rather than provided as required in box 9a or another box permitted in the Instructions for Form W-



8BEN-E if the GIIN is clearly identified as being furnished with respect to the box.

If you receive a Form W-8 from a payee or an account holder that contains a TIN or GIIN, you may not rely on the TIN or GIIN if the number provided is incomplete or truncated.

## **Further Notes for Validating Form W-8BEN-E**

**Part I, Line 4 (Chapter 3 Status).** If you receive a Form W-8BEN-E from an entity that indicates in Part I, line 4, that the entity is a disregarded entity, partnership, simple trust, or grantor trust, and the entity has checked “No” in Part I, line 4, of the Form W-8BEN-E, then you should not accept the Form W-8BEN-E if the form is used with respect to payments that are subject to chapter 3 withholding. In such a case, you should request the entity complete a Form W-8IMY, if the entity is a partnership, simple trust, or grantor trust, or have the owner of a disregarded entity complete the appropriate Form W-8 based on the owner’s characteristics if the entity is a disregarded

entity. An FFI documenting an account holder under its chapter 4 requirements or under an applicable IGA may, however, accept the Form W-8BEN-E when the entity account holder does not receive payments subject to chapter 3 withholding or withholdable payments associated with the form.

**Part I, Line 5 (Chapter 4 Status).** If you receive a Form W-8BEN-E from an entity that is a certified deemed-compliant FFI under Regulations section 1.1471-5(f)(2), a deemed-compliant FFI under an applicable IGA, or an exempt beneficial owner, the entity should not check the box in Part I, line 5, of Form W-8BEN-E for Nonparticipating FFI (including a limited FFI or an FFI related to a Reporting IGA FFI other than a registered deemed-compliant FFI or participating FFI). Instead, it should check the appropriate box for its status as a certified deemed-compliant FFI, nonreporting IGA FFI, or exempt beneficial owner. See the Instructions for Part I, line 5, of Form W-8BEN-E.

**Part I, Line 9 (Foreign TIN).** You should request the entity payee's foreign TIN to be

completed on line 9b of the Form W-8BEN-E if you are a financial institution maintaining the payee's obligation at your U.S. office. If the foreign TIN is not provided, you may not treat the Form W-8BEN-E as valid if you know that the entity payee has a foreign TIN that it has not provided, unless you have record of the TIN in your account files that you are able to report on Form 1042-S.

**Part X, Line 24 (Owner-Documented FFI).** You may accept a Form W-8BEN-E from an entity claiming status as an owner-documented FFI that you agree to treat as an owner-documented FFI that does not check box 24d in Part X regardless of whether you know that the entity is a trust that has one or more contingent beneficiaries. You may accept this certificate (and may otherwise treat an entity as an owner-documented FFI) only if you are a designated withholding agent under the chapter 4 regulations.

## **Form W-8ECI**

Request Form W-8ECI from any foreign person or organization to which you are

making a payment if it is the beneficial owner of the income and it claims that the income is effectively connected with the conduct of a trade or business in the United States.

However, request a Form W-8BEN or W-8BEN-E (as applicable) from a foreign partner that is allocated income that is effectively connected with the conduct of the partnership's trade or business in the United States, unless the foreign partner has made an election under section 871(d) or section 882(d).

## **Notes for Form W-8ECI**

If you are an FFI maintaining accounts for account holders and you receive a Form W-8ECI from an account holder, you may also need to obtain other documentation for determining the account holder's chapter 4 status to meet your documentation requirements as a participating FFI or registered deemed-compliant FFI.

If you receive a Form W-8ECI without a U.S. TIN entered on line 7, you may not treat the income as effectively connected with a U.S.

trade or business and you must apply the appropriate presumption rules.

Your receipt of Form W-8ECI serves as a representation by the payee or beneficial owner that the items of income identified on line 11 are effectively connected with the conduct of a trade or business within the United States. Therefore, if a beneficial owner provides you with a Form W-8ECI, you may treat all of the U.S. source income identified on line 11 paid to that beneficial owner as effectively connected with the conduct of a trade or business within the United States and not as a withholdable payment for purposes of chapter 4 (see Regulations section 1.1473-1(a)(4)(ii)). Therefore, a chapter 4 status is not required for a payee who provides a valid Form W-8ECI, except in the circumstances described above (for an FFI documenting an account holder under its chapter 4 requirements or the requirements of an applicable IGA).

If you pay items of income that are not identified on line 11 by the beneficial owner as effectively connected with the conduct of a

trade or business within the United States, you are generally required to obtain from the beneficial owner another type of Form W-8.

You may not treat an amount as income effectively connected with the conduct of a trade or business within the United States unless the beneficial owner gives you a valid Form W-8ECI. However, there are exceptions for income paid on notional principal contracts and payments made to certain U.S. branches.

