

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG-130967-13, page 884.

Sections 1471 through 1474 of the Internal Revenue Code, commonly known as FATCA, generally require a U.S. withholding agent to withhold tax on certain payments to a foreign financial institution (FFI) that has not agreed to provide the IRS with certain information regarding its United States accounts. Under FATCA, a U.S. withholding agent must also withhold tax on certain payments to a nonfinancial foreign entity (NFFE) that has not provided the withholding agent with information about the NFFE's substantial United States owners. Temporary regulations in TD 9657 revise and refine final FATCA regulations, TD 9610, and provide guidance to persons making certain U.S. related payments to FFIs and NFFEs, and payments by FFIs to other persons. The text of the temporary regulations also serves as the text of these proposed regulations.

REG-134361-12, page 895.

Payors of payments of certain U.S. source income to foreign persons are subject to comprehensive payee documentation, information reporting, and tax withholding requirements under sections 1441, 1442, and 1443 (contained in chapter 3 of subtitle A of the Internal Revenue Code). These payments may also be subject to comprehensive payee due diligence and documentation, information reporting, and tax withholding rules under chapter 4 (sections 1471-1474), Chapter 61, and section 3406. Temporary regulations in TD 9658 provide guidance coordinating and conforming the due diligence, information reporting, and tax withholding rules under chapter 3 and 61 and section 3406 with the requirements under chapter 4. The text of the temporary regulations also serves as the text of these proposed regulations.

Notice 2014-11, page 880.

This notice provides the maximum vehicles values for use with the special valuation rules under regulation section 1.61-21(d) and (e) for 2014. These values are adjusted annually for inflation by reference to the Consumer Price Index.

Notice 2014-14, page 881.

This notice announces the intention of Treasury and the IRS to modify the rule relating to specified ELLs when finalizing the proposed regulations published in the Federal Register at 78 FR 73128 (2013) on December 5, 2013. Specifically, final regulations will provide that the rules relating to specified equity-linked instruments issued on or after 90 days of the date of publication of final regulations.

Rev. Proc. 2014-24, page 879.

Consolidated returns; failure to properly include subsidiary. This revenue procedure provides a determination by the Commissioner under § 1.1502-75(b) that if an affiliated group satisfies the conditions described in the revenue procedure, a subsidiary that actually failed to file a Form 1122 is treated as if it filed such form and thus joined in the making of a consolidated return by the affiliated group.

Notice 2014-17, page 881.

The notice, as interim guidance, provides a general rule that per capita distributions to members of Indian tribes made from funds held in trust by the Secretary of the Interior ("Trust Account") are excluded from the gross income of the members of the tribe receiving the per capita distributions. It also provides an exception where distributions to tribal members from a Trust Account will not be excluded from gross income under 26 U.S.C. § 61 to the members of the tribe receiving the distributions if the Trust Account is used to mischaracterize taxable income as nontaxable per capita distributions.

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T.D. 9657, page 687.

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T.D. 9658, page 748.

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T.D. 9660, page 842.

Final regulations provide rules under section 6055 of the Code, enacted by section 1502 of the Affordable Care Act, relating to information reporting by persons that provide minimum essential coverage to individuals.

employers subject to the information reporting requirements under section 6056.

ADMINISTRATIVE

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EXCISE TAX

T.D. 9661, page 855.

Section 6056 was added to the Code by the Patient Protection and Affordable Care Act. Section 6056 requires applicable large employers, as defined in section 4980H, to report to the IRS information about the health care coverage, if any, they offered to full-time employees, in order to administer the employer shared responsibility provisions of section 4980H of the Code. Section 6056 also requires applicable large employers to furnish related statements to employees that employees may use to determine whether, for each month of the calendar year, they may claim on their individual tax returns a premium tax credit under section 36B. These final regulations provide for a general reporting method and alternative reporting methods designed to simplify and reduce the cost of reporting for

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Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

26 CFR 1471: Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

T.D. 9657

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

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 and temporary regulations.

SUMMARY: This document contains final and temporary 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. The text of the temporary regulations also serves as the text of the proposed regulations set forth in a cross-reference notice of proposed rulemaking (REG-130967-13) published in the Proposed Rules section in this issue of the **Bulletin**.

DATES: *Effective date.* These regulations are effective on March 6, 2014.

FOR FURTHER INFORMATION

CONTACT: Tara Ferris, Nancy Lee, Michael Kaercher, or Kamela Nelan at (202) 317-6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains amendments to the Income Tax Regulations (CFR part 1) 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 U.S. accounts, and on certain payments to certain nonfinancial foreign entities (NFFE) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874) and, on September 10, 2013, a correction to the final regulations was published in the **Federal Register** (78 FR 55202) (final regulations). The Treasury Department and the IRS received numerous comments in response to the final regulations.

Following publication of the final regulations, the Treasury Department and the IRS also issued additional guidance under chapter 4. Notice 2013-43 (2013-31 I.R.B. 113) previews the revised timelines for implementation of the FATCA requirements (which are adopted by these temporary regulations) and provides additional guidance concerning the treatment of FFIs located in jurisdictions that have signed intergovernmental agreements for the implementation of FATCA (IGAs) but have not yet brought those IGAs into force. In particular, Notice 2013-43 clarifies that a jurisdiction is treated as having in effect an IGA if the jurisdiction is listed on the Treasury website as a jurisdiction

that is treated as having an IGA in effect. In general, the Treasury Department and the IRS intend to include on this list jurisdictions that have signed but have not yet brought into force an IGA. The list of jurisdictions that are treated as having an IGA in effect is available at the following address:

<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>. Notice 2013-69 (2013-46 I.R.B. 503) further previews some of the changes that the Treasury Department and IRS intend to make to the final regulations and publishes a draft of the agreement that an FFI may enter into with the IRS in order to satisfy its obligations under section 1471(b) of the Code and be treated as a participating FFI (FFI agreement). Revenue Procedure 2014-13 (2014-3 I.R.B. 419) provides the final FFI agreement.

II. Regulatory 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 under FATCA. The Treasury Department and the IRS exercised this authority by publishing final regulations that provide specific operational guidelines for implementing FATCA in a manner consistent with its policy objectives. As described in the preamble to the final regulations, the final regulations implement the statute based on a risk-based approach that is intended to address policy considerations, eliminate unnecessary burdens, and to the extent possible, build on existing practices and obligations.

Following publication of the final regulations, the Treasury Department and the IRS received unsolicited comments suggesting changes to or requesting clarification of certain rules in the final regulations. As a result of these comments, the Treasury Department and the IRS have continued to work with affected parties to develop rules that achieve an appropriate balance between fulfilling the important policy objectives of chapter 4 and mini-

mizing the burdens imposed on stakeholders. As part of this process, the Treasury Department and the IRS have carefully considered comments received in response to the final regulations and have met with stakeholders. While many of these comments reiterate comments that were received and considered prior to the publication of the final regulations or suggest changes to the final regulations that are outside the scope of these temporary regulations, a number of comments proposed changes to the final regulations that the Treasury Department and the IRS believe warrant inclusion in these temporary regulations. The Treasury Department and the IRS will accept comments and engage with interested stakeholders in connection with finalizing these temporary regulations.

Explanation of Provisions

I. In General

In response to comments and after further consideration, these temporary regulations revise and further clarify the final regulations. To this end, these temporary regulations take into account helpful comments received and provide additional detail and certainty regarding the scope of obligations imposed under chapter 4. In addition, these temporary regulations reflect changes made to the final regulations to coordinate the chapter 4 regulations with the temporary regulations published under chapters 3 and 61 and section 3406 of the Code. Additionally, these temporary regulations contain modifications to the final regulations to further harmonize them with the IGAs. Several of the changes made by these temporary regulations were previewed in Notice 2013–69, the draft FFI agreement, and certain of the draft IRS forms released throughout 2013.

The following sections provide a discussion of the additions and modifications made by the temporary regulations to the final regulations. To facilitate this discussion, the defined terms set forth in the temporary regulations are used throughout.

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

To address comments received and to provide further clarification, these temporary regulations modify certain definitions contained in the final regulations.

A. Direct reporting NFFE, sponsored direct reporting NFFE, and sponsoring entity

Comments requested an election providing NFFEs with the ability to report information about their substantial U.S. owners directly to the IRS rather than to withholding agents. In response to these comments and as previewed in Notice 2013–69, these temporary regulations provide certain NFFEs with elections to be treated as direct reporting NFFEs or sponsored direct reporting NFFEs. A NFFE that is treated as a direct reporting NFFE or sponsored direct reporting NFFE shall be treated as an excepted NFFE. Accordingly, definitions have been added for a direct reporting NFFE and a sponsored direct reporting NFFE, and the definition of a sponsoring entity has been modified. Conforming changes have also been made throughout these temporary regulations to implement these changes.

B. Excepted NFFE

These temporary regulations modify the definition of excepted NFFE such that excepted NFFEs include, among other things, a direct reporting NFFE and a sponsored direct reporting NFFE. In addition, to correct an oversight, the definition of excepted NFFE under these temporary regulations is further expanded to include a NFFE that is a qualified intermediary (QI), withholding foreign partnership (WP) or withholding foreign trust (WT).

C. Offshore obligation and offshore account

In response to comments stating that the definition of offshore obligation in the final regulations is unclear, and in order to harmonize chapters 4 and 61, these temporary regulations define offshore obligation by cross-reference to § 1.6049–5(c)(1) (which now uses the term *offshore obligation* instead of *offshore account*).

These temporary regulations also remove the definition of offshore account because it is included in the definition of offshore obligation under § 1.6049–5(c)(1).

D. Pre-FATCA Form W–8

These temporary regulations make a clarifying change to the definition of pre-FATCA Form W–8. The final regulations define pre-FATCA Form W–8 as certain Forms W–8 that do not contain chapter 4 statuses. However, the chapter 4 status of a non-U.S. individual filing a Form W–8 is the same as his or her chapter 3 status. Therefore, the definition in the final regulations could be interpreted to mean that any Form W–8 previously submitted by a non-U.S. individual could not be treated as a pre-FATCA Form W–8. These temporary regulations modify the definition of pre-FATCA Form W–8 to avoid this result.

E. Standardized industry coding system

The final regulations define the term *standardized industry code* to mean a code that is part of a coding system that is used to classify account holders by business type for purposes other than tax purposes and that is implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized. In response to comments, these temporary regulations remove the term *standardized industry code* and replace it with the term *standardized industry coding system*. The term *standardized industry coding system* in these temporary regulations is substantially similar to the term *standardized industry code* in the final regulations, except that it focuses on a coding system used by the withholding agent to classify account holders, rather than a specific code that is part of such a coding system. Additionally, and in response to comments, with respect to a preexisting obligation of an entity, the preexisting obligation documentary evidence rules have been liberalized by eliminating the requirement that the classification of the payee's status be recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized.

F. *Certain foreign insurance companies treated as U.S. persons*

The final regulations treat a foreign insurance company that is not licensed to do business in any State and makes an election under section 953(d) as a foreign person. Comments requested that a foreign insurance company that has made an election under section 953(d) be treated as a U.S. person. A foreign insurance company that has made an election under section 953(d) is required to report on its U.S. income tax return the U.S. persons that own a direct or indirect interest in it. As previewed in Notice 2013–69, and in light of the existing reporting requirements applicable to these entities, the temporary regulations modify the definition of U.S. person to include a foreign insurance company that has made an election under section 953(d) and that either is not a specified insurance company or is a specified insurance company that is licensed to do business in any State. In such cases, the foreign insurance company will be required to continue to report on its owners in accordance with its election under section 953(d). A foreign insurance company that has made an election under section 953(d) and that is a specified insurance company that is not licensed to do business in any State will continue to be treated as a foreign person for purposes of chapter 4.

G. *Coordination of definitions*

In response to comments requesting clarification and in order to coordinate the definitions in the final regulations with the definitions in chapters 3 and 61 and the FFI agreement, these temporary regulations add definitions of backup withholding, branch, chapter 4 withholding rate pool, exempt recipient, IGA, non-exempt recipient, reportable payment, and reporting Model 2 FFI and modify the definition of a U.S. branch treated as a U.S. person. In addition, the definitions of financial institution, limited branch, limited FFI, and substantial U.S. owner are modified to ensure coordination between the FFI agreement and these temporary regulations.

H. *Harmonization with IGAs*

These temporary regulations modify the definition of nonreporting IGA FFI to include (in addition to an FFI that is identified or treated as a nonreporting financial institution pursuant to a Model 1 or Model 2 IGA that is not a registered deemed-compliant FFI) an FFI that is a resident of, located in, or established in a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under the temporary regulations. Certain definitions (including the definition of retirement plan under § 1.1471–6(f)) are also modified to further harmonize these temporary regulations and the IGAs.

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

A. *Grandfathered obligations—definitions—material modification*

Comments indicated that outstanding life insurance contracts often contain a provision permitting the substitution of an insured and, as a result, cannot be a grandfathered obligation under the final regulations. Because such provisions are prevalent in existing life insurance contracts, the Treasury Department and the IRS have determined that life insurance contracts that have such a provision should be eligible for grandfathered status until the provision is invoked, but that any change or substitution of the insured under the contract should be treated as a material modification such that grandfathered status would no longer apply. These temporary regulations modify the final regulations accordingly.

B. *Grandfathered obligations—determination by withholding agent of grandfathered treatment*

The final regulations provide that a withholding agent is required to treat a modification of an obligation as material if the withholding agent knows or has reason to know that a material modification has occurred. The Treasury Department and the IRS received comments stat-

ing that it is difficult for a withholding agent to determine whether there has been a material modification of a grandfathered obligation absent a disclosure from the issuer of the obligation, and therefore that the receipt of such a disclosure should be the only instance in which a withholding agent is required to treat a modification of an obligation as material. In response to these comments, the temporary regulations modify the final regulations to provide that a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of an obligation as material only if the withholding agent has actual knowledge that a material modification has occurred. One example of an event that will cause a withholding agent to have actual knowledge of a material modification is if the withholding agent receives a disclosure indicating that there has been or will be a material modification to the obligation.

IV. *Comments and Changes to § 1.1471–3—Identification of Payee*

A. *Payee defined*

1. *Exceptions—U.S. Intermediary or Agent of a Foreign Person*

Comments requested that, in cases in which a withholding agent makes a withholdable payment to a U.S. insurance broker that is acting as an intermediary for or agent of a foreign insurer, the withholding agent be allowed to treat the U.S. insurance broker as the payee unless the withholding agent has reason to know that the U.S. insurance broker will not satisfy its withholding obligations. These temporary regulations modify the final regulations to adopt this comment.

2. *Exceptions—U.S. Branch of Certain Foreign Banks or Foreign Insurance Companies*

A payment made to a U.S. branch of a participating FFI or a registered deemed-compliant FFI may be treated as a payment made to a U.S. person if the branch is treated as a U.S. person for purposes of withholding under chapter 4. The final regulations inadvertently omit a cross-reference to the regulations containing the requirements of U.S. branches to report information regarding certain U.S. owners of owner-documented FFIs and passive

NFFEs. These temporary regulations add a cross-reference to § 1.1474-1(i)(1) and (2).

B. Determination of payee's status—determination of whether the payment is made to a QI, WP, or WT

In order to harmonize the rules in chapter 4 with those in chapters 3 and 61, these temporary regulations clarify that, with respect to a withholding agent's determination of whether a payment is made to a QI, WP, or WT, a Form W-8IMY, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," provided by such entity must contain the entity's QI-EIN, WP-EIN, or WT-EIN (as applicable). In addition, QIs, WPs, and WTs that have a GIIN must provide both a QI-EIN, QP-EIN, or WT-EIN and the GIIN to a withholding agent on the Form W-8IMY.