**Notional principal contracts reportable on Form 1042-S.** Withholding at a 30% rate is not required on amounts paid under the terms of a notional principal contract whether or not a Form W-8ECI is provided (except when a payment made under such contract is U.S. source income, such as a dividend equivalent amount under section 871(m)).

However, if the income is effectively connected with the conduct of a U.S. trade or business, it is reportable by the withholding agent on Form 1042-S (regardless of whether the payment is U.S. source income). A withholding agent must treat income as effectively connected with the conduct of a

U.S. trade or business, even if a Form W-8ECI has not been received, if the income is paid to a qualified business unit of a foreign person located in the United States or if the income is paid to a qualified business unit of a foreign person located outside the United States and the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a U.S. trade or business. However, a payment is not treated as effectively connected with the conduct of a U.S. trade or business if the payee provides a Form W-8BEN-E representing that the income is not effectively connected with a U.S. trade or business or makes a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swaps and Derivatives Association agreement), or in the confirmation on the particular notional principal contract transaction, that the payment is not effectively connected with the conduct of a U.S. trade or business. See Regulations section 1.1441-4(a)(3)(ii) and

the instructions for Form W-8BEN-E described earlier.

**Payments to certain U.S. branches treated as effectively connected income.**

Payments to U.S. branches of certain foreign persons that have not agreed to be treated as U.S. persons under Regulations section 1.1441-1(b)(2)(iv)(A) and that have provided a U.S. TIN are presumed to be effectively connected with the conduct of a trade or business within the United States even if the foreign person (or its U.S. branch) does not give you a Form W-8ECI or withholding certificates with respect to other persons receiving the payment for which a Form W-8IMY is provided by the U.S. branch.

If Form W-8IMY or the branch's EIN is not provided, the income paid cannot be treated as effectively connected income, and the withholding agent must withhold when the payment is collected by the branch on behalf of other persons.



## **Form W-8EXP**

Request Form W-8EXP from any foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to which you are making a payment subject to chapter 3 withholding if such person is claiming an exemption from withholding under sections 1441, 1442, and 1443 pursuant to section 115(2), 501(c), 892, or 895, or claiming a reduced rate of withholding under section 1443(b).

A withholding agent making a withholdable payment will also be required to determine the chapter 4 status of the person submitting Form W-8EXP to determine an exemption from withholding under chapter 4. In some instances, for example, a payee that is claiming an exemption from withholding under sections 1441, 1442, and 1443 will also be an exempt beneficial owner that is not subject to withholding for purposes of chapter 4. See Regulations section 1.1471-6. You should also request Form W-8EXP when the

government, organization, or other entity referred to in the first sentence of this paragraph is claiming an exemption from withholding under chapter 4 as an exempt beneficial owner under Regulations section 1.1471-6, as a tax-exempt organization under section 501(c), or as an entity with another chapter 4 status to which withholding under chapter 4 does not apply (among the chapter 4 statuses shown on Form W-8EXP). See line 4 of Form W-8EXP for the chapter 4 statuses that may be claimed on this form.

If you are an FFI documenting an account holder that is a tax-exempt organization or exempt beneficial owner under Regulations section 1.1471-6 to which you do not pay amounts subject to withholding under chapter 3, you may instead require that the account holder complete Form W-8BEN-E to establish its status for chapter 4 purposes. For purposes other than documenting a payee or account holder claiming a reduced rate of withholding pursuant to section 115(2), 501(c), 892, 895, or 1443, you may request Form W-8BEN-E (such as to establish only the entity's foreign status) or W-8ECI (to

establish that the income is effectively connected with a U.S. trade or business).

A Form W-8EXP submitted by a foreign person for purposes of withholding under sections 1441 through 1443 will also establish that partner's foreign status for purposes of section 1446. However, except as provided in Regulations section 1.1446-3(c)(3) (regarding certain tax-exempt organizations described in section 501(c)), the submission of Form W-8EXP will have no effect on whether the partner is subject to withholding under section 1446.

A withholding agent may treat a payee as an international organization without requiring a Form W-8EXP if the name of the payee is one designated as an international organization by Executive Order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization. With regard to amounts derived from bankers' acceptances for chapter 3 purposes, a withholding agent may treat a payee as a foreign central bank

of issue without requiring a Form W-8EXP if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue.

A U.S. TIN is required if the beneficial owner is claiming an exemption based solely on a claim of tax-exempt status as a foreign private foundation (or other foreign organization described under section 501(c)). However, a U.S. TIN is not required from a foreign private foundation that is subject to the 4% excise tax on gross investment income (under section 4948(a)) on income that would be exempt from withholding except for section 4948(a) (for example, portfolio income).

## **Form W-8IMY**

Request Form W-8IMY from any person that is an intermediary (whether a qualified intermediary (QI) or a nonqualified intermediary, including certain U.S. branches or territory financial institutions), a withholding foreign partnership (WP), a

withholding foreign trust (WT), or a flow-through entity to which you make a withholdable payment or payment that is a reportable amount (as described in Regulations section 1.1441-1(e)(3)(vi)). A flow-through entity includes a foreign partnership (other than a WP), a foreign simple or grantor trust (other than a WT), and, for any payments for which a treaty benefit is claimed, any entity to the extent it is treated as fiscally transparent under section 894. See the Instructions for Form W-8IMY for when a Form W-8IMY is required to be provided by a U.S. branch. Form W-8IMY should also be provided by an entity to claim status as a qualified securities lender (QSL) with respect to payments of U.S. source substitute dividends and may be relied upon regardless of whether the QSL acts as an intermediary with respect to substitute dividends associated with the form. In a case in which an entity certifies on Form W-8IMY its status as a QSL, you may make payments of substitute dividends to this entity without requiring a withholding statement when the QSL provides a written statement that it is

not acting as an intermediary with respect to such payments associated with the form or certifies its status as a QI. Additionally, you may rely on documentation that does not include a chapter 4 status for an account holder or an intermediary or flow-through entity when the withholding statement provided by such entity indicates that the payment is made to an account excluded as a financial account under Regulations section 1.1471-5(b)(2).

The chapter 4 status of an intermediary or flow-through entity is also required on the form if the form is associated with a withholdable payment and you are required to determine the entity's status for chapter 4 purposes. Except to the extent provided otherwise in applicable regulations, appropriate withholding certificates, documentary evidence, and withholding statements must be associated with Form W-8IMY for both chapter 3 and 4 purposes or you must apply the presumption rules. See the Instructions for Form W-8IMY for details on these requirements, including the requirements for chapter 3 withholding rate

pools permitted to be provided to withholding agents by QIs, and when chapter 4 withholding rate pools may be included in withholding statements provided by intermediaries and flow-through entities. A participating FFI or registered deemed-compliant FFI may also request Form W-8IMY from an intermediary or flow-through entity that is an account holder of the participating FFI or registered deemed-compliant FFI to establish its chapter 4 status (when required for chapter 4 purposes) or status under an applicable IGA even when no payments subject to chapter 3 withholding or withholdable payments are made to the account. In such a case, a withholding statement is not required.

## **Notes for Validating Form W-8IMY**

**TIN, Chapter 4 Status, and Withholding Statement.** A QI, WP, or WT must provide the EIN that was issued to the entity in such capacity (its QI-EIN, WP-EIN, or WT-EIN) as well as its GIIN if it is an FFI (other than a QI that is a limited FFI), a direct reporting NFFE, or a sponsoring entity as required for chapter

4 purposes when it is receiving a withholdable payment associated with the Form W-8IMY unless an exception for providing a chapter 4 status applies (for example, a Form W-8IMY provided with respect to a preexisting account (see Regulations section 1.1471-2(a)(4)(ii)). See the Instructions for Form W-8BEN-E and the discussion of Form W-8BEN-E earlier in these instructions for the requirements with respect to obtaining and validating a GIIN that also apply with respect to an entity providing a Form W-8IMY, including when a branch of an FFI receives a withholdable payment and when a GIIN is not required on Form W-8IMY and when a chapter 4 status is not required on this form. Because status as a QI, WP, or WT for a financial institution is limited to certain classes of FFIs, for Forms W-8IMY associated with withholdable payments, a withholding agent must validate that the QI, WP, or WT certifies its status when required for chapter 4 purposes described in Regulations sections 1.1441-1(e)(5)(ii) (for a QI), 1.1441-5(c)(2) (for a WP), or 1.1441-5(e)(5)(v) (for a WT). However, for certain QIs that are not financial



institutions, you may request the written statement described later in these instructions to establish its chapter 4 status. Also see the Instructions for Form W-8IMY and the section 1441 regulations for the permitted chapter 4 statuses of these entities.

A U.S. TIN is also required for an entity certifying its status as a QSL with respect to U.S. source substitute dividend payments and for a U.S. branch or territory financial institution providing a Form W-8IMY to evidence its agreement to be treated as a U.S. person. In a case in which you make a payment of a substitute dividend to a QSL for which you are required to determine the QSL's chapter 4 status, you must collect Form W-8IMY. In a case in which a QSL's chapter 4 status is not required, you may continue to rely on the written certification of its compliance with the requirements of QSL status as required in Section III.C of Notice 2010-46, 2010-24 I.R.B. 757, available at [www.irs.gov/irb/2010-24\\_IRB/ar09.html](http://www.irs.gov/irb/2010-24_IRB/ar09.html), until such certification expires.