C. Rules for reliably associating a payment with a withholding certificate or other appropriate documentation

1. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—In General

These temporary regulations clarify that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that both acts as an intermediary and is located outside of the FFI's country of residence, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate. This change provides more detail on the use of GIINs issued to branches or disregarded entities of an FFI and that are used, in part, to identify an FFI to withholding agents.

2. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—Withholding Statement—Special Requirements for an FFI Withholding Statement

Comments requested additional clarification to the final regulations concerning

the requirements of an FFI withholding statement, specifically with regard to the use of a chapter 4 withholding rate pool identified on an FFI withholding statement to allocate a withholdable payment (or portion of a withholdable payment) to persons included within the chapter 4 withholding rate pool. Some of these clarifications have already been previewed in the draft FFI agreement, published in Notice 2013-69, and the final FFI agreement, published in Rev. Proc. 2014-13. These temporary regulations provide further clarification of FFI withholding statement requirements, including rules on when a chapter 4 withholding rate pool may be used by an FFI to allocate withholdable payments to a class of persons within a particular type of chapter 4 withholding rate pool. For example, if a participating FFI (including a reporting Model 2 FFI) that is a non-U.S. payor receives a withholdable payment on behalf of an account holder of a U.S. account, the participating FFI may include the account holder in a chapter 4 withholding rate pool of U.S. payees provided on an FFI withholding statement to the withholding agent to allocate the payment (or portion thereof) to the U.S. payee pool when the participating FFI reports the account holder under § 1.1471-4(d)(3) (Form 8966, "FATCA Report," reporting) or § 1.1471-4(d)(5) (election to report on Form 1099). As a result, the participating FFI need not provide payee specific information to the withholding agent with respect to the account holder, even if such information would typically be required under chapter 61, because it will be reported to the IRS under chapter 4.

Additionally, reporting Model 1 FFIs and reporting Model 2 FFIs (without regard to whether such FFIs are U.S. or non-U.S. payors) may include certain recalcitrant account holders in a chapter 4 withholding rate pool of U.S. payees when such payments are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients). This rule was added to provide coordination between the various reporting regimes. For example, a reporting Model 2 FFI may include an account holder of a non-consenting U.S. account in a chapter 4 withholding rate pool of

U.S. payees with respect to a withholdable payment that is not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 when the FFI reports the account holder as described in § 1.1471-4(d)(6) for the year in which the payment is made.

Finally, in order to clarify potential ambiguities, and as previewed in the draft and final FFI agreement, these temporary regulations provide that an FFI withholding statement should indicate the portion of the payment allocated to a pool of recalcitrant account holders that hold dormant accounts for which the FFI (and not the withholding agent) will withhold in escrow under the procedures described in § 1.1471-4(b)(6). Additionally, a participating FFI that elects to apply backup withholding under § 1.1471-4(b)(3)(iii) to a withholdable payment that is also a reportable payment (as described under chapter 61) must also indicate the portion of the payment allocated to each recalcitrant account holder subject to backup withholding under section 3406 and report such payment to the IRS on Form 1099. A participating FFI will not be able to make the election to backup withhold under § 1.1471-4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

3. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—Withholding Statement—Special Requirements for a Chapter 4 Withholding Statement and Exempt Beneficial Owner Withholding Statement

An intermediary providing a withholding certificate for a withholdable payment under chapter 4 may also need to provide information under chapter 3 or chapter 61 if those chapters also apply to the payment the intermediary receives. These temporary regulations modify the final regulations to coordinate with chapters 3 and 61 by providing cross-references to the regulations under those chapters to clarify the information required to be included on a withholding statement when a withholdable payment is also reportable under chapters 3 or 61.

4. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Period of Validity

Under chapter 4, withholding certificates are valid for three years, unless an exception permits indefinite validity (until a change in circumstances occurs). Beneficial owner withholding certificates provided by certain entities qualify for indefinite validity if the certificate is furnished with documentary evidence establishing the entity's foreign status. Comments requested that section 501(c) entities be excluded from the requirement to furnish documentary evidence of foreign status as it is an undue burden on such entities. The Treasury Department and the IRS agree that it is appropriate to exclude these entities from the requirement to furnish documentary evidence of foreign status. In response to these comments and to coordinate with the rules under chapter 3, these temporary regulations cross-reference the rules for indefinite validity of withholding certificates for section 501(c) entities in § 1.1441-1(e)(4)(ii)(B).

5. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Electronic Transmission of Withholding Certificate, Written Statement, and Documentary Evidence

The final regulations provide that a withholding agent may accept withholding certificates, written statements, and documentary evidence supporting a payee's claim of chapter 4 status electronically if the agent is able to verify the identity of the sender as the person named on the form. Comments requested that the verification rules be modified or eliminated to reduce the burden on the withholding agent. The Treasury Department and the IRS agree with the comments, but have determined that the electronic transmission requirements under chapter 4 should match those to be revised under chapter 3 in consideration of these comments. Therefore, these temporary regulations modify the final regulations by cross-referencing the electronic submission rules in § 1.1441-1(e)(4)(iv)(C) which have been modified to adopt the change in a separate regulations package. These

temporary regulations also make similar conforming changes to the final regulations with respect to requirements for an intermediary to electronically submit a withholding statement with a withholding certificate to a withholding agent.

6. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Acceptable Substitute Withholding Certificate—Non-IRS Form for Individuals

In general, a withholding agent may substitute its own form for an official Form W-8 if the substitute form contains provisions that are substantially similar to the official form. The final regulations provide that if a substitute form is used in place of a W-8BEN for individuals, the form must contain, among other things, the individual's city and country of birth. The Treasury Department and the IRS received comments indicating that the inclusion of city of birth on this form would impose an undue burden on withholding agents. In response to comments, these temporary regulations remove the city of birth requirement. After further consideration, however, the temporary regulations require that the substitute form must contain the individual's date of birth, without regard to whether a foreign tax identification number is provided.

7. Documentation Furnished on Account-by-Account Basis unless Exception Provided for Sharing Documentation within Expanded Affiliated Group—Preexisting Account

The Treasury Department and the IRS received comments requesting that, for preexisting accounts, a withholding agent be allowed to rely on documentation held at a branch of the withholding agent or a branch of another expanded affiliated group member even if the withholding agent does not treat the accounts as consolidated obligations. The comments indicated that, in certain cases, the requirement to treat the accounts as consolidated obligations in order to share documentation is too burdensome. These temporary regulations modify the final regulations to allow a withholding agent, with respect to a preexisting account that it maintains, to rely on documentation furnished by a

payee for a preexisting account held at another branch of the withholding agent or a branch of another expanded affiliated group member solely to determine the chapter 4 status of the account holder if: (i) the withholding agent obtains and reviews copies of such documentation supporting the chapter 4 status of the payee and (ii) the withholding agent has no reason to know that, when the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect.

D. Documentation requirements to establish payee's chapter 4 status

1. Reliance on Pre-FATCA Form W-8

The final regulations generally allow the withholding agent to rely on a pre-FATCA Form W-8 for international organizations. In order to clarify a potential ambiguity and to conform with chapter 3, these temporary regulations provide that reliance on a pre-FATCA Form W-8 is limited to international organizations as defined under chapter 3 and under section 7701(a)(18).

2. Identification of U.S. Persons—In General

Under chapter 4, a withholding agent must treat certain payees as U.S. persons. In order to clarify a potential ambiguity, these temporary regulations provide that foreign branches of U.S. persons and FFIs that have elected to be treated as U.S. persons under section 953(d) (despite the fact that such FFIs may not be U.S. persons for other purposes of chapter 4) should be treated as U.S. persons by a withholding agent if the withholding agent has a valid Form W-9, "Request for Taxpayer Identification Number and Certification," from the payee or is required to presume that the payee is a U.S. person. This reduces burden because FFIs that have elected to be treated as U.S. persons under section 953(d) are generally treated as U.S. persons under chapter 3 and would need to provide a Form W-9 in connection with payments subject to chapter 3 withholding and reporting.

3. Identification of U.S. Persons—Preexisting Obligations

The final regulations provide that a withholding agent (other than a participating FFI or registered deemed-compliant FFI) that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it previously reviewed a Form W-9 or other documentation that established that the payee is a U.S. person and established that the payee is an exempt recipient for purposes of chapter 61. Comments from U.S. withholding agents indicated that the burden of documenting such payees that have previously been classified as U.S. persons is both significant and disproportionate to the benefits of obtaining documentation of U.S. status. In response to these comments, these temporary regulations modify the final regulations to allow withholding agents (other than a participating FFI or registered deemed-compliant FFI) to treat the payee of a payment with respect to a preexisting obligation as a U.S. person if the withholding agent has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through documentation or the application of the rules in § 1.6049-4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

4. Identification of Participating FFIs and Registered Deemed-Compliant FFIs

The final regulations generally provide that a withholding agent may only treat a payee as a participating FFI or registered deemed-compliant FFI if the withholding agent receives an appropriate withholding certificate and a GIIN. The final regulations also provide a transitional rule for when withholding agents may treat payments made prior to January 1, 2017, with respect to a preexisting obligation, as made to a payee that is a participating FFI or registered deemed-compliant FFI. Under this rule the payee only needs to provide the withholding agent with its GIIN (which the withholding agent must verify) and indicate whether the FFI is a participating FFI or a registered deemed-compliant FFI. After further consideration and to coordinate with the rules under chapters 3 and 61, these temporary regu-

lations modify the final regulations to provide that in such cases the payee must also have provided the withholding agent with a pre-FATCA Form W-8, as payees that receive U.S. source FDAP income would have already been required to provide a withholding certificate to a withholding agent. These temporary regulations further clarify the final regulations such that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that is located outside of the FFI's country of residence and receives the payment, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate.

5. Identification of Excepted NFFEs—Identifying a Direct Reporting NFFE, Identifying a Sponsored Direct Reporting NFFE, and Identification of an Excepted Inter-Affiliate FFI

These temporary regulations provide that direct reporting NFFEs and sponsored direct reporting NFFEs qualify as excepted NFFEs. Consistent with this change, these temporary regulations add to the final regulations identification rules with respect to direct reporting NFFEs and sponsored direct reporting NFFEs. Additionally, under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations with respect to an excepted inter-affiliate FFI to allow such FFIs to hold depository accounts to pay for expenses in the country in which the FFI is operating and that are maintained within the same country. Accordingly, conforming changes have also been made by these temporary regulations to add identification rules with respect to an excepted inter-affiliate FFI. An identification rule was not necessary under the final regulations because an excepted inter-affiliate FFI was not allowed

to hold an account with a withholding agent other than a member of its expanded affiliated group.

E. *Standards of knowledge*

1. GIIN Verification

The final regulations provide that, under certain circumstances, a withholding agent has reason to know that a payee is not a financial institution. To clarify a potential ambiguity, these temporary regulations provide that a withholding agent has reason to know that a withholdable payment is being made to a limited branch of a participating or registered deemed-compliant FFI when it is directed to make payment to an address of the FFI in a jurisdiction other than the address of the participating FFI or registered deemed-compliant FFI (or branch of such FFI) that is identified as the FFI (or branch of such FFI) that is supposed to receive the payment. These temporary regulations further provide special rules regarding a direct reporting NFFE and a sponsored direct reporting NFFE's claim of chapter 4 status.

2. Reason to Know

Under chapter 4, a withholding agent may not rely on an FFI's claim of chapter 4 status if the withholding agent has reason to know that such claim is unreliable or incorrect. Under the final regulations, the withholding agent is required to review information used to satisfy AML due diligence requirements in determining whether a claim of chapter 4 status was unreliable or incorrect. In response to comments, these temporary regulations modify the final regulations such that when a withholding agent has classified a person by business type for AML due diligence or another regulatory purpose (other than for a tax purpose) that requires the withholding agent to periodically monitor or update the classification, the withholding agent will have reason to know that information contained in its account files conflicts with the person's claim of chapter 4 status only if the classification recorded by the withholding agent is inconsistent with the chapter 4 status claimed. Comments also requested

additional time to review the information collected for AML due diligence because it is typically gathered and stored by a different department or division of the withholding agent and is not linked to the customers' account files. These temporary regulations adopt this comment and allow 30 days to review information collected for AML due diligence for new accounts.

The final regulations also provide due diligence requirements with respect to U.S. indicia of account holders for payments made with respect to preexisting obligations. After further consideration, the temporary regulations modify these provisions such that the U.S. indicia-based due diligence requirements generally do not apply to a withholding agent that has previously documented an account for purposes of chapter 3 or chapter 61. However, under the temporary regulations, a withholding agent that applies the limits on reason to know described in chapter 3 or chapter 61 must review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person. A cross-reference in § 1.1471-3(e)(4)(viii)(A)(4) has also been corrected.

F. Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation

The Treasury Department and the IRS intend for the chapter 4 presumption rules for determining the status of a person as an individual or an entity and as U.S. or foreign to be identical to the presumption rules in chapters 3 and 61. To ensure coordination of these rules, these temporary regulations modify the final regulations by cross-referencing the presumption rules under chapter 3, rather than restating the rules in detail. This change ensures coordination between the presumption rules in chapter 3 and chapter 4 in the event that the chapter 3 presumption rules are modified.

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

A. Withholding requirements

1. Satisfaction of Withholding Requirements—Election to Withhold under Section 3406

As announced in Notice 2013-69, these temporary regulations modify the final regulations to coordinate withholding under chapter 4 and backup withholding under section 3406. Under § 1.1474-6(f), a participating FFI that makes a withholdable payment that is also a reportable payment to a recalcitrant account holder is not required to apply backup withholding under section 3406 if it withholds on the payment under chapter 4. A reportable payment that is not subject to withholding under chapter 4 remains subject to backup withholding under section 3406. Additionally, these temporary regulations provide under § 1.1471-4(b)(3)(iii) that a participating FFI may satisfy its chapter 4 withholding obligations for a withholdable payment that is a reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding if the participating FFI elects for backup withholding under section 3406 to apply (rather than withholding under chapter 4 with regard to such payees). A participating FFI will not be able to make the election to backup withhold under § 1.1471-4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

2. Special Rule for Dormant Accounts

With respect to dormant accounts of recalcitrant account holders, the final regulations permit a participating FFI to escrow amounts withheld under chapter 4 rather than deposit such amounts with the IRS. To coordinate with the chapter 3 and 61 regulations which would have required such amounts to be withheld upon, the temporary regulations limit this allowance to amounts not otherwise subject to withholding under chapter 3 or backup withholding under section 3406. In addition, a participating FFI may not delegate its responsibility to escrow the withheld tax to

the withholding agent from which it receives the payment. These modifications are intended to harmonize the treatment of such escrowed amounts under chapters 3 and 4 and are consistent with the provisions of the FFI agreement.

B. Due diligence for the identification and documentation of account holders and payees

1. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—U.S. Indicia and Relevant Documentation Rules—Documentation to be Retained upon Identifying U.S. Indicia—Standing Instructions to Pay Amounts

The final regulations provide a cure for standing instructions to pay amounts to an account maintained in the United States for an account holder that differs from the cure provided under chapter 3. These temporary regulations modify the final regulations to provide an option to follow the chapter 3 rules by adding a cross-reference to § 1.1441-7(b)(12).

2. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—Exception for Preexisting Individual Accounts Previously Documented as Held by Foreign Individuals

The final regulations provide that a participating FFI that has previously established an account holder's status as foreign in order to fulfill its reporting obligations as a U.S. payor under chapter 61 is not required to perform an electronic search or enhanced review. Comments requested that this exception be extended to the identification and documentation performed by an agent of a participating FFI that is a U.S. payor. To address these comments and to further coordinate between the IGAs and the regulations, these temporary regulations modify the final regulations to adopt this comment.

C. Account reporting

1. Reporting Requirements In General—Financial Institution Required to Report an Account—Special Reporting of Account Holders of Territory Financial Institutions

Section 1.1471-4(d)(2)(ii)(B) provides a special reporting rule for participating FFIs that maintain an account held by a territory financial institution acting as an intermediary. If such territory financial institution agrees to be treated as a U.S. person, the participating FFI is not required to report under § 1.1471-4 with respect to the account holders of the territory financial institution because such entities will report directly to the IRS. However, if the territory financial institution does not agree to be treated as a U.S. person, the final regulations require the participating FFI to report under § 1.1471-4 with respect to each account holder of the territory financial institution that receives a withholdable payment (or portion thereof) and that is a specified U.S. person or substantial U.S. owner of a foreign entity (indirect account holders). The final regulations are ambiguous about how a participating FFI could report on these indirect account holders. To provide more clarity with respect to the reporting requirements and to provide additional flexibility, the temporary regulations give participating FFIs the option of reporting on these indirect account holders on either Form 8966 or Form 1099. Additionally, these temporary regulations clarify the scope of information that must be reported by a participating FFI on Form 8966 or Form 1099 with respect to account holders of a territory financial institution that has not elected to be treated as a U.S. person.

2. Reporting Requirements In General—Financial Institution Required to Report an Account—Requirement to Identify the GIIN of a Branch that Maintains an Account

The final regulations provide that a participating FFI may elect to comply with its obligation to report under § 1.1471-4(d)(3) or § 1.1471-4(d)(5) on a branch-by-branch basis. After further consideration, the temporary regulations

provide that a participating FFI may report under § 1.1471-4(d)(3) or § 1.1471-4(d)(5) with respect to all of the participating FFI's U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). Consistent with the final regulations, a participating FFI must include the GIIN assigned to the participating FFI or its branch (including a disregarded entity of the FFI), as applicable, to identify the jurisdiction of the FFI or branch (or disregarded entity) that maintains the accounts subject to reporting.

3. Reporting Requirements In General—Financial Institution Required to Report an Account—Reporting by Participating FFIs and Registered Deemed-Compliant FFIs (including QIs, WPs, WTs, and Certain U.S. Branches Not Treated as U.S. Persons) for Accounts of Nonparticipating FFIs (Transitional)

The final regulations provide transitional reporting requirements for a participating FFI or registered deemed-compliant FFI making a payment of a foreign reportable amount to a nonparticipating FFI. Under § 1.1474-1(d)(4)(iii)(C) of the final regulations, a participating FFI is required to report the aggregate amount of foreign reportable amounts paid to each payee that is a nonparticipating FFI, even when such payments are not associated with a financial account. The final regulations define foreign reportable amount as a payment of FDAP income that would be a withholdable payment if paid by a U.S. person. Comments requested changes and clarification with respect to the transitional rule because it was unclear regarding the scope of payments subject to reporting and because of the cost of modifying systems to comply with this reporting rule. These temporary regulations continue to provide transitional reporting rules, but, consistent with Notice 2013-69, modify it to address these comments. First, the temporary regulations clarify that reporting will be required only with respect to nonparticipating FFIs that maintain an account with the participating FFI. Second, these temporary regulations modify the definition of foreign reportable amount to mean foreign source payments

as described in § 1.1471-4(d)(4)(iv) paid to or with respect to each such account. Third, the temporary regulations provide that instead of reporting only foreign reportable amounts paid to such nonparticipating FFIs, a participating FFI may report all payments made with respect to the account (not only foreign reportable amounts). Fourth, the temporary regulations provide that, when a participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI and the participating FFI has been unable to obtain such consent, it may report the aggregate number of accounts held by all such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts. These temporary regulations also modify the final regulations to provide that the information required under the transitional reporting rule will be provided on Form 8966, not Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," and accordingly move the transitional rule to § 1.1471-4(d)(2)(ii)(F) and delete a residual paragraph in § 1.1474-1(d)(3)(iii) and renumber (d)(3)(iv) through (d)(3)(x). These changes were previously announced in Notice 2013-69 and are also included in the final FFI agreement. Finally, the temporary regulations require participating FFIs to retain account statements for accounts maintained for such nonparticipating FFIs.

4. Reporting Requirements In General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rule for U.S. Payors Other Than U.S. Branches

The final regulations provide that a participating FFI that is a U.S. payor (other than a U.S. branch) is treated as satisfying its chapter 4 reporting obligations with respect to accounts that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs if it reports the information required under chapter 61 and the information described under § 1.1471-4(d)(5)(ii) (requiring additional information on accounts held by specified U.S. persons, U.S. owned foreign entities that are NFFEs, and owner-

documented FFIs). In response to comments, the temporary regulations modify the final regulations to allow a participating FFI that is a U.S. payor to satisfy its chapter 4 reporting obligations with respect to its U.S. accounts or accounts held by owner-documented FFIs either by reporting the information described in chapter 61 and § 1.1471-4(d)(5)(ii) or (iii) (the information reporting would be made on Form 1099 for U.S. accounts that are not U.S. owned NFFEs), as provided in the final regulations, or by reporting the information described in § 1.1471-4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) (the information reporting would be made on Form 8966). A participating FFI that reports the information described in § 1.1471-4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) and that is required to report payments under chapter 61 is not relieved of that obligation.

5. Reporting Requirements in General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rules for U.S. Branches Not Treated as U.S. Persons

The final regulations do not include a rule for reporting by a U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person. To correct this oversight, these temporary regulations add new § 1.1471-4(d)(2)(iii)(C) to provide that such a U.S. branch is treated as having satisfied its reporting requirements under chapter 4 if it reports the information required under chapter 61 with respect to account holders of accounts that the U.S. branch is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

6. Reporting on Recalcitrant Account Holders—Extensions in Filing

In response to comments, the temporary regulations modify the final regulations to provide an automatic 90-day extension of time in which to file Form 8966 with respect to recalcitrant account holders. An additional 90-day hardship extension may be provided in certain circumstances. These revisions are consistent with the extensions of time already permitted for filing Form 8966 with respect to U.S. accounts.

7. Treatment of a Disregarded Entity

In response to comments and in order to address a potential ambiguity in the final regulations about whether a disregarded entity that is owned by an FFI is treated as a branch of an FFI, these temporary regulations clarify that the term branch with respect to an FFI includes an entity that is disregarded as an entity separate from the FFI. This clarification was previewed in the draft FFI agreement which was published in Notice 2013-69. These temporary regulations make additional changes throughout the final regulations to further clarify the treatment of a disregarded entity when such an entity is treated as a branch of an FFI. For example, the GIIN verification procedures that apply with respect to a branch of an FFI also apply with respect to a disregarded entity that is owned by an FFI. Additionally, a disregarded entity that is owned by an FFI may be treated as a limited branch if the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains, and the reason to know standards that apply to withholdable payments made to a branch of a participating or registered deemed-compliant FFI also apply to withholdable payments made to a disregarded entity that is owned by such an FFI.

D. Expanded affiliated group requirements

The final regulations require that, in general, each FFI within an expanded affiliated group must be either a participating FFI or a registered deemed-compliant FFI. Comments noted that some FFIs within an expanded affiliated group will have the status of an exempt beneficial owner and requested that the regulations be modified to allow for such FFIs to be excluded from this requirement. The temporary regulations modify the final regulations to adopt this comment.

E. Verification—IRS review of compliance

The final regulations allow the IRS to request additional information in its review of Form 8966. The temporary regulations further allow the IRS to request

additional information to determine an FFI's compliance with the applicable FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

F. Event of default

The final regulations define events of default under an FFI agreement. This definition includes the failure to significantly reduce, over a period of time, the number of recalcitrant account holders and payees that are nonparticipating FFIs. Comments were made that this language was ambiguous and could imply an event of default, for example, even in circumstances in which an FFI consistently complies with the regulatory due diligence procedures. Accordingly, in response to the comments, these temporary regulations modify the final regulations to provide that this event of default consists of a 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 as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees.

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

A. U.S. accounts—account holder—in general; grantor trust

The definition of account holder in the final regulations does not treat a grantor trust as an account holder to the extent that the grantor is treated as owning the trust or all the assets in the trust under sections 671 through 679, regardless of whether the grantor is a U.S. or foreign person. If such grantor is a foreign person and the beneficiary of the trust is a U.S. person, the grantor is treated as the account holder and consequently, the account is a non-U.S. account and no beneficiary that is a specified U.S. person is treated as having an interest in the portion of the trust owned by the grantor. Therefore, the specified U.S. person is not an account holder and would not be reported even though such U.S. person might be a

substantial U.S. owner of the foreign grantor trust. Further, for purposes of determining whether a foreign grantor trust has a substantial U.S. owner (and is a U.S. account), the final regulations provide that a substantial U.S. owner is any specified U.S. person treated as owning any portion of the grantor trust under sections 671 through 679, and a trust owned only by U.S. grantors is not treated as having a beneficiary that is a specified U.S. person. Thus, in contrast to the account holder rule, the test for determining a substantial U.S. owner of a trust is made without regard to the treatment of the settlor of the trust as a foreign grantor under sections 671 through 679. In response to requests for further clarification, these temporary regulations remove the grantor trust rule in the definition of account holder in the final regulations so that the general rule for treating an entity as an account holder will apply to treat a grantor trust as the account holder. Accordingly, a grantor trust that holds an account must provide documentation of its chapter 4 status as a FFI or NFFE. This change harmonizes the treatment of a grantor trust as an account holder for purposes of the chapter 4 withholding provisions with the provisions in chapters 3 and 61, which treat a grantor trust, rather than the grantor, as the payee.

B. Financial accounts—value of interest determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments, and return earned on the interest (including upon a sale, exchange, or redemption) determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs

While financial accounts generally include equity or debt interests (other than regularly traded interests) in investment entities, financial accounts include only certain enumerated categories of interests in holding companies, treasury centers, and other financial institutions. Among the enumerated categories are certain equity and debt interests whose return or value is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. The final regulations provide that a debt interest is considered to have a

value determined primarily by reference to such assets if the debt interest is secured by the assets of a U.S. person. The final regulations provide that an equity interest is considered to have a value determined primarily by reference to such assets if the amount payable upon redemption of the equity interest is secured primarily by assets that give rise (or could give rise) to withholdable payments. A similar provision under another enumerated category treating certain interests in holding companies and treasury centers as financial accounts (see §§ 1.1471–5(b)(1)(iii)(B)(2) and (3)) also applies to a debt interest secured by the assets of one or more investment entities described in §§ 1.1471–5(e)(4)(i)(B) or (C) or one or more passive NFFEs that are members of the entity’s expanded affiliated group (collectively, the secured equity and debt provisions).

Comments have suggested that these provisions are overbroad because it is questionable whether the value of, or return earned on, a debt or equity interest is determined primarily by reference to assets of a U.S. person solely because the debt or equity interest is secured by such assets. In response to these comments, these temporary regulations modify the final regulations by eliminating the secured equity or debt provisions. The facts and circumstances may nonetheless lead to a conclusion that the value of a secured equity or debt interest is determined, directly or indirectly, primarily by reference to assets giving rise to withholdable payments (for example, when the amount payable as interest on, or upon redemption or retirement of, a debt interest is determined primarily by reference to the assets securing the debt interest).

In addition, the final regulations provide that a debt interest is considered to have a value determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments if amounts payable as interest on, or upon redemption or retirement of, the debt are determined primarily by reference to the profits or assets of a U.S. person. This provision inadvertently did not address whether debt interests with amounts payable by reference to equity interests in a U.S. person are debt interests whose return or value is determined primarily by

reference to assets that give rise (or could give rise) to withholdable payments. To correct this omission, the temporary regulations modify the final regulations to include a reference to equity interests in, as well as profits and assets of, a U.S. person.

C. Definition of financial institution

1. In General

The final regulations provide that the definition of financial institution includes a holding company or treasury center that is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity. Comments noted that the definition, with respect to an insurance company, should be limited to a specified insurance company which is itself a financial institution. These temporary regulations correct the final regulations to treat a holding company or treasury center as a financial institution if it is part of an expanded affiliated group that includes a specified insurance company.

2. Holding Financial Assets for Others as a Substantial Portion of its Business—Income Attributable to Holding Financial Assets and Related Financial Services

The final regulations provide that an entity is a custodial institution if at least 20 percent of the entity’s gross income is attributable to holding financial assets for others and related financial services. The final regulations define income attributable to holding financial assets to include, among other things, fees for providing financial advice. As a result, an entity could qualify as a custodial institution under the final regulations even if the entity’s sole business is to provide financial advice to clients and it does not conduct any activities as a custodian or broker. Comments indicated that this definition is overly broad and could cause entities that do not hold financial assets and therefore have no financial accounts to be treated as custodial institutions. In response, these temporary regulations modify the final regulations to define income attributable to holding financial assets to include fees for providing financial advice with respect

to financial assets held in (or to be held in) custody by the entity.

3. Investment Entity—Examples

The final regulations generally provide that an investment entity includes an entity whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets and that is managed by another entity that primarily conducts as a business certain investment-related activities. Examples 7 and 8 in § 1.1471-5(e)(4)(v) are clarified such that a foreign introducing broker does not manage an entity if it does not have discretionary authority to manage its clients' assets. However, even though these facts have been added to Examples 7 and 8, the results in Examples 7 and 8 remain the same. In Example 7, even when the introducing broker has discretionary authority to act unilaterally on its client's behalf with respect to its client's investments, because the introducing broker is an individual, the entity that she manages would not be treated as an investment entity under § 1.1471-5(e)(4)(i)(B). By comparison, because the introducing broker in Example 8 is an entity that primarily conducts as a business certain investment related activities, the entity managed by the introducing broker would be treated as an investment entity under § 1.1471-5(e)(4)(i)(B).

4. Exclusions—Excepted Nonfinancial Group Entities—In General

The final regulations provide that a holding company, treasury center, or captive finance company will not qualify as an excepted nonfinancial group entity if, among other things, it is formed in connection with or availed of certain arrangements or investment vehicles. Comments requested additional guidance on what it means to be "formed in connection with or availed of." The temporary regulations modify the final regulations such that any entity that existed at least six months prior to its acquisition by an arrangement or investment vehicle and which, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to be formed in connection with or availed of such an arrangement or

investment vehicle, in the absence of other facts suggesting the existence of an investment strategy.

5. Exclusions—Excepted Nonfinancial Group Entities—Nonfinancial Group

For purposes of determining whether an expanded affiliated group is a nonfinancial group, the final regulations provide an income test for the three-year period preceding the year for which the determination is made. Comments requested: (i) that this exclusion also be applicable if the expanded affiliated group has been in existence for less than three years and (ii) that a group would qualify if it meets the income test over an average of three years (rather than having to meet the test in each of the three preceding years). The Treasury Department and the IRS have determined that the exclusion should be available to expanded affiliated groups that have been in existence for less than three years, and these temporary regulations modify the final regulations accordingly. The Treasury Department and the IRS continue to believe, however, that only expanded affiliated groups that meet the income test in each year of the testing period should qualify for the exclusion.