A chapter 4 status is also required on a Form W-8IMY when the intermediary or flow-through entity providing the form is a participating FFI or registered deemed-compliant FFI that is using the form to provide a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees (in addition to when a chapter 4 status is otherwise required for withholdable payments). Additionally, for a Form W-8IMY provided by an intermediary allocating a payment to such a pool, the intermediary must provide the certification required on the form in Part IV with respect to its compliance with the requirements of Regulations section 1.6049-4(c)(4) (or similar requirement under chapter 61 for a payment other than interest). In the case of a QI providing a withholding statement allocating a payment to this pool, the QI must check the applicable certification(s) in Part III, line 14e(i) and/or 14e(ii). If the QI provides the certification in line 14e(i), the QI must certify to its chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or

registered deemed-compliant FFI (including a reporting Model 1 FFI.)

If a participating FFI or registered deemed-compliant FFI that is an intermediary or flow-through entity provides you with a withholding statement and documentation for its account holders and payees, you are not required to verify the information on the account holders and payees provided in the documentation for chapter 4 purposes unless it is facially incorrect, and you are not required to obtain supporting documentation for the payee in addition to the information provided on the withholding statement unless you are obtaining the documentation for purposes of chapter 3 or 61, or unless you know that the documentation review conducted by the participating FFI or registered deemed-compliant FFI was not adequate for purposes of chapter 4. See Regulations section 1.1471-3(e)(4)(vi)(B) for standards that apply in such a case to determine that chapter 4 withholding does not apply (such that you may then determine the rate of withholding applicable for chapter 3 purposes).

A QI that is a limited FFI may provide a Form W-8IMY associated with a withholding statement allocating a payment to a pool of exempt beneficial owners for which the QI is receiving the payment.

For a QI providing this form that is not an FFI, the entity is not required to provide a chapter 4 status on Form W-8IMY and need not check a box in Part I, line 5. You may request that the entity certify, on a statement associated with the form, that the entity is a QI that is an NFFE to clarify its chapter 4 status as other than an FFI.

An intermediary or flow-through entity may provide a status for chapter 4 purposes found under the requirements of (and documentation permitted under) an applicable IGA for an account holder, and a withholding agent may rely upon such status and documentation. Additionally, see the earlier instructions for Form W-8BEN-E and Form W-8IMY for further details on alternative certifications that may be requested by withholding agents for such cases.

**1446 requirements.** Request Form W-8IMY for purposes of section 1446 only from a foreign upper-tier partnership or foreign grantor trust. Generally, for purposes of section 1446, the Form W-8IMY submitted by these entities is used to transmit the forms of the owners of these entities. When such other forms are provided, a partnership may look through these entities to the beneficial owners when determining its section 1446 tax obligation.

## **Special Requirements for Hybrid and Reverse Hybrid Entities**

A hybrid entity is any person (other than an individual) that is treated as fiscally transparent (rather than as a beneficial owner) for purposes of declaring its status under the Code but is not treated as fiscally transparent by a country with which the United States has an income tax treaty. A hybrid entity, however, may be considered a payee for chapter 4 purposes when receiving a withholdable payment when it is a flow-through entity (i.e., not a disregarded entity) in addition to its partners, beneficiaries, or

owners as applicable. See Regulations section 1.1471-3(a) (defining who is a payee of a withholdable payment) and Regulations section 1.1471-3(d) for entities required to be documented for chapter 4 purposes.

If you are making a payment to a hybrid entity that is making a claim for treaty benefits as a qualified resident under an applicable tax treaty on its own behalf, the hybrid entity should provide a Form W-8BEN-E to claim treaty benefits. If the hybrid entity is receiving a payment that is a withholdable payment, it should also provide to you a Form W-8IMY along with a withholding statement (if required) establishing the chapter 4 status of each of its partners, beneficiaries, or owners as a condition for providing the rate of withholding under the treaty on the entire payment. If the hybrid entity is a disregarded entity, the single owner should provide a Form W-8BEN-E or W-8BEN (as applicable) along with the Form W-8BEN-E for the hybrid entity. Line 10 of the Form W-8BEN-E may be used by the hybrid entity to associate the Forms W-8.

For an entity that is a reverse hybrid entity receiving a withholdable payment, you should obtain a Form W-8BEN-E from the entity to establish its chapter 4 status. Additionally, with respect to a payment for which the entity is claiming a reduced rate of withholding for its partners, beneficiaries, or owners, as applicable, you have obtained from the entity a Form W-8IMY with applicable documentation with respect to claims of treaty benefits for reduced withholding made by partners, beneficiaries, or owners in the entity. Otherwise, withholding will apply under chapter 4 based on the presumptions under Regulations section 1.1473-1(f) regardless of whether otherwise valid treaty claims are made by such persons.