In order to provide further clarification when determining the percentage of income or assets of the group that produce or are held for the production of passive income, these temporary regulations also modify the final regulations by excluding transactions between members of the expanded affiliated group. In addition, these temporary regulations provide guidance on measuring the value of such assets.

6. Exclusions—Excepted Nonfinancial Group Entities—Holding Company

Comments requested that, for purposes of determining if a holding company is part of an excepted nonfinancial group, a trust or partnership that owns all the stock of a common parent corporation of an expanded affiliated group be eligible for treatment as a holding company and member of an excepted nonfinancial group. Otherwise, such entities are not treated as part of the expanded affiliated group and cannot qualify for such exception. These temporary regulations modify the final

regulations to allow a partnership or other non-corporate entity to be treated as a holding company (and therefore as a potential member of an excepted nonfinancial group) if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of two or more corporations and each such corporation has its own subsidiaries such that it is the common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate such group for purposes of applying the rules of this section unless the non-corporate entity is treated as the common parent entity of the entire expanded affiliated group in accordance with § 1.1471-5(i)(10).

7. Exclusions—Excepted Nonfinancial Group Entities—Treasury Center

Comments were received that the definition of a treasury center in the final regulations is too narrow in that an entity that manages working capital but does not otherwise invest or trade may not satisfy this definition. For example, a group's cash pooling entity may be in a net deficit position and therefore may not be considered to be investing or trading in financial assets. In addition, with respect to the financing activities of such a vehicle, the final regulations could be read to limit situations in which an entity that is itself equity funded can qualify as a treasury center. In response to these comments, the temporary regulations modify the final regulations to clarify that an entity that manages the working capital of an expanded affiliated group (or any member thereof) will not cease to qualify as a treasury center solely because it has no investments and does not trade in financial assets. Further, the temporary regulations clarify that equity-funded affiliates may qualify as treasury centers.

8. Exclusions—Excepted Inter-Affiliate FFI

Under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations to allow such entities to hold depository accounts maintained in the country in which the entity is operating to pay for expenses in that same country.

D. Deemed-compliant FFIs

1. Registered Deemed-Compliant FFIs—Restricted Funds

Under chapter 4, interests in a restricted fund that are not issued directly by the fund can only be sold through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks, or restricted distributors. In response to comments, even though these temporary regulations do not eliminate the requirement of the restricted fund to terminate its agreement with any distributor that has a change in status that causes it to no longer qualify to be a distributor and redeem or transfer all debt and equity interests of the FFI issued through that distributor, these temporary regulations do remove the requirement that the restricted fund certify to the IRS.

2. Registered Deemed-Compliant FFIs—Qualified Credit Card Issuers and Servicers

Comments were received that an FFI that issues credit cards may form a separate entity that services the credit cards. Under the final regulations, such an entity could be an FFI, but would not be treated as a registered deemed-compliant FFI because it is not an issuer of credit cards, even though such FFI would otherwise qualify for registered deemed-compliant FFI status. Pursuant to these comments,

the temporary regulations expand the registered deemed-compliant FFI category to include qualified credit card servicers.

3. Registered Deemed-Compliant FFIs—Sponsored Investment Entities and Controlled Foreign Corporations

Under the final regulations, an FFI remains liable for its withholding and reporting obligations under chapter 4 even if a sponsoring entity performs these responsibilities on behalf of such FFI. In response to comments, these temporary regulations modify the final regulations to clarify that a sponsoring entity will not be jointly and severally liable for the sponsored FFI's obligations unless the sponsoring entity is also a withholding agent that is separately liable for such obligations.

4. Certified Deemed-Compliant FFIs—Nonregistering Local Bank

The final regulations provide that, in order to be treated as a nonregistering local bank, an FFI's business must consist primarily of receiving deposits from and making loans to unrelated retail customers. Comments noted that the final regulations do not provide a definition of unrelated for this and other purposes. In addition, it may be unclear how the final regulations would apply to a member-owner of a credit union or similar cooperative credit organization. In order to address these concerns, and consistent with the IGAs, these temporary regulations modify the final regulations such that a credit union or similar cooperative credit organization will be eligible for treatment as a nonregistering local bank if its business consists primarily of receiving deposits from and making loans to members, provided that no such member has a greater than five percent interest in such credit union or cooperative credit organization. For purposes of determining what unrelated means for retail customers of a bank, as well as for purposes of aggregating the interests of related members of a credit union or cooperative credit organization under the five percent test, the temporary regulations provide that the rules of section 267(b) apply.

5. Certified Deemed-Compliant FFIs—Limited Life Debt Investment Entities (Transitional)

Comments were received stating that most securitization investment vehicles could not meet the requirements in the final regulations for a limited life debt investment entity (LLDIE) to be treated as certified deemed-compliant FFIs. To accommodate industry practices and expand the types of securitization vehicles that will qualify as a LLDIE, these temporary regulations make a number of significant changes to the definition of LLDIE in the final regulations. These changes include: (i) removing the requirement that a LLDIE's organizational documents cannot be amended without the consent of all of its investors; (ii) clarifying that a LLDIE issues debt or equity interests under a trust indenture or similar agreement; (iii) extending the category so that it applies to a LLDIE that issued all of its interests on or before January 17, 2013 (for example, the date that the final regulations were filed); (iv) allowing a LLDIE to be treated as a certified deemed-compliant FFI until the LLDIE liquidates or terminates; (v) removing the requirement that investors be unrelated to each other; and (vi) expanding the types of assets that the entity can hold and still qualify as a LLDIE.

6. Certified Deemed-Compliant FFIs—Investment Advisors and Investment Managers

In response to comments, and to coordinate with the IGAs, these temporary regulations add certain investment advisors and investment managers that do not maintain financial accounts as entities eligible for treatment as certified deemed-compliant FFIs. Accordingly, these temporary regulations also add identification rules with respect to such investment advisors and investment managers.

7. Related Persons

Certain provisions in the final regulations (such as §§ 1.1471-3(c)(9)(ii)(B); 1.1471-5(f)(2)(i)(B); 1.1471-5(f)(4)(i); and 1.1471-5(i)(6)(i)) use the term *related* or *unrelated* to describe a relationship between parties. Comments noted that the final regulations do not define what is

meant by *related*. These temporary regulations generally amend the relevant paragraphs of the final regulations to provide that parties are related for purposes of the relevant paragraph when such parties have a relationship described in section 267(b).

E. Expanded affiliated group

Comments requested that a LLDIE not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity. These comments indicated that because interests in these entities are generally held through a clearing organization, these entities often would not be able to determine the identity of their investors. In addition, comments noted the burden of monitoring ownership changes for the purpose of determining when to include or exclude a LLDIE as a member of an expanded affiliated group, and the potential adverse consequences to the rest of the group in the event that any such entity is not properly included. Comments also stated that the definition of expanded affiliated group in the final regulations presents challenges with respect to non-corporate entities that are within a chain of commonly controlled corporations. For example, the final regulations do not clearly indicate whether constructive ownership rules apply to determine whether a non-corporate entity is controlled by a member of the group. In response to these comments, these temporary regulations modify the definition of expanded affiliated group to exclude from the group pre-existing LLDIEs (for example, a LLDIE that issued all of its interests, and was in existence, on or before January 17, 2013) and clarify the ownership rules applicable to corporate and non-corporate members of the group. These temporary regulations also permit (but do not require) a non-corporate entity to be treated as the common parent entity of the expanded affiliated group.

VII. Comments and Changes to Section 1.1471-6—Payments Beneficially Owned by Exempt Beneficial Owners—Foreign Central Bank of Issue

Comments were received stating that the functions of a foreign central bank of

issue may be performed by an institution other than a bank. In response to these comments and in order to coordinate the regulations with the IGAs, these temporary regulations modify the final regulations to include an institution performing such functions within the definition of a foreign central bank of issue. In addition, comments stated that a foreign central bank of issue may earn income from cash as well as securities. Accordingly, the temporary regulations allow a foreign central bank of issue to be a beneficial owner with respect to income earned on cash.

Comments also stated that some foreign central banks maintain depository accounts solely for their employees. These comments requested that such employee-only accounts not be treated as accounts held in connection with commercial activities. The Treasury Department and the IRS believe there is a low risk of tax evasion with respect to such employee accounts, and that the burden on central banks to register as an FFI for these activities and provide documentation as intermediaries would be disproportionately high. Therefore, the temporary regulations modify the final regulations to exclude maintaining such accounts from the definition of commercial activities.

VIII. Comments and Changes to Section 1.1472-1—Withholding on NFFEs

A. Exceptions—payments to an excepted NFFE—active NFFEs

Comments noted that fiscal year financial statements may not be used in determining whether an entity is an active NFFE. These comments noted that preparing calendar year financial statements for entities using non-calendar fiscal years would cause significant burdens without commensurate benefits. Therefore, these comments suggested that an entity be able to use either its calendar or fiscal year in analyzing whether the entity meets the active NFFE test. Comments further suggested that an entity be allowed to use financial statements based on foreign accounting principles. These comments have been adopted and these temporary regulations modify the final regulations accordingly.

B. Exceptions—payments made to an excepted NFFE

After further consideration, these temporary regulations provide that QIs, WPs, and WTs are treated as excepted NFFEs.

C. Exceptions—payments to an excepted NFFE—direct reporting NFFEs and sponsored direct reporting NFFEs

These temporary regulations provide that excepted NFFE includes a NFFE that is a direct reporting NFFE or sponsored direct reporting NFFE. A direct reporting NFFE is a NFFE that elects to report on Form 8966 directly to the IRS certain information about its direct or indirect substantial U.S. owners (or it may be required to certify on Form 8966, or in such other manner as the IRS may prescribe, that it does not have any such substantial U.S. owners) in lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account. A direct reporting NFFE is required to register with the IRS to obtain a GIIN and to agree to comply with the provisions in the regulations regarding reporting information about its substantial U.S. owners. In general, withholding agents and participating FFIs will identify and document a direct reporting NFFE in a manner similar to how withholding agents and participating FFIs will document a participating FFI, including by verifying that the GIIN of the direct reporting NFFE is listed on the IRS FFI List. Notwithstanding that a direct reporting NFFE will document itself to withholding agents and participating FFIs in a manner similar to a participating FFI, it will not be treated as a participating FFI and will not enter into an FFI agreement. Therefore, since the definition of excepted NFFE includes a direct reporting NFFE, an account held by a direct reporting NFFE will not be treated as a U.S. account and will not be reported to the IRS by a participating FFI with which the direct reporting NFFE has a financial account.

In addition, these temporary regulations modify the final regulations such that an entity may act as a sponsor for one or more direct reporting NFFEs. A sponsoring entity will report on Form 8966 directly to the IRS (on the sponsored di-

rect reporting NFFE's behalf) information about each sponsored direct reporting NFFE's direct or indirect substantial U.S. owners. These changes were previously announced in Notice 2013-69 and were made in response to comments.

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

A. Definition of withholdable payment—U.S. source FDAP income defined—special rule for sales of interest bearing debt obligations; gross proceeds defined—payment of gross proceeds—amount of gross proceeds

Under the final regulations, income that is otherwise described as U.S. source FDAP income does not include 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. In order to harmonize this rule with the rules in chapter 3, these temporary regulations provide that this type of interest is not excluded from U.S. source FDAP income or gross proceeds if the sale or exchange is part of a plan described in the anti-abuse rule under § 1.1441-3(b)(2)(ii).

B. Definition of withholdable payment—payments not treated as withholdable payments—offshore payments of U.S. source FDAP income prior to 2017 (transitional)

1. In General

The final regulations provide an exclusion from the definition of withholdable payments for certain non-intermediated offshore payments of U.S. source FDAP income prior to 2017. The Treasury Department and the IRS intended to provide that the exclusion does not apply to debt or equity issued by a U.S. person in order to prevent U.S. persons from exploiting this exception by issuing debt or equity interests through a foreign branch. To clarify the issue, these temporary regulations modify the final regulations such that the exclusion does not apply to payments made with respect to debt or equity issued by a U.S. person (excluding a deposit account maintained by a foreign branch of a U.S. financial institution).

Comments indicated that because the defined term *payments with respect to an offshore obligation* is not used in the final regulations, it is unclear whether, in order for this exception to apply, all payments must be made outside the U.S. To clarify, these temporary regulations modify the final regulations to use the defined term.

2. Insurance Brokers

Because the final regulations treat insurance brokers as intermediaries, the transitional rule for offshore payments of U.S. source FDAP income under the final regulations does not apply to insurance and reinsurance premiums paid to foreign insurance companies by non-U.S. insurance brokers. Comments were received stating that the transitional rule should apply to such premiums, because it applies to insurance premiums paid directly by the insured. These temporary regulations provide a transitional rule such that, for purposes of the exception for offshore payments, an intermediary does not include a person acting as an insurance broker with respect to premiums.

C. Definition of withholdable payment—payments not treated as withholdable payments—collateral arrangements prior to 2017 (transitional)

Comments requested relief from withholding on payments made by a secured party with respect to collateral securing one or more transactions under a collateral arrangement between the secured party and the counterparty. Comments indicated that general industry practice is to commingle collateral from all counterparties in a single account held by the secured party and that this practice does not permit the identification of collateral to a particular counterparty. As a result, a secured party is currently unable to determine whether it is acting as an intermediary or a principal with respect to some or all of the payments made to the counterparty based upon the secured party's right under a collateral arrangement to sell or loan the collateral to a third party. To allow the industry time to develop the systems necessary to make this determination, these temporary regulations add a transitional rule so that withholding on such payments

will begin on January 1, 2017, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement.

D. Substantial U.S. owner—indirect ownership of foreign entities—interests owned or held by a related person

The final regulations define a substantial U.S. owner to include a specified U.S. person that owns, directly or indirectly, more than 10 percent of a foreign corporation, partnership, or trust. Ownership is determined by aggregating interests held by related persons, applying certain provisions of the regulations under section 267 to determine whether such persons are related. These temporary regulations clarify that a person must have direct or indirect ownership in the entity before the aggregation rules apply, such that a substantial U.S. owner does not include an individual with no ownership interest other than an interest attributed to him from a related person.

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

A. Information returns for payment reporting—filing requirement—in general

The final regulations provide a general statement that a withholding agent needs to file a Form 1042-S to report a chapter 4 reportable amount, even though there are exceptions to this rule, such as the exception applicable to a participating FFI that provides its withholding agent with sufficient information for it to do the reporting. The final regulations have been modified to qualify this language.

The final regulations also provide that a recipient copy of the Form 1042-S may include more than one type of income, which would thus display information differently than the copy filed with the IRS. For refund purposes, it is important for the IRS to match the recipient copy of the Form 1042-S to the copy filed with the IRS. As previewed in the draft Form 1042-S instructions released on November 1, 2013, and to coordinate with the regulations under chapter 3, these temporary regulations remove the allowance for

withholding agents to include more than one type of income or other payment on the copy of the Form 1042-S furnished to the recipient.

However, to allow sufficient time for withholding agents to adapt to this change to the final regulations, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of the Form 1042-S for calendar year 2014. Starting with calendar year 2015, the Form 1042-S and accompanying instructions will require a separate Form 1042-S for each type of income or other payment.