## **Due Diligence Requirements**

You are responsible for ensuring that all information relating to the type of income for which Form W-8 is submitted is complete and appears to be accurate and, for an entity providing the form, includes a chapter 4 status (if required as described above). In general, you may rely on the information and

certifications provided on the form (including the status of the beneficial owner as an individual, corporation, etc.) unless you have actual knowledge or reason to know that the information is unreliable or incorrect. You have reason to know that the information is unreliable or incorrect if you have knowledge of relevant facts or statements contained in the withholding certificate or other documentation that would cause a reasonably prudent person in your position to question the claims made. For example, if you have information in your records that contradicts information provided on the form, you may not rely on the form. If you know or have reason to know that any information is unreliable or incorrect, you must obtain a new Form W-8 or other appropriate documentation.

**Reason to know.** You have reason to know that a Form W-8 is unreliable or incorrect if the Form W-8 is incomplete with respect to any item that is relevant to the claims made, the form contains any information that is inconsistent with the claims made, the form lacks information necessary to establish that



the beneficial owner is entitled to a reduced rate of withholding, or the withholding agent has other account information that is inconsistent with the claims made. See, however, the allowance to use other documentation to validate a Form W-8 for an inconsequential error on a Form W-8 described below in these instructions.

If you are a withholding agent that is a financial institution (as defined in Regulations section 1.1471-5(e)), insurance company, or a broker or dealer in securities that maintains an account for a direct account holder (beneficial owner) making a payment of U.S. source FDAP income to a direct account holder, you have reason to know that a Form W-8BEN or W-8BEN-E provided by the direct account holder is unreliable or incorrect for such payments if one or more of the following circumstances exist with respect to a claim of foreign status for chapter 3 or 4 purposes or a claim of treaty benefits. In that case, you must either request a new form or the additional documentation to substantiate the claims on the form. See Regulations section 1.1441-7(b)(3) for the limits on reason to

know for the entities referenced in this paragraph for purposes of chapter 3. See Regulations section 1.1471-3(e)(4)(v) for when a withholding agent may rely on a code or classification under Regulations section 1.1471-3(c)(5)(ii)(B) to treat an entity as a foreign person for chapter 4 purposes (including the U.S. indicia relevant for such purposes). For participating FFIs documenting the status of account holders for purposes of the FFI's chapter 4 requirements, see Regulations section 1.1471-4(c).

A withholding agent described above may not rely on a Form W-8BEN or Form W-8BEN-E if:

1. The withholding agent has classified the account holder as a U.S. person in its account information, the Form W-8 has a current permanent residence address or a current mailing address in the United States, the withholding agent has a current residence or current mailing address in the United States as part of its account information, the account holder notifies the withholding agent of a new

residence or mailing address in the United States, or, only to the extent described in Regulations section 1.1441-7(b)(5), the withholding agent has a U.S. telephone number as the sole telephone number for the account holder. However:

- a. An individual who has provided a Form W-8BEN may be treated as a foreign person if:
  - The withholding agent has in its possession or obtains documentary evidence (as described in Regulations section 1.1471-3(c)(5)(i)) (which does not contain a U.S. address) supporting the claim of foreign status, and the individual provides the withholding agent with a reasonable explanation, in writing, supporting his or her claim of foreign status,
  - For a payment made outside the U.S. with respect to an offshore obligation (as defined in Regulations section 1.6049-5(c)(1)), the withholding agent has in its possession or obtains documentary

evidence establishing foreign status (as described in Regulations section 1.1471-3(c)(5)(i)) that does not contain a U.S. address,

- With respect to an offshore obligation (as defined in Regulations section 1.6049-5(c)(1)), the withholding agent classifies the individual as a resident of the country where the obligation is maintained and is required to report payments to the individual annually to the tax authority of the country in which the obligation is maintained and that country has an income tax treaty or information exchange agreement in effect with the United States, or
- The withholding agent has classified the account holder as a U.S. person in its account information, and the withholding agent has in its possession or obtains documentary evidence (as described in Regulations section 1.1471-3(c)(5)(i)(B)) evidencing citizenship in a country other than the United States.

- b. An entity that has provided a Form W-8BEN-E may be treated as a foreign person if the withholding agent does not know or have reason to know that it is a flow-through entity and:
- The withholding agent has in its possession or obtains documentation establishing foreign status (as described in Regulations section 1.1471-3(c)(5)(i) and as applicable to entities) that substantiates that the entity is actually organized or created under the laws of a foreign country, or
  - For a payment made with respect to an offshore obligation (as defined in Regulations section 1.6049-5(c)(1)), 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 a payment made to the entity annually to the tax authority of the country in which the account is maintained and that country has an income tax treaty or tax

information exchange agreement in effect with the United States.