B. Information returns for payment reporting—filing requirement—recipient—defined; persons that are not recipients

For Form 1042-S reporting, the final regulations provide that an excepted NFFE that is not acting as an agent or intermediary with respect to the payment is the recipient of the payment in question. However, if such entity is a flow-through entity, it is not treated as a recipient on the Form 1042-S for chapter 3 purposes. In order to have a consistent definition of recipient for chapters 3 and 4 reporting purposes (because reporting for both chapters is performed on a single Form 1042-S), these temporary regulations modify the final regulations by providing that an excepted or passive NFFE that is a flow-through entity is not treated as a recipient. Also, the final regulations have been modified to remove the provision indicating that a participating FFI or registered deemed-compliant FFI is not a recipient when it fails to provide information to the withholding agent regarding its reporting pools, which is reflected on Form 1042-S. These temporary regulations further remove the references to a participating FFI, registered deemed-compliant FFI, and U.S. branch that is not treated as a U.S. person from the definition of persons that are not recipients.

C. Information returns for payment reporting—amounts subject to reporting—in general

These temporary regulations make a correction to the definition of the term *chapter 4 reportable amount* in § 1.1474-

1(d)(2) to add that this amount must also be a withholdable payment.

D. Information returns for payment reporting—method of reporting—payments by U.S. withholding agents to recipients—payments to participating FFIs, deemed-compliant FFIs, and certain QIs

Consistent with changes made by these temporary regulations to clarify the chapter 4 withholding rate pools, the final regulations are modified to clarify that a withholding agent that receives an FFI withholding statement from a participating FFI or registered deemed-compliant FFI [must report with respect to each such pool identified on the FFI withholding statement] on 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 identified on an FFI withholding statement.

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

These temporary regulations add a coordination rule for instances in which a participating FFI withholds under chapter 4 on a payment made to a recalcitrant account holder that is a U.S. non-exempt recipient, and such payment is also a reportable amount subject to backup withholding. The rule is applicable to cases in which the participating FFI does not elect to withhold on the payment under section 3406.

XII. Future Guidance

A. Verification requirements of sponsoring entities

Regulations describing the verification requirements of sponsoring entities will be proposed and issued separately from these temporary regulations. Under the proposed regulations, a sponsoring entity will be required to make two separate compliance certifications: one on behalf of its sponsored FFI or sponsored direct reporting NFFE with respect to the sponsored FFI's compliance with the requirements of an FFI agreement or the spon-

sored direct reporting NFFE's election to be treated as a direct reporting NFFE (as applicable), and a second certification on the sponsoring entity's own behalf with respect to its compliance with the requirements of its status as a sponsoring entity. In addition, the verification requirements in the proposed regulations will allow the IRS to request additional information from a sponsoring entity, such as regarding the information reported on the forms filed with the IRS with respect to a sponsored FFI or sponsored direct reporting NFFE in order to review such entities' compliance with the requirements for maintaining their status as a sponsored FFI or sponsored direct reporting NFFE, and to assist the IRS with its review of account holder or substantial U.S. owner compliance with tax reporting requirements.

B. FFI agreement

Several changes made by these temporary regulations are not reflected in and may be inconsistent with certain provisions in the FFI agreement. As a result, the Treasury Department and the IRS intend to publish a revenue procedure revising the FFI agreement to conform to these regulations. For instance, the rules regarding an optional escrow by a participating FFI of tax withheld on withholdable payments to dormant accounts held by recalcitrant account holders are modified in these temporary regulations. The FFI agreement will be revised to reflect that the tax withheld in escrow becomes due 90 days after the date that the account ceases to be a dormant account, rather than the date that is the earlier of 90 days or the end of the calendar year following the date that the account ceases to be a dormant account.

In addition, cross references to the temporary regulations under chapters 3, 4, and 61 will be updated to reflect changes to the numbering of various sections of those temporary regulations after the date of publication of the revenue procedure containing the FFI agreement. For example, cross references in the FFI agreement to terms defined in the chapter 4 temporary regulations will be modified to reflect the addition of the term *reporting Model 2 FFI* and the renumbering of subsequent

sections in § 1.1471–1(b). In addition, an incorrect citation to § 1.6049–4(b)(6) will be removed.

The FFI agreement will also be revised to reflect a change to the reporting requirements by participating FFIs that elect to backup withhold under section 3406 rather than to withhold under chapter 4 on a withholdable payment that is a reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding. These temporary regulations clarify that a participating FFI may make the election to apply backup withholding under section 3406 with respect to an account holder only if it complies with the information reporting rules under chapter 61 and section 3406. Accordingly, various sections of the FFI agreement will be modified to reflect this change.

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 section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1471–3, 1.1471–4, 1.1472–1, 1.1474–1, and 1.1474–6. In addition, these temporary regulations amend a number of collections of information set out in TD 9610. The IRS intends that the information collection requirements of these temporary regulations will be satisfied by filing Forms 8957, 8966, the W–8 series of forms, W–9, 1042, 1042–S, the 1099 series of forms, as well as income tax returns (for example, Forms 1040 and 1120F) and Form 843 relating to refunds. 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 temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information un-

less the collection of information displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Bulletin**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara Ferris, Nancy Lee, Michael Kaercher, and Kamela Nelan of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part 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 1.1474–6 is also issued under 26 U.S.C. 1474.

Par. 2. Section 1.1471–1 is amended:

1. By removing paragraph (b)(81).

2. By redesignating paragraphs (b)(115) through (b)(142) as (b)(124) through (b)(151), paragraphs (b)(108) through (b)(114) as (b)(116) through (b)(122), paragraph (b)(107) as (b)(114), paragraphs (b)(82) through (b)(106) as (b)(88) through (b)(112), paragraphs (b)(75) through (b)(80) as (b)(82) through (b)(87), paragraphs (b)(62) through (b)(74) as (b)(68) through (b)(80), paragraphs (b)(39) through (b)(61) as (b)(44) through (b)(66), paragraphs (b)(28) through (b)(38) as (b)(32) through (b)(42), paragraphs (b)(18) through (b)(27) as (b)(21) through (b)(30), paragraphs (b)(9) through (b)(17) as (b)(11) through (b)(19), and paragraphs (b)(7) and (b)(8) as (b)(8) and (b)(9).

3. By adding new paragraphs (b)(7), (b)(10), (b)(20), (b)(31), (b)(43), (b)(67), (b)(81), (b)(113), (b)(115), and (b)(123).

4. By revising newly-designated paragraphs (b)(23), (b)(35), (b)(41), (b)(48), (b)(50), (b)(76), (b)(77), (b)(83), (b)(88), (b)(91), (b)(98), (b)(100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105),

(b)(124), (b)(125), (b)(128), (b)(135), and (b)(141).

The revisions and additions read as follows:

§ 1.1471-1 Scope of chapter 4 and definitions.

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(b) * * *

(7) [Reserved]. For further guidance, see § 1.1471-1T(b)(7).

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(10) [Reserved]. For further guidance, see § 1.1471-1T(b)(10).

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(20) [Reserved]. For further guidance, see § 1.1471-1T(b)(20).

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(23) [Reserved]. For further guidance, see § 1.1471-1T(b)(23).

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(31) [Reserved]. For further guidance, see § 1.1471-1T(b)(31).

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(35) [Reserved]. For further guidance, see § 1.1471-1T(b)(35).

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(41) [Reserved]. For further guidance, see § 1.1471-1T(b)(41).

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(43) [Reserved]. For further guidance, see § 1.1471-1T(b)(43).

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(48) [Reserved]. For further guidance, see § 1.1471-1T(b)(48).

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(50) [Reserved]. For further guidance, see § 1.1471-1T(b)(50).

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(67) [Reserved]. For further guidance, see § 1.1471-1T(b)(67).

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(76) [Reserved]. For further guidance, see § 1.1471-1T(b)(76).

(77) [Reserved]. For further guidance, see § 1.1471-1T(b)(77).

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(81) [Reserved]. For further guidance, see § 1.1471-1T(b)(81).

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(83) [Reserved]. For further guidance, see § 1.1471-1T(b)(83).

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(88) [Reserved]. For further guidance, see § 1.1471-1T(b)(88).

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(91) [Reserved]. For further guidance, see § 1.1471-1T(b)(91).

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(98) [Reserved]. For further guidance, see § 1.1471-1T(b)(98).

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(100) [Reserved]. For further guidance, see § 1.1471-1T(b)(100).

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(104) * * *

(i) [Reserved]. For further guidance, see § 1.1471-1T(b)(104)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-1T(b)(104)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-1T(b)(104)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1471-1T(b)(104)(ii)(C).

(105) [Reserved]. For further guidance, see § 1.1471-1T(b)(105).

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(113) [Reserved]. For further guidance, see § 1.1471-1T(b)(113).

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(115) [Reserved]. For further guidance, see § 1.1471-1T(b)(115).

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(123) [Reserved]. For further guidance, see § 1.1471-1T(b)(123).

(124) [Reserved]. For further guidance, see § 1.1471-1T(b)(124).

(125) [Reserved]. For further guidance, see § 1.1471-1T(b)(125).

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(128) [Reserved]. For further guidance, see § 1.1471-1T(b)(128).

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(135) [Reserved]. For further guidance, see § 1.1471-1T(b)(135).

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(141) [Reserved]. For further guidance, see § 1.1471-1T(b)(141).

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Par. 3. Section 1.1471-1T is added to read as follows:

§ 1.1471-1T Scope of chapter 4 and definitions (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-1(a).

(b) [Reserved]. For further guidance, see § 1.1471-1(b).

(1) through (6) [Reserved]. For further guidance, see § 1.1471-1(b)(1) through (6).

(7) *Backup withholding.* The term *backup withholding* means the withholding required under section 3406.

(8) [Reserved]. For further guidance, see § 1.1471-1(b)(8).

(9) [Reserved]. For further guidance, see § 1.1471-1(b)(9).

(10) *Branch.* The term *branch* means a branch as defined in § 1.1471-4(e)(2)(ii).

(11) through (19) [Reserved]. For further guidance, see § 1.1471-1(b)(11) through (19).

(20) *Chapter 4 withholding rate pool.*

The term *chapter 4 withholding rate pool* means a pool identified on a chapter 4 withholding statement (as described in § 1.1471-3(c)(3)) provided by an intermediary or flow-through entity with respect to a withholdable payment and that is allocated to payees that are nonparticipating FFIs. The term *chapter 4 withholding rate pool* also includes, with respect to a pool identified on an FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI with respect to a withholdable payment that is allocated to a class of recalcitrant account holders subject to withholding under chapter 4 as described in § 1.1471-4(d)(6)(i) (including a pool of account holders to which the escrow procedures for dormant accounts apply and U.S. persons included in a U.S. payee pool to the extent allowed and as described in § 1.1471-3(c)(3)(iii)(B)(2)(ii) and (iii)).

(21) through (22) [Reserved]. For further guidance, see § 1.1471-1(b)(21) through (22).

(23) *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)(104)(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.

(24) through (30) [Reserved]. For further guidance, see § 1.1471-1(b)(24) through (30).

(31) *Direct reporting NFFE*. The term direct reporting NFFE has the meaning set forth in § 1.1472-1(c)(3).

(32) through (34) [Reserved]. For further guidance, see § 1.1471-1(b)(32) through (34).

(35) *Effective date of the FFI agreement*. The term *effective date of the FFI agreement* with respect to an FFI or a branch of an FFI that is a participating FFI means the date on which the IRS issues a GIIN to the FFI or branch. For participating FFIs that receive a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

(36) through (40) [Reserved]. For further guidance, see § 1.1471-1(b)(36) through (40).

(41) *Excepted NFFE*. The term *excepted NFFE* means a NFFE that is described in § 1.1472-1(c)(1).

(42) [Reserved]. For further guidance, see § 1.1471-1(b)(42).

(43) *Exempt recipient*. The term *exempt recipient* means a person described in § 1.6049-4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045-2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041-3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income).

(44) through (47) [Reserved]. For further guidance, see § 1.1471-1(b)(44) through (47).

(48) *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 WP

agreement, and a WT 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 June 30, 2014. 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 June 30, 2014.

(49) [Reserved]. For further guidance, see § 1.1471-1(b)(49).

(50) *Financial institution*. The term *financial institution* has the meaning set forth in § 1.1471-5(e) and includes a financial institution as defined in an applicable Model 1 or Model 2 IGA.

(51) through (66) [Reserved]. For further guidance, see § 1.1471-1(b)(51) through (66).

(67) *Intergovernmental agreement (IGA)*. The term *intergovernmental agreement* or *IGA* means any applicable Model 1 or Model 2 IGA.

(68) through (75) [Reserved]. For further guidance, see § 1.1471-1(b)(68) through (75).

(76) *Limited branch*. The term *limited branch* has the meaning set forth in § 1.1471-4(e)(2)(iii). With respect to a reporting Model 2 FFI, a limited branch is a branch of the reporting Model 2 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI, or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), and for which the reporting Model 2 FFI meets the terms of the applicable Model 2 IGA with respect to the branch.

(77) *Limited FFI*. The term *limited FFI* has the meaning set forth in § 1.1471-4(e)(3)(ii). With respect to a reporting Model 2 FFI, a limited FFI is a related entity that operates in a jurisdiction that prevents the entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited FFIs under § 1.1471-4(e)(3)(iv), and for which the reporting Model 2 FFI meets

the requirements of the applicable Model 2 IGA with respect to the entity.

(78) through (80) [Reserved]. For further guidance, see § 1.1471-1(b)(78) through (80).

(81) *Non-exempt recipient*. The term *non-exempt recipient* means a person that is not an exempt recipient.

(82) [Reserved]. For further guidance, see § 1.1471-1(b)(82).

(83) *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, and an FFI that is a resident of, or located or established in, a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under § 1.1471-5(f)(2).

(84) through (87) [Reserved]. For further guidance, see § 1.1471-1(b)(84) through (87).

(88) *Offshore obligation*. The term *offshore obligation* means an offshore obligation defined in § 1.6049-5(c)(1) (by substituting the terms *withholding agent* or *financial institution* for the term *payor*).

(89) through (90) [Reserved]. For further guidance, see § 1.1471-1(b)(89) through (90).

(91) *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 (a *reporting Model 2 FFI*). The term *participating FFI* also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

(92) through (97) [Reserved]. For further guidance, see § 1.1471-1(b)(92) through (97).

(98) *Payor*. The term *payor* has the meaning set forth in §§ 31.3406(a)-2 and 1.6049-1(a)(2) and generally includes a withholding agent.

(99) [Reserved]. For further guidance, see § 1.1471-1(b)(99).

(100) *Person*. The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder and includes an entity or arrangement that is an insurance company. The term *person* also includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(101) through (103) [Reserved]. For further guidance, see § 1.1471-1(b)(101) through (103).

(104) [Reserved]. For further guidance, see § 1.1471-1(b)(104).

(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 June 30, 2014. 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) [Reserved]. For further guidance, see § 1.1471-1(b)(104)(ii).

(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)(104)(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)(104)(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)(104)(i) of this section.

(105) *Pre-FATCA Form W-8*. The term *pre-FATCA Form W-8* means a version of a Form W-8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441-1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired, or a Form W-8 that was issued prior to 2013 and furnished by an individual to establish such individual's foreign status but otherwise meets the requirements of § 1.1441-1(e)(1)(ii) applicable to such certificate and has not expired.

(106) through (112) [Reserved]. For further guidance, see § 1.1471-1(b)(106) through (112).

(113) *Reportable payment*. The term *reportable payment* means a payment of interest or dividends (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)).

(114) [Reserved]. For further guidance, see § 1.1471-1(b)(114).

(115) *Reporting Model 2 FFI*. The term *reporting Model 2 FFI* means a participating FFI that is described in § 1.1471-1(b)(91).

(116) through (122) [Reserved]. For further guidance, see § 1.1471-1(b)(116) through (122).

(123) *Sponsored direct reporting NFFE*. The term *sponsored direct reporting NFFE* has the meaning set forth in § 1.1472-1(c)(5).

(124) *Sponsoring entity*. The term *sponsoring entity* means (i) 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 (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472-1(c)(5).

(125) *Standardized industry coding system*. The term *standardized industry coding system* means 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.

(126) through (127) [Reserved]. For further guidance, see § 1.1471-1(b)(126) through (127).

(128) *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). In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE the term *substantial U.S. owner* means a *controlling person* as defined in the applicable Model 2 IGA.

(129) through (134) [Reserved]. For further guidance, see § 1.1471-1(b)(129) through (134).

(135) *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, registered deemed-compliant FFI, or NFFE that is treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A).

(136) through (140) [Reserved]. For further guidance, see § 1.1471-1(b)(136) through (140).

(141) *U.S. person*—(i) 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). The term *U.S. person* or *United States person* also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)) and is not licensed to do business in any State, or the foreign insurance company is a specified insurance company and is licensed to do business in any State.

(ii) The term *U.S. person* or *United States person* does not include a foreign insurance company that has made an election under section 953(d) if it is a specified insurance company and is not licensed to do business in any State.

(142) through (151) [Reserved]. For further guidance, see § 1.1471-1(b)(142) through (151).

(c) [Reserved]. For further guidance, see § 1.1471-1(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 4. In § 1.1471–2,

a. Revise paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(2)(iii)(A), and (a)(2)(v).

b. Remove the heading of paragraph (a)(4)(ii), and add introductory text to paragraph (a)(4)(ii).

c. Revise paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (b)(2)(i)(A)(I), (b)(2)(ii)(A)(4), (b)(2)(ii)(B)(2), (b)(2)(iv), and (b)(4)(ii).

The revisions read as follows:

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

(a) * * *

(1) [Reserved]. For further guidance, see § 1.1471–2T(a)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(ii).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(iii)(A).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–2T(a)(2)(v).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–2T(a)(4)(ii)(B).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(I) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(i)(A)(I).

* * * * *

(ii) * * *

(A) * * *

(4) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(ii)(A)(4).

* * * * *

(B) * * *

(2) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(ii)(B)(2).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471–2T(b)(2)(iv).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–2T(b)(4)(ii).

* * * * *

Par. 5. Section 1.1471–2T is added to read as follows:

§ 1.1471–2T Requirement to deduct and withhold tax on withholdable payments to certain FFIs (temporary).

(a) [Reserved]. For further guidance, see § 1.1471–2(a).

(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 June 30, 2014, 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 that apply when 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 a 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) [Reserved]. For further guidance, see § 1.1471–2(a)(2).

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWP, or NWTs.* A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a 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 a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) 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 June 30, 2014, 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) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii).

(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 June 30, 2014, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. 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—

(I) through (4) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii)(A)(I) through (4).

(B) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iv).

(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 and § 1.1472-1(b) 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 and § 1.1472-1(b). 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) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471-2(a)(3).

(4) [Reserved]. For further guidance, see § 1.1471-2(a)(4).

(i) through (i)(B) [Reserved]. For further guidance, see § 1.1471-2(a)(4)(i) through (a)(4)(i)(B).

(ii) *Exception to withholding for certain payments made prior to July 1, 2016 (transitional).*

(A) *In general.* For any withholdable payment made prior to July 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 January 1, 2015, 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—

(I) through (2)(xviii) [Reserved]. For further guidance, see § 1.1471-2(a)(4)(ii)(B)(I) through (a)(4)(ii)(B)(2)(xviii).

(iii) through (viii) [Reserved]. For further guidance, see § 1.1471-2(a)(4)(iii) through (viii).

(5) through (5)(ii) [Reserved]. For further guidance, see § 1.1471-2(a)(5) through (a)(5)(ii).

(b) [Reserved]. For further guidance, see § 1.1471-2(b).

(1) [Reserved]. For further guidance, see § 1.1471-2(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471-2(b)(2).

(i) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(A).

(I) Any obligation outstanding on July 1, 2014;

(2) through (3) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(A)(2) through (3).

(B) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(B).

(ii) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(A).

(I) through (3) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(A)(I) through (3).

(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 but, in the case of a life insurance contract that contains a provision that permits the substitution of a new individual as the insured under the contract, only until a substitution occurs; and

(5) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(A)(5).

(B) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(B).

(I) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(B)(I).

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

(3) through (4) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii)(B)(3) through (4).

(iii) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(iii).

(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). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) through (3)(iii) [Reserved]. For further guidance, see § 1.1471-2(b)(3) through (b)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471-2(b)(4).

(i) [Reserved]. For further guidance, see § 1.1471-2(b)(4)(i).

(ii) *Determination of material modification.* For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of the obligation as material only if the withholding agent has actual knowledge thereof, such as in the event the withholding agent receives a disclosure indicating that there has been or will be a material modification to such obligation. The issuer of the obligation (or an agent of the issuer) that is a withholding agent is required to treat a modification of the obligation as material if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation.

(iii) [Reserved]. For further guidance, see § 1.1471-2(b)(4)(iii).

(c) [Reserved]. For further guidance, see § 1.1471-2(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 6. Section 1.1471-3 is amended:

1. By adding paragraphs (c)(6)(ii)(B)(7), (c)(8)(v), (d)(5)(iii), and (d)(11)(x) through (xii).

2. By revising paragraphs (a)(3)(iii), (a)(3)(v) through (vi), (b)(3), (c)(3)(ii)(C) through (D), (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(5), (c)(3)(iii)(B)(1) through (4), (c)(5)(ii)(B), (c)(6)(ii)(B)(3), (c)(6)(ii)(B)(5) through (6), (c)(6)(ii)(C)(3) through (5), (c)(6)(ii)(E)(3), (c)(6)(iv), (c)(6)(v)(A) through (B), (c)(9)(ii)(B),

(c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory text, (d)(4)(iii)(A)(1), (d)(4)(iv)(A), (d)(4)(iv)(C) through (D), (d)(4)(v), (d)(5)(i) through (ii), (d)(6)(vii)(A)(1), (d)(11)(viii)(A) introductory text, (d)(11)(viii)(C), (d)(12)(iii)(A) through (B), (e)(2) through (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v) introductory text, (e)(4)(v)(B)(1) through (2), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii)(A)(4), and (f)(1) through (9).

The additions and revisions read as follows:

§ 1.1471-3 *Identification of payee.*

(a) * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.1471-3T(a)(3)(iii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471-3T(a)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471-3T(a)(3)(vi).

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see § 1.1471-3T(b)(3).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(C) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(ii)(C).

(D) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(ii)(D).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(A).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(A)(5).

* * * * *

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(1).

(2) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2).

(i) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(3).

(4) [Reserved]. For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(4).

* * * * *

(5) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-3T(c)(5)(ii)(B).

* * * * *

(6) * * *

(ii) * * *

(B) * * *

(3) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(3).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(5).

(6) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(6).

(7) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(7).

(C) * * *

(3) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(3).

(4) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(4).

(5) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(5).

* * * * *

(E) * * *

(3) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(ii)(E)(3).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(v)(A).

(B) [Reserved]. For further guidance, see § 1.1471-3T(c)(6)(v)(B).

* * * * *

(8) * * *

(v) [Reserved]. For further guidance, see § 1.1471-3T(c)(8)(v).

(9) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-3T(c)(9)(ii)(B).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471-3T(c)(9)(v).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471-3T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471-3T(d)(2)(i).
* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471-3T(d)(2)(iii).
* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(iii).
(A) * * *

(I) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(iii)(A)(I).
* * * * *

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(iv)(A).
* * * * *

(C) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(iv)(C).

(D) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(iv)(D).

(v) [Reserved]. For further guidance, see § 1.1471-3T(d)(4)(v).
(5) * * *

(i) [Reserved]. For further guidance, see § 1.1471-3T(d)(5)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3T(d)(5)(ii) through (d)(5)(ii)(B).
(A) [Reserved]. For further guidance, see § 1.1471-3T(d)(5)(ii)(A).
(B) [Reserved]. For further guidance, see § 1.1471-3T(d)(5)(ii)(B).
(iii) [Reserved]. For further guidance, see § 1.1471-3T(d)(5)(iii) through (d)(5)(iii)(B).
(6) * * *

(vii) * * *

(A) * * *

(I) [Reserved]. For further guidance, see § 1.1471-3T(d)(6)(vii)(A)(I).
* * * * *

(11) * * *

(viii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-3T(d)(11)(viii)(A).
* * * * *

(C) [Reserved]. For further guidance, see § 1.1471-3T(d)(11)(viii)(C).
* * * * *

(x) [Reserved]. For further guidance, see § 1.1471-3T(d)(11)(x).

(xi) [Reserved]. For further guidance, see § 1.1471-3T(d)(11)(xi).

(xii) [Reserved]. For further guidance, see § 1.1471-3T(d)(11)(xii) through (d)(11)(xii)(C).
(12) * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-3T(d)(12)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-3T(d)(12)(iii)(B).

(e) * * *

(2) [Reserved]. For further guidance, see § 1.1471-3T(e)(2).

(3) [Reserved]. For further guidance, see § 1.1471-3T(e)(3).
(i) [Reserved]. For further guidance, see § 1.1471-3T(e)(3)(i).
(ii) [Reserved]. For further guidance, see § 1.1471-3T(e)(3)(ii).
(iii) [Reserved]. For further guidance, see § 1.1471-3T(e)(3)(iii).
(iv) [Reserved]. For further guidance, see § 1.1471-3T(e)(3)(iv).
(4) [Reserved]. For further guidance, see § 1.1471-3T(e)(4).
(i) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(i).
(ii) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(ii) through (e)(4)(ii)(B).
(A) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(ii)(A).
(B) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(ii)(B).
(iii) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(iii).
(iv) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(iv) through (e)(4)(iv)(B)(2).
(v) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(v).
* * * * *

(B) * * *

(I) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(v)(B)(I).

(2) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(v)(B)(2).
* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(vi)(B).
(vii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(vii)(B).
* * * * *

(viii) * * *

(A) * * *

(4) [Reserved]. For further guidance, see § 1.1471-3T(e)(4)(viii)(A)(4).
* * * * *

(f) * * *

(1) [Reserved]. For further guidance, see § 1.1471-3T(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471-3T(f)(2).

(3) [Reserved]. For further guidance, see § 1.1471-3T(f)(3).

(4) [Reserved]. For further guidance, see § 1.1471-3T(f)(4).

(5) [Reserved]. For further guidance, see § 1.1471-3T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471-3T(f)(6).

(7) [Reserved]. For further guidance, see § 1.1471-3T(f)(7) through (f)(7)(ii).
(i) [Reserved]. For further guidance, see § 1.1471-3T(f)(7)(i).
(ii) [Reserved]. For further guidance, see § 1.1471-3T(f)(7)(ii).
(8) [Reserved]. For further guidance, see § 1.1471-3T(f)(8).
(9) [Reserved]. For further guidance, see § 1.1471-3T(f)(9) through (f)(9)(ii).
* * * * *

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

§ 1.1471-3T Identification of payee (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-3(a).
(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(a)(1) through (2).
(3) [Reserved]. For further guidance, see § 1.1471-3(a)(3).
(i) through (ii)(B) [Reserved]. For further guidance, see § 1.1471-3(a)(3)(i) through (a)(3)(ii)(B).
(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 or a U.S. insurance broker (to the extent such withholdable payment is a payment of premiums) 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 insti-

tution or U.S. insurance broker as the payee if the withholding agent does not have reason to know that the U.S. financial institution or U.S. insurance broker will not comply with its obligations to withhold under sections 1471 and 1472.

(iv) [Reserved]. For further guidance, see § 1.1471-3(a)(3)(iv).

(v) *Disregarded entity or limited 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) as an entity separate from its single owner must treat the single owner as the payee. The rules under § 1.1471-3(d)(4) and (e)(3) apply to determine the circumstances under which a withholding agent may treat a payment made to a disregarded entity owned by an FFI as made to a payee that is a participating FFI or registered deemed-compliant FFI, and not as a payment made to a payee that is a non-participating FFI. A withholding agent that makes a payment to a limited branch (including an entity disregarded as a separate entity from its owner if such owner is an FFI and the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains) 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 that is treated as a U.S. person must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9, “*Request for Taxpayer Identification Number and Certification*”). See also paragraph (f)(6)

of this section 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 that has elected to be treated as a U.S. person to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See also § 1.1474-1(i)(1) and (2) for the requirement of a U.S. branch to report information regarding certain U.S. owners of owner documented FFIs and passive NFFEs. 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) [Reserved]. For further guidance, see § 1.1471-3(a)(3)(vii).

(b) [Reserved]. For further guidance, see § 1.1471-3(b).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(b)(1) through (2).

(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, provides the person’s QI-EIN, WP-EIN, or WT-EIN, and the person’s GIIN, if applicable.

(4) [Reserved]. For further guidance, see § 1.1471-3(b)(4).

(c) [Reserved]. For further guidance, see § 1.1471-3(c).

(1) through (2)(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(1) through (c)(2)(ii).

(3) [Reserved]. For further guidance, see § 1.1471-3(c)(3).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii).

(A) through (B) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii)(A) through (B).

(C) The person’s entity classification for U.S. tax purposes;

(D) The person’s chapter 4 status; and

(E) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii)(E).

(iii) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii).

(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch of such entity (whether or not such branch is treated as a U.S. person) 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) through (4) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(A)(1) through (4).

(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, whether or not such branch is treated as a U.S. person, and a QI, WP, or WT that is a participating FFI or registered deemed-compliant FFI), and an EIN in the case of a QI, WP, or WT. Additionally, if a branch (other than a U.S. branch) of a participating FFI or registered deemed-compliant FFI outside of its country of residence acts as an intermediary, the GIIN of such branch must be provided on the withholding certificate. In the case of a U.S. branch, the GIIN provided must be the GIIN assigned to the participating FFI or registered deemed-compliant FFI.

(6) through (12) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(A)(6) through (12).

(B) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(B).

(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. A withholding statement may be provided electronically only if it meets the requirements of § 1.1441-1(e)(3)(iv)(B). 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.*

(i) An FFI withholding statement may include either payee-specific information or pooled information that indicates the portion of the payment allocable to a chapter 4 withholding rate pool of U.S. payees, each class of recalcitrant account holders identified in § 1.1471-4(d)(6), or a class of nonparticipating FFIs. If payee-specific information is provided for purposes of chapter 4 it must indicate both the portion of the payment allocated to each payee and each payee's chapter 4 status. A participating FFI that applies the escrow procedures described in § 1.1471-4(b)(6) for dormant accounts must also indicate the portion of the payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts for which the participating FFI (and not the withholding agent) will withhold in escrow. The withholding statement provided by a participating FFI

that applies the election to backup withhold under § 1.1471-4(b)(3)(iii) must also indicate the portion of the reportable payment that is a withholdable payment allocated to each recalcitrant account holders subject to backup withholding under section 3406. See section 3406 for when backup withholding is required, including the exception to backup withholding under § 31.3406(g)-1(e). Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a WP, WT, or QI with respect to the account must also identify each intermediary or flow-through entity that receives the payment and such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent or payor reasonably requests in order to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

(ii) An FFI withholding statement provided by a reporting Model 2 FFI or a reporting Model 1 FFI may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees, which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients) and that are, with respect to a reporting Model 2 FFI, the holders of non-consenting U.S. accounts as described in an applicable IGA when the FFI reports the accounts in one of the pools described in § 1.1471-4(d)(6) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, the holders of accounts that have U.S. indicia for which appropriate documentation sufficient to treat the accounts as held by other than specified U.S. persons has not been provided pursuant to an applicable Model 1 IGA and the reporting Model 1 FFI reports the accounts as U.S. reportable accounts pursuant to the applicable Model 1 IGA for the year in which the payment is made.