2. The form is provided with respect to an offshore obligation and the account holder has provided standing instructions directing the withholding agent to pay amounts from its account to an address in, or an account maintained in, the United States, unless the account holder provides a reasonable explanation in writing that supports its foreign status or provides documentary evidence (as described in Regulations section 1.1471-3(c)(5)(i)) supporting its foreign status.
3. The Form W-8BEN is provided by an individual and is used to establish foreign status and 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, unless the withholding agent has in its possession or obtains documentary

evidence (described in Regulations section 1.1471-3(c)(5)(i)(B)) evidencing 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.
4. The Form W-8 is used to establish residence in a treaty country and:
- a. The permanent residence address is not in the treaty country or the withholding agent is notified of a new permanent residence address that is not in the treaty country. However, the beneficial owner may be treated as a resident of the treaty country if it provides a reasonable explanation for the permanent residence address outside the treaty country or the

withholding agent has in its possession, or obtains, documentary evidence described in Regulations section 1.1471-3(c)(5)(i) that establishes residency in the treaty country.

- b. The mailing address is not in the treaty country or the withholding agent has a mailing address that is not in the treaty country as part of its account information. However, the beneficial owner may be treated as a resident of the treaty country if:
  - The withholding agent has in its possession, or obtains, documentary evidence supporting the claim of residence in the treaty country and the additional documentation does not contain an address outside the treaty country,
  - The withholding agent has in its possession, or obtains, documentation that establishes that the beneficial owner is an entity organized in a treaty country (or an entity managed and controlled in a



treaty country, if required by the applicable treaty),

- The withholding agent knows that the address outside the treaty country (other than a P.O. box or in-care-of address) is a branch of the account holder that is a resident of the treaty country, or
  - The beneficial owner provides a written statement that reasonably establishes entitlement to treaty benefits.
- c. The account holder has standing instructions for the withholding agent to pay amounts from its account to an address outside, or an account maintained outside, the treaty country unless the account holder provides (or has provided) a reasonable explanation, in writing, establishing the account holder's residency in the applicable treaty country or the withholding agent has in its possession or obtains documentary evidence (described in Regulations section 1.1471-3(c)(5)(i)) establishing the account

holder's residence in the applicable treaty country.

For additional information on the standards of knowledge for chapter 3 purposes applicable to withholding agents for relying on a claim of foreign status or a claim of residency in a treaty country, see Regulations section 1.1441-7(b) (including special rules for accounts documented before July 1, 2014, including when a withholding agent is required to identify whether an individual has a U.S. place of birth for such an account).

For additional information on the standards of knowledge applicable to withholding agents for Forms W-8 provided for chapter 4 purposes, see Regulations section 1.1471-3(e).

Where required, a reasonable explanation supporting an individual's claim of foreign status means a written statement prepared by the individual, or, in the alternative, a checklist provided by the withholding agent and completed by the individual stating that the individual meets one of the requirements listed in Regulations section 1.1441-

7(b)(12)(i) through (iv). See Regulations section 1.1441-7(b)(12) for purposes of chapter 3 and Regulations section 1.1471-3(e)(4)(viii) for purposes of chapter 4.

**Dual claims.** If you are making payments to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf and on behalf of persons in their capacity as interest holders in that entity, you may, at your option, accept the dual claims even though you hold different withholding certificates that require you to treat the entity inconsistently for different payments or for different portions of the same payment, or you may choose to apply only the claim made by the entity, provided the entity may be treated as the beneficial owner of the income. If, however, inconsistent claims are made for the same portion of a payment, you may either reject both claims and request consistent claims or you may choose which reduction to apply. For partnerships that allocate effectively connected taxable income to partners that are foreign partnerships, the rules under section 1.1446-5 apply.

# Requesting a New Form W-8

Request a new Form W-8:

- Before the expiration of the validity period of an existing Form W-8 (see Period of Validity below for more information);
- If the existing form does not support a claim of reduced rate for a type of income that the submitter of the form has not previously received or is incomplete with respect to any claim made on the form; or
- If you know or have reason to know of a change in circumstances that makes any information on the current form unreliable or incorrect for purposes of chapter 3 or 4 (to the extent applicable based on the claims made on the form). For limits on reason to know if you are a financial institution, insurance company, or broker or dealer in securities, see Regulations sections 1.1441-7(b)(3) (if you are a withholding agent with respect to a payment subject to chapter 3 withholding) and 1.1471-3(d)(4)(v) (if you are a

withholding agent with respect to a withholdable payment).