(iii) An FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI that is a non-U.S. payor (a payor other than a U.S. payor as

defined in § 1.6049-5(c)(5)) may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees (in addition to the U.S. payees described in paragraph (c)(3)(iii)(B)(2)(ii) of this section), which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 and that are, with respect to a participating FFI (including a reporting Model 2 FFI), account holders that hold U.S. accounts (as defined in § 1.1471-1(b)(134) and an applicable Model 2 IGA) that the FFI reports as U.S. accounts pursuant to § 1.1471-4(d)(3) or (5) for the year in which the payment is made; with respect to a registered deemed-compliant FFI (other than a reporting Model 1 FFI), account holders of U.S. accounts that the FFI reports pursuant to the conditions of its applicable deemed-compliant status under § 1.1471-5(f)(1) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, account holders of U.S. accounts that the reporting Model 1 FFI reports as reportable U.S. accounts pursuant to an applicable Model 1 IGA, and which includes the U.S. TINs of such account holders, for the year in which the payment is made.

(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 entity 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. Additionally, if the payment is a reportable amount under chapters 3 or 61, see the provisions of those chapters for any additional information that may be required

(including pooled information under the alternative procedures described in § 1.1441-1(e)(3)(iv)(D), if applicable).

(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. With respect to the amount of the payment allocable to each exempt beneficial owner and subject to withholding under chapter 3, see § 1.1441-1(e)(3)(iv).

(C) through (H) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(C) through (H).

(iv) through (v) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471-3(c)(4).

(5) [Reserved]. For further guidance, see § 1.1471-3(c)(5).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(5)(i) through (c)(5)(i)(E).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(5)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-3(c)(5)(ii)(A).

(B) *Preexisting obligation documentary evidence.* With respect to a preexisting obligation of an entity, 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) or a standardized industry coding system and that was recorded by the withholding agent consistent with its normal business practices for AML or another regulatory purpose (other than for tax purposes), 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) [Reserved]. For further guidance, see § 1.1471-3(c)(5)(ii)(C).

(6) [Reserved]. For further guidance, see § 1.1471-3(c)(6).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(B).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(B)(1) through (2).

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section (other than an entity described in paragraph (c)(6)(ii)(C)(2)(iii) of this section) and documentary evidence establishing the entity's foreign status when both are provided together;

(4) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(B)(4).

(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;

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

(7) For the validity period of a beneficial owner withholding certificate provided by an entity described in paragraph (c)(6)(ii)(C)(2)(iii) of this section, see § 1.1441-1(e)(4)(ii).

(C) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(C).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(C)(1) through (c)(6)(ii)(C)(2)(x).

(3) A withholding certificate or written statement 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) An owner reporting 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 June 30, 2014, 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 June 30, 2014, 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 withholding agent does not know or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(D).

(E) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(E).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(E)(1) through (2).

(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 invalid due to the change in circumstances or the date that a new certificate or new documentation is obtained. See, how-

ever, § 1.1441-1(e)(4)(ii)(D) for requirements, including the requirement to withhold under chapters 3 or 61, applicable when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). 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) through (iii)(B) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(iii) through (c)(6)(iii)(B).

(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)(B).

(v) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(v).

(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 chapter 4 statuses provided on the official version but the substitute form must include any chapter 4 status for which withhold-

ing 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 (including the official Form W-8) from a person 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 substitute form must provide all countries in which the individual is resident for tax purposes, country of birth, a tax identification number (if any) for each country of residence, the individual's date of birth, 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) through (vii) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(vi) through (vii).

(7) through (7)(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(7) through (c)(7)(ii).

(8) [Reserved]. For further guidance, see § 1.1471-3(c)(8).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-3(c)(8)(i) through (iv).

(v) *Preexisting account.* A withholding agent may rely on documentation furnished by a payee for a preexisting 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 obtains and reviews copies of such documentation supporting the chapter 4 status designated for the payee and the withholding agent has no reason to know that, at the time the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect. For example, the withholding agent may not rely on documentation furnished by a payee for a preexisting 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, based on information in the withholding agent's account records, the withholding agent has reason to know that such documentation is unreliable or incorrect.

(9) [Reserved]. For further guidance, see § 1.1471-3(c)(9).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii)(A).

(B) The third-party data provider must be in the business of providing credit reports or business reports to customers unrelated to it 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. For purposes of this paragraph (c)(9)(ii)(B), a customer is related to a third-party data provider if they have a relationship with each other that is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii)(C) through (F).

(iii) through (iv)(D) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(iii) through (c)(9)(iv)(D).

(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, a 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 payments made af-

ter the transition period, if any, to the account holder equal to 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 either the acquirer is in the same expanded affiliated group as the predecessor or transferor prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtains 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) [Reserved]. For further guidance, see § 1.1471-3(d).

(1) *Reliance on pre-FATCA Form W-8.* To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, 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. This reliance is only available in the case of a payee that is an international organization if such payee is described under section 7701(a)(18). To establish the chapter 4 status of a payee that is not a foreign individual, a foreign government, or an 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 applicable 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, 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), or international organizations not described under section 7701(a)(18).

(2) [Reserved]. For further guidance, see § 1.1471-3(d)(2).

(i) *In general.* A withholding agent must treat a payee as a U.S. person, including a payee that is a foreign branch of a U.S. person (other than a branch that is treated as a QI) or is an FFI that has elected to be treated as a U.S. person for tax purposes under section 953(d), 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 contains a certification 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) [Reserved]. For further guidance, see § 1.1471-3(d)(2)(ii).

(iii) *Preexisting obligations.* As an alternative to applying the rules in para-

graphs (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 of a payment with respect to a preexisting obligation as a U.S. person if it has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through the documentation or the application of the rules in § 1.6049-4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

(3) through (3)(ii) [Reserved]. For further guidance, see § 1.1471-3(d)(3) through (d)(3)(ii).

(4) [Reserved]. For further guidance, see § 1.1471-3(d)(4).

(i) *In general.* Except as otherwise provided in paragraphs (d)(4)(ii) through (iv) or paragraphs (e)(3)(i) and (ii) 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, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the 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 registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a participating FFI or registered deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a participating FFI or registered deemed-compliant FFI (including a U.S. entity that is disregarded as an entity separate from the FFI).

(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, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee has provided the withholding agent with a pre-FATCA Form W-8 and (either orally or in writing) its GIIN and has indicated whether it is a participating FFI or a registered deemed-compliant FFI (or whether such branch or disregarded entity is treated as a participating FFI or a registered deemed-compliant FFI), and the withholding agent has verified the GIIN of the FFI, branch, or disregarded entity, as the context requires, 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 a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the 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, or branch thereof (including an entity that is disregarded as an entity separate from the FFI) if—

(A) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(A).

(I) A written statement that contains the payee's GIIN, states that the payee is the beneficial owner of the payment, and indicates whether the payee is treated as a participating FFI or a registered deemed-compliant FFI, as appropriate; and

(2) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(A)(2).

(B) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iv).

(A) For payments made prior to January 1, 2015, a withholding agent may treat a payee that is an FFI or branch of an FFI (including an entity that is disregarded as an entity separate from the FFI) 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) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iv)(B).

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat a 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 or 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 pursuant to which the payee claims a status 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 will be invalid for purposes of chapter 4 beginning on the date that is 90 days after the date that the claim is made by the payee. The payee will be treated as an undocumented payee beginning on the date that the form is invalid, and will be subject to withholding on payments made on or after that date

until valid documentation (which includes a confirmed GIIN under paragraph (e)(3)(i) of this section) is provided. A withholding agent that has withheld as required in the previous sentence 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) [Reserved]. For further guidance, see § 1.1471–3(d)(5).

(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a certified deemed-compliant FFI, other than a sponsored, closely held investment vehicle, 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. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a certified deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a certified deemed-compliant FFI.

(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, closely held investment vehicle and includes the sponsoring entity’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. See paragraph

(c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a sponsored, closely held investment vehicle that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of such vehicle.

(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, closely held investment vehicle, and provides the sponsoring entity’s GIIN, 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).

(iii) *Investment advisors and investment managers.*

(A) *In general.* A withholding agent may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as an investment advisor and investment manager. 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 an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if its AML due diligence documentation indicates that the payee has financial accounts.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if it obtains a written statement that indicates that the payee is an investment advisor and investment manager. 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) [Reserved]. For further guidance, see § 1.1471–3(d)(6).

(i) through (vi) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(i) through (vi).

(vii) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii).

(A) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A).

(I) 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 June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4);

(2) through (5) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A)(2) through (5).

(B) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(B).

(7) through (10)(iii) [Reserved]. For further guidance, see § 1.1471–3(d)(7) through (d)(10)(iii).

(11) [Reserved]. For further guidance, see § 1.1471–3(d)(11).

(i) through (vii)(B)(3) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(i) through (d)(11)(vii)(B)(3).

(viii) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii).

(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 June 30, 2014, and December 31, 2015, 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—

(I) through (3) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(A)(I) through (3).

(B) through (B)(2) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(B) through (d)(11)(viii)(B)(2).

(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 June 30, 2014 (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) through (ix)(C) [Reserved]. For further guidance, see § 1.1471-3(d)(11)(ix) through (d)(11)(ix)(C).

(x) *Identifying a direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a direct reporting NFFE if it has a withholding certificate that identifies the payee as a direct reporting NFFE 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)(iii) of this section (indicating when a withholding agent may rely upon a GIIN).

(B) *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 direct reporting NFFE if the withholding agent has—

(1)(i) 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

(ii) 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), and

(2) Received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(C) *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 direct reporting 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 it has received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(xi) *Identifying a sponsored direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a sponsored direct reporting NFFE if it has a withholding certificate that identifies the payee as a sponsored direct reporting NFFE and the withholding certificate includes the sponsored direct reporting NFFE's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section (indicating when a withholding agent may rely upon a GIIN). For payments prior to January 1, 2016, a sponsored direct reporting NFFE may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored direct reporting NFFE has not obtained a GIIN.

(B) *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 sponsored direct reporting NFFE if the withholding agent has—

(1) A written statement that the payee is a foreign entity that is a sponsored direct reporting NFFE 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), and

(2) Received (either orally or in writing) the GIIN of the sponsored direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iv) of this section. For payments prior to January 1, 2016, such requirement may be fulfilled by receiving (either orally or in writing) the GIIN of the sponsoring entity to the extent that the sponsored direct reporting NFFE has not obtained a GIIN.

(xii) *Identification of excepted inter-affiliate FFI.*

(A) *In general.* A participating FFI may treat a payee as an excepted inter-affiliate FFI described in § 1.1471-5(e)(5)(iv) if it has obtained a withholding certificate identifying the payee as such an entity.

(B) *Offshore obligations.* A participating FFI that makes a payment with respect to an offshore obligation may treat the payment as made to an excepted inter-affiliate FFI described in § 1.1471-5(e)(5)(iv) if the participating FFI obtains a written statement in which the payee certifies that it is a foreign entity operating as an excepted inter-affiliate FFI and that it is a member of an expanded affiliated group of participating FFIs or registered deemed-compliant FFIs. 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 (as described in § 1.1471-3(c)(5)(i)) that provides the participating FFI with sufficient information to establish that the payee is an excepted inter-affiliate FFI described in § 1.1471-5(e)(5)(iv).

(C) *Reason to know.* A participating FFI has reason to know that an entity is not an excepted inter-affiliate FFI if it makes any payments (other than a payment of bank deposit interest) to such entity.

(12) [Reserved]. For further guidance, see § 1.1471-3(d)(12).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-3(d)(12)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471-3(d)(12)(iii).

(A) *In general.* 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 June 30, 2014, and December 31, 2015, 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 June 30, 2014, (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) [Reserved]. For further guidance, see § 1.1471-3(e).

(1) [Reserved]. For further guidance, see § 1.1471-3(e)(1).

(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 days after the date the notice is received.

(3) *GIIN verification.*

(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 FFI or branch thereof (including an entity that is disregarded as an entity separate from 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 days of the date that the claim is made. For purposes of this paragraph (e)(3)(i), the GIIN that the withholding agent must confirm is, with respect to a payee that is a participating FFI or registered deemed-compliant FFI, the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence) or, with respect to a payment that is made to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN assigned to the FFI identifying the country in which the branch or disregarded entity receiving the payment is located. The withholding agent will have reason to know that a withholdable payment is made to a limited branch (including a disregarded entity) of a participating or registered deemed-compliant FFI when

it is directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is identified as the FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed as described in the preceding sentence. For example, if a participating FFI has identified Branch A, located in Jurisdiction A, as its branch to receive withholdable payments on a withholding certificate described in § 1.1471-3(e)(3)(ii), but subsequently directs the withholding agent to make the payment to an address of the FFI in Jurisdiction B, then the withholding agent will have reason to know that the payment is made to a limited branch, unless the withholding agent obtains documentation to treat the payment to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. An FFI 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 withholding agent will have 90 days from the date it receives the Form W-8 to obtain a GIIN and 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 has 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 making a payment to a branch of the FFI at an address in a country that does not have in effect a Model 1 IGA.

(iii) *Special rules for direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a direct reporting NFFE and that is required under paragraph (d)(11)(x) of this section to confirm that the entity claiming status as a direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE 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 days of the date that the claim is made. A payee whose registration with the IRS as a direct reporting NFFE 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 withholding agent will have 90 days from the date it receives the Form W-8 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 direct reporting NFFE. If a direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a direct reporting NFFE on the earlier of the date that the withholding agent discovers that the NFFE has been removed from the list or the date that is one year from the date the NFFE's GIIN was actually removed from the list.

(iv) *Special rules for sponsored direct reporting NFFEs and sponsoring entities—(A) Sponsored direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE and that is required under paragraph (d)(11)(xi) of this section to confirm that the entity claiming status as a sponsored direct re-

porting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if its 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 days of the date that the claim is made. A sponsored direct reporting NFFE whose registration with the IRS as a sponsored direct reporting NFFE 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 withholding agent will have 90 days from the date it receives the Form W-8 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 sponsored direct reporting NFFE. If a sponsored direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsored entity has been removed from the list or the date that is one year from the date the sponsored entity's GIIN was actually removed from the list.

(B) *Sponsoring entities (transitional rule).* For payments made prior to January 1, 2016, a withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE has reason to know that such payee is not such a NFFE if the name of its sponsoring entity (including a name reasonably similar to the name the withholding agent has on file for the sponsoring entity) and the GIIN of its sponsoring entity do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsoring entity whose registration with the IRS 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 withholding agent will have 90 days from the date it receives the Form W-8 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 sponsored direct reporting NFFE. If the sponsoring entity of the NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsoring entity has been removed from the list or the date that is one year from the date the sponsoring entity's GIIN was actually removed from the list.

(4) *Reason to know.* A withholding agent has 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 certificate or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claim being made. For an obligation other than a preexisting obligation, a withholding agent has reason to know that a person's 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 chapter 4 status being claimed. A withholding agent will not, however, have reason to know that a person's claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created. In addition to the specific 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 obtained documentation to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only to the extent provided in this paragraph (e)(4). See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). The limits on reason to know for multiple ob-

ligations held by the same person set forth in § 1.1441-7(b)(11) shall apply by substituting the term *chapter 4 status* for the term *foreign status*. See § 1.1471-3(e)(4)(vii) for the limits on reason to know with respect to a preexisting obligation.