**Example.** A foreign individual investor opens an account with a broker to purchase U.S. Treasury bonds and provides Form W-8BEN to obtain the portfolio interest exemption. The investor does not complete Part II of Form W-8BEN (because he is not claiming treaty benefits). Later, the investor purchases U.S. stock and claims treaty benefits on dividend income. The investor at that time completes a new Form W-8BEN providing the information required in Part II.

## **Period of Validity**

Generally, a Form W-8 is valid from the date signed until the last day of the third succeeding calendar year. For example, a Form W-8BEN signed on September 30, 2015, remains valid through December 31, 2018. However, under certain conditions a Form W-8 will have an indefinite validity period, unless there has been a change in circumstances. For example, a Form W-8BEN-E provided by an entity to support its foreign status along

with documentary evidence to support a claim made on the form. To determine the period of validity for a Form W-8 for purposes of chapter 3, see Regulations section 1.1441-1(e)(4)(ii). To determine the period of validity for a Form W-8 for purposes of chapter 4, see Regulations section 1.1471-3(c)(6)(ii). For the validity period of a pre-FATCA Form W-8 that may be relied upon by a withholding agent for chapter 4 purposes, see Regulations section 1.1471-3(d)(1).

## **Forms Received That Are Not Dated or That Contain Inconsequential Errors or Omissions**

If a Form W-8 is valid except that the person providing the form has not dated the form, the withholding agent may date the form from the day it is received and measure the validity period from that date. A withholding agent generally may treat a withholding certificate as valid if it contains an error or omission that is inconsequential and the withholding agent has sufficient

documentation on file to supplement the missing information. However, a failure to establish an entity type or make a required certification is not inconsequential. For example, if an entity beneficial owner receiving a withholdable payment selects a certified deemed-compliant FFI status on line 5 of Form W-8BEN-E but does not complete the corresponding required certifications in Part V, the form is invalid for chapter 4 purposes. On the other hand, for a Form W-8 for which the person signing the form does not also print a name before the signature when required on the form, the withholding agent need not treat the form as incomplete if the withholding agent has documentation or information supporting the identity of the person signing the form. See Regulations sections 1.1441-1(b)(7)(iv) for chapter 3 purposes and 1.1471-3(c)(7)(i) for chapter 4 purposes for further information about the rules for withholding certificates that contain inconsequential errors.

# Substitute Forms W-8

You may develop and use your own Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY (a substitute form) if its content is substantially similar to the IRS's official Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY (to the extent required by these instructions) and it satisfies certain certification requirements. You may develop and use a substitute form that is in a foreign language, provided that you make an English translation of the form and its contents available to the IRS upon request. You may combine Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY into a single substitute form. A form that satisfies these substitute forms requirements may be treated as a similar agreed form for purposes of an applicable Model 1 IGA, if the partner jurisdiction does not decline such treatment.

You may omit the chapter 4 certifications on your substitute form if such certifications are not required based on the payments made to the payees or account holders. You may not, however, omit the chapter 4 certifications if



you are an FFI documenting the chapter 4 status of your account holders under your chapter 4 requirements or under an applicable IGA. You may choose to provide a substitute form that does not include all of the chapter 4 statuses provided on the Form W-8, 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.

You are also required to furnish instructions for the substitute form to the extent and manner provided in the official instructions for the official form.

You may incorporate a substitute Form W-8 into other business forms you customarily use, such as account signature cards, provided the required certifications are clearly set forth. However, you may not:

1. Use a substitute form that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or

2. Imply that a person may be subject to 30% withholding or backup withholding unless that person agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-8 is valid only if it contains the same penalties of perjury statement and certifications as the official forms and the required signature. However, if the substitute form is contained in some other business form, the words “information on this form” may be modified to refer to that portion of the business form containing the substitute form information. The design of the substitute form must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained in the form.

## **Content of Substitute Form**

**Form W-8BEN.** The substitute Form W-8BEN must contain all of the information required in Part I, lines 1 through 7, and line 8. The

certifications in Part II must be included in a substitute form only if treaty benefits are claimed, and then only to the extent that the certifications are required. For example, Form W-8BEN, line 10, special rates and conditions (applicable to a claim for treaty benefits), is not required if this form is being requested from an individual receiving a payment of U.S. source dividends from stocks that are actively traded on an established securities market.

***Penalties of perjury statement.*** The design of the substitute Form W-8BEN must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: “The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-

U.S. individual and, if applicable, obtain a reduced rate of withholding.”

## **Non-IRS Form for Individuals**

A withholding agent may also substitute its own form for an official Form W-8BEN, regardless of whether the substitute form is titled as a Form W-8. The form must include the name and address of the individual that is the payee or beneficial owner, all countries in which the individual is resident for tax purposes, the individual’s city and country of birth, and a tax identification number, if any, for each country of residence. The form may also request other information required for purposes of tax or anti-money laundering (AML) due diligence in the United States or in other countries.

***Penalties of perjury statement.*** A non-IRS form for individuals 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. However, 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 Regulations sections 1.1471-3(e) and 1.1471-4(c)(4)(i)(A).

**Form W-8BEN-E.** The substitute Form W-8BEN-E must contain all of the information required in Part I, lines 1 through 6, and lines 8 and 9 if a U.S. or foreign TIN (or a GIIN) is required. The certifications in Part II must be included in a substitute form if you are making a withholdable payment to a branch or disregarded entity owned by the payee that is a class of FFI identified in Part II operating in a jurisdiction other than the jurisdiction of residency of the entity named in Part I of the form. See discussion regarding payments to branches or disregarded entities in *Further Notes for Validating Form W-8BEN-E*, earlier in these instructions. The

certifications in Part III must be included only if treaty benefits are claimed, and then only to the extent that the certifications are required. See *Alternative Certifications Under an Applicable IGA*, earlier in these instructions, for circumstances in which the chapter 4 certifications may be replaced with alternative certifications.

***Penalties of perjury statement.*** The design of the substitute Form W-8BEN-E must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person, establish your chapter 4 status (if required), and, if applicable, obtain a reduced rate of withholding. "

**Form W-8ECI.** The substitute Form W-8ECI must contain all of the information required in Part I other than line 9. The certifications in Part II of Form W-8ECI must be included in a substitute form.

***Penalties of perjury statement.*** The design of the substitute Form W-8ECI must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form.

Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line:

"The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and that the income for which this form is provided is effectively connected with the conduct of a trade or business within the United States."

**Form W-8EXP.** The substitute Form W-8EXP must contain all of the information required in

Part I, lines 1 through 5, line 7, if a U.S. TIN is required, and line 8. The substitute Form W-8EXP must also contain all of the statements and certifications contained in Parts II and III as applicable with respect to the purpose for which the form is provided, but a specific statement needs to be included (in its entirety) only if it is relevant to the type of entity providing the form. For example, if the only beneficial owners a U.S. withholding agent has as account holders are foreign governments for purposes of both chapters 3 and 4, the withholding agent may use a substitute Form W-8EXP that contains the required information in Part I, plus the required statements and certifications from Parts II and III that are related to foreign governments, as opposed to the certifications for other types of entities that would otherwise be providing the Form W-8EXP.

***Penalties of perjury statement.*** The design of the substitute Form W-8EXP must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form.



Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession."

**Form W-8IMY.** The substitute Form W-8IMY must contain all of the information required in Part I, lines 1 through 6, line 8 if a U.S. TIN is required, and line 9, if a GIIN is required. The information required in Part II must be included in a substitute form if you are making a withholdable payment to a branch or disregarded entity provided by the payee that is a class of FFI identified in Part II operating in a jurisdiction other than the jurisdiction of residence of the entity named in Part I of the form. See discussion regarding payments to branches or disregarded entities

in Further Notes for Validating Form W-8BEN-E, earlier in these instructions. The substitute Form W-8IMY must also contain all of the statements and certifications relevant to chapter 3 contained in Parts III through VIII if you are making a payment subject to withholding under chapter 3 and, except as otherwise indicated in the form's instructions, the statements and certifications relevant to the chapter 4 status contained in Parts IX through XXVI for the intermediary or flow-through entity providing the form if you are making a withholdable payment or if you are an FFI documenting your account holders for purposes of chapter 4 or the applicable IGA. However, a specific part needs to be included (in its entirety) only if it is relevant. For example, if the only intermediaries to which a U.S. withholding agent makes payments are qualified intermediaries that are participating FFIs, the withholding agent may use a substitute Form W-8IMY that contains only the required information from Part I (including line 9 to collect the intermediaries' GIINs), plus the statements and certifications from Part III. A substitute Form W-8IMY must

also incorporate the same attachments as the official form (such as a withholding statement and beneficial owner documentation, to the extent otherwise required). A withholding agent may also include any information in a substitute Form W-8IMY, or require any information to be associated with the form, that is reasonably related to his obligation to withhold and correctly report payments.

***Penalties of perjury statement.*** The design of the substitute Form W-8IMY must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form.

Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line:

“The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish: 1) your status as a qualified intermediary, a nonqualified intermediary, a specific type of U.S. branch, a withholding foreign partnership, a withholding

foreign trust, a nonwithholding foreign partnership, a nonwithholding foreign simple trust, or a nonwithholding foreign grantor trust; 2) your chapter 4 status; and/or 3) your status as a qualified securities lender."