(i) *Reason to know regarding an entity's chapter 4 status.* A withholding agent has reason to know that a withholding certificate, written statement, or documentary evidence provided by or on behalf of an entity 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 entity's claim regarding its chapter 4 status. For example, a withholding agent has reason to know that an entity's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has obtained a financial statement or credit report for AML purposes that indicates that the entity is engaged in business as a financial institution. See also paragraph (e)(4) of this section for the 30-day period before a withholding agent has reason to know a claim is unreliable or incorrect based on AML information. Further, a withholding agent that has classified an entity as engaged in a particular type of business based on its records, such as through the use of a standardized industry coding system, has reason to know that the chapter 4 status claimed by the entity is unreliable or incorrect if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

(ii) *Reason to know 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. Except as otherwise provided in this para-

graph (e)(4)(ii)(A), a withholding agent that has obtained a withholding certificate to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(5), associated with the person and for which appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). 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.

(B) *Withholding certificate provided by an FFI.* A withholding agent that obtains a withholding certificate to reliably associate a payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI does not need to apply the standards of knowledge described in § 1.1441-7(b)(5) if it has confirmed the FFI's GIIN on the current published IRS FFI list, in the manner described under paragraph (e)(3) of this section, within 90 days of receipt of the withholding certificate.

(iii) *Reason to know applicable to written statements.* A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(ii) of this section, to determine whether it has reason to know that a written statement is unreliable or incorrect in terms of establishing a person's claim of foreign status. The rules under paragraph (e)(4)(ii) shall be applied by substituting the term *written statement* for *withholding certificate*.

(iv) *Reason to know 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 does not match the appearance or signature of the person presenting the document. A withholding agent may not treat documentary evidence as valid 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 chapter 4 status, or the documentary evidence lacks information necessary to establish the person's chapter 4 status. Additionally, a withholding agent that has obtained documentary evidence to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv).

(B) *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 has reason to know that the chapter 4 status claimed is unreliable or incorrect 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 a payee solely for the purpose of supporting the chapter 4 status claimed by the entity 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 classification described in paragraph (c)(5)(ii)(B) of this section or a standardized industry coding system to treat an entity as having a foreign 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) through (A)(7) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(v)(A) through (e)(4)(v)(A)(7).

(B) [Reserved]. For further guidance, see § 1.1471-3(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) through (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 a payment 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 a tax information exchange agreement or income tax treaty in effect with the United States.

(3) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(v)(B)(3).

(vi) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vi).

(A) through (A)(2) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vi)(A) through (e)(4)(vi)(A)(2).

(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 has reason to know that the chapter 4 status claimed is unreliable or incorrect. 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 chapters 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 has reason to know that the claim is unreliable or incorrect 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 in the document.

(vii) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vii).

(A) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vii)(A).

(B) *Reason to know there are U.S. indicia associated with preexisting obligations.* With respect to a preexisting obligation, a withholding agent may apply the limits on reason to know described in § 1.1441-7(b)(3)(ii) for a person that the withholding agent has previously documented for purposes of chapters 3 or 61 (applied without regard to the fact that section 1441 generally applies to reportable amounts under chapter 3 and without regard to whether the person was so documented before July 1, 2014). A withholding agent that applies the limits on reason to know described in § 1.1441-7(b)(3)(ii) must, however, review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person, if any.

(viii) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii).

(A) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(A).

(I) through (3) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(A)(I) through (3).

(4) Is a spouse or unmarried child under the age of 21 years of an individual described in one of the paragraphs (e)(4)(viii)(A)(I) through (3) of this section;

(B) through (D) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(B) through (D).

(5) through (6) [Reserved]. For further guidance, see § 1.1471-3(e)(5) through (6).

(f) [Reserved]. For further guidance, see § 1.1471-3(f).

(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) the 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 nonparticipating FFI). Paragraph (f)(2) of this section provides the presumption rules with respect to classification as an individual or entity. Paragraph (f)(3) of this section provides the presumption rules to determine a payee's U.S. or foreign status. Paragraph (f)(4) of this section provides the presumption rules with respect to an entity's chapter 4 status. Paragraph (f)(5) of this section provides the presumption rules with respect to an intermediary or flow-through entity. Paragraph (f)(6) of this section provides the presumption rules with respect to effectively connected income paid to a U.S. branch of a payee. Paragraph (f)(7) of this section provides the presumption rules that apply to a payment made to joint payees. Paragraph (f)(8) of this section provides rules for how a payee may rebut the presumptions described in this paragraph (f). Paragraph (f)(9) of this section provides the 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 and entity as the beneficial owner.* 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 payee's status as an individual or an entity from the documentary evidence, must apply the presumption rules of § 1.1441-1(b)(3)(ii) to determine the payee's classification as an individual, trust, partnership, corporation, intermediary, or flow-through entity. Additionally, a withholding agent that receives valid documentary evidence with respect to an entity must apply the rules under § 1.1441-1(b)(3)(ii) to determine when it may treat such entity as a beneficial owner.

(3) *Presumptions of U.S. or foreign status.* If a withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documen-

tary evidence from which it is possible to determine the payee's U.S. or foreign status, it must apply the presumption rules of § 1.1441-1(b)(3)(iii) to determine the U.S. or foreign status of the payee (substituting the term *withholdable payment* for the term *payment*). In the case of a payment that a withholding agent can reliably associate with valid 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, the payment will be presumed 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).

(4) *Presumption of chapter 4 status for a foreign entity.* If a withholding agent cannot reliably associate a valid withholding certificate or valid documentary evidence sufficient to determine the chapter 4 status of the entity receiving payment under paragraph (d) of this section (for example, as a participating FFI, nonparticipating FFI, or NFFE), it must presume that the entity is a nonparticipating FFI.

(5) *Presumption of chapter 4 status of payee with respect to a payment to an intermediary or flow-through entity.* If a withholding agent makes a payment to a foreign flow-through entity or intermediary, including a payment that it is required to treat as made to such an entity under paragraphs (f)(2) and (3) of this section, and cannot reliably associate such payment with valid documentation under paragraph (c) of this section, the withholding agent must presume that the payment is made to a nonparticipating FFI.

(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 of a payment that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an

EIN from the U.S. branch (either orally or in writing). 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 in accordance with the procedures described in §§ 31.3406(d)-1 through 31.3406(d)-5, 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 if the payment with respect to the offshore obligation is made outside the United States (as described in § 1.6049-5(e)).

(8) *Rebuttal of presumptions*. A payee may rebut the presumptions described in paragraphs (f)(2) through (7) of this section 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 paragraphs (f)(2) through (7) of this section 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 described in § 1.1474-1(a).

(g) [Reserved]. For further guidance, see § 1.1471-3(g).

(h) *Expiration date*. The applicability of this section expires on February 28, 2017.

Par. 8. Section 1.1471-4 is amended:

1. By removing paragraph (d)(3)(v).

2. By redesignating paragraphs (d)(3)(vi) through (viii) as paragraphs (d)(3)(v) through (vii).

3. By adding paragraphs (d)(2)(iii)(C), (d)(2)(ii)(F), and (d)(6)(vii).

4. By revising paragraphs (a)(3), (b)(1) through (3), (b)(6), (c)(5)(iv)(B)(2)(vi), (c)(5)(iv)(E), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B)(2), (d)(2)(ii)(E), (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(3)(ii)(E), (d)(3)(iii)(F), (d)(5)(v) through (vi), (d)(7)(i), (d)(7)(ii)(A), (d)(7)(iii), (d)(7)(iv)(A) through (B), (d)(8), (d)(9) *Example 3*, *Example 5*, and *Example 7*, (e)(1), (e)(2)(ii), (f)(4)(i) through (ii), (g)(1) introductory text, (g)(1)(ii), and (g)(2).

5. By removing the heading of paragraph (d)(7) and adding introductory text to paragraph (d)(7).

The additions and revisions read as follows:

§ 1.1471-4 *FFI agreement*.

(a) * * *

(3) [Reserved]. For further guidance, see § 1.1471-4T(a)(3).

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471-4T(b)(2).

(3) [Reserved]. For further guidance, see § 1.1471-4T(b)(3).

(i) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(iii).

* * * * *

(6) [Reserved]. For further guidance, see § 1.1471-4T(b)(6).

* * * * *

(c) * * *

(5) * * *

(iv) * * *

(B) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see § 1.1471-4T(c)(5)(iv)(B)(2)(vi).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(c)(5)(iv)(E).

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(A).

(B) * * *

(2) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(B)(2).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(E).

(F) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(F).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(B).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(C).

(3) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(d)(3)(ii)(E).

(iii) * * *

(F) [Reserved]. For further guidance, see § 1.1471-4T(d)(3)(iii)(F).

* * * * *

(5) * * *

(v) [Reserved]. For further guidance, see § 1.1471-4T(d)(5)(v).

(vi) [Reserved]. For further guidance, see § 1.1471-4T(d)(5)(vi).

* * * * *

(6) * * *

(vii) [Reserved]. For further guidance, see § 1.1471-4T(d)(6)(vii).

* * * * *

(7) [Reserved]. For further guidance, see § 1.1471-4T(d)(7).

(i) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(ii)(A).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iii).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iv)(B).

(8) [Reserved]. For further guidance, see § 1.1471-4T(d)(8).

(9) * * *

Example 3. [Reserved]. For further guidance, see § 1.1471-4T(d)(9), *Example 3.*

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Example 5. [Reserved]. For further guidance, see § 1.1471-4T(d)(9), *Example 5.*

* * * * *

Example 7. [Reserved]. For further guidance, see § 1.1471-4T(d)(9), *Example 7.*

(e) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(e)(1).

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-4T(e)(2)(ii).

* * * * *

(f) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471-4T(f)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-4T(f)(4)(ii).

(g) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(g)(1).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1471-4T(g)(1)(ii).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471-4T(g)(2).

* * * * *

Par. 9. Section 1.1471-4T is added to read as follows:

§ 1.1471-4T FFI Agreement (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-4(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-4(a)(1) through (2).

(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 § 1.1471-4(d)(2)(ii)(F)). 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) through (7) [Reserved]. For further guidance, see § 1.1471-4(a)(4) through (7).

(b) [Reserved]. For further guidance, see § 1.1471-4(b).

(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 June 30, 2014, 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 pass-thru 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 and special rules for withholding and the exclusion from the definitions of the terms *withholdable payment* and *foreign pass-thru 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, with respect to certain preexisting accounts, under paragraph (c) of this section, 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. 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.*

(i) *In general.* 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.

(ii) *Withholding not required.* 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 a 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.

(iii) *Election to withhold under section 3406.* A participating FFI may elect to satisfy its withholding obligation under paragraph (b)(1) of this section with respect to recalcitrant account holders that are also U.S. non-exempt recipients subject to backup withholding under section 3406 receiving withholdable payments, to the extent that the payments also constitute reportable payments, by applying withholding under section 3406 at the backup withholding rate to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 and section 3406. Nothing in this paragraph relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See § 1.1474-6(f) for the general rule that satisfying withholding requirements under chapter 4 will satisfy backup withholding requirements under section 3406 for a payment that is both a withholdable payment and a reportable payment.

(4) through (5)(ii) [Reserved]. For further guidance, see § 1.1471-4(b)(4) through (b)(5)(ii).

(6) *Special rule for dormant accounts.* A participating FFI that makes a withholdable payment not otherwise subject to withholding under chapter 3 or backup withholding under section 3406 to a recalcitrant account holder of a dormant account that it maintains must withhold on

the account for purposes of chapter 4. However, the participating FFI may, in lieu of depositing the tax withheld, 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. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this paragraph (b)(6) may not delegate the responsibility to escrow withheld tax to the withholding agent from which it is receiving payment. Once a dormant account escheats irrevocably to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is no longer 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) [Reserved]. For further guidance, see § 1.1471-4(b)(7).

(c) [Reserved]. For further guidance, see § 1.1471-4(c).

(1) through (4)(iii)(B) [Reserved]. For further guidance, see § 1.1471-4(c)(1) through (c)(4)(iii)(B).

(5) [Reserved]. For further guidance, see § 1.1471-4(c)(5).

(i) through (iii)(C) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(i) through (c)(5)(iii)(C).

(iv) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(B).

(I) through (I)(vii) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(B)(I) through (c)(5)(iv)(B)(I)(vii).

(2) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(B)(2).

(i) through (v) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(B)(2)(i) through (v).

(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 either a form of documentary evidence described in § 1.1471-3(c)(5)(i)(A) through (C) or a written reasonable explanation (as defined in § 1.1441-7(b)(12)) establishing the account holder's status as a foreign person.

(vii) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(B)(2)(vii).

(C) through (D)(4)(vi) [Reserved]. For further guidance, see § 1.1471-4(c)(5)(iv)(C) through (c)(5)(iv)(D)(4)(vi).

(E) Exception for preexisting individual accounts previously documented as held by foreign individuals. 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. Additionally, a participating FFI with a U.S. payor as its paying agent 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 an account for which its paying agent that is a U.S. payor has previously obtained documentation to establish the account holder's status as a foreign individual under chapter 61. 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 (or its pay-

ing agent that is a U.S. payor) 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 that was properly reported in that 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 and reporting 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) through (7) [Reserved]. For further guidance, see § 1.1471-4(c)(6) through (7).

(d) [Reserved]. For further guidance, see § 1.1471-4(d).

(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 chapter 61 for reporting requirements

that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See § 301.1474-1(a) for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) [Reserved]. For further guidance, see § 1.1471-4(d)(2).

(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)(vi) 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 foreign reportable amounts and for transitional rules for participating FFIs to report certain foreign reportable amounts paid to accounts held by nonparticipating FFIs, see § 1.1471-4(d)(2)(ii)(F).

(ii) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(ii).

(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (F) 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), (d)(3), or (d)(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) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(ii)(B).

(I) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(ii)(B)(I).

(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 an entity that is treated as a passive 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). The participating FFI shall be treated as having satisfied these reporting requirements if it reports with respect to each such specified U.S. person or substantial U.S. owner of a passive NFFE either—

(i) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section (except account number); or

(ii) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section (except account number and account balance or value).

(C) through (D) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(ii)(C) through (D).

(E) *Requirement to identify the GIIN of a branch that maintains an account.* A participating FFI may report under paragraph (d)(3) or (d)(5) of this section either with respect to all of its U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). A participating FFI shall include the GIIN assigned to the participating FFI

or its branches to identify the jurisdiction of the FFI or branch that maintains the accounts subject to reporting under paragraph (d)(3) or (d)(5) of this section. Additionally, a participating FFI 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 the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(F) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 8966, “FATCA Report,” if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI or registered deemed-compliant FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI or registered deemed-compliant FFI must report on Form 8966 the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI’s account by the participating FFI during the calendar year. In addition, the

participating FFI must retain the account statements related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), (v), (vi) and (vii) of this section for rules relating to reporting on recalcitrant account holders. 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.

(iii) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(iii).

(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) shall be treated as having satisfied the chapter 4 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, if the participating FFI reports with respect to each such account either—

(1) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section; or

(2) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section. However, such participating FFI that is required to report on such accounts under chapter 61 is not relieved of that obligation.

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

(1) through (4) [Reserved]. For further guidance, see § 1.1471-4(d)(2)(iii)(B)(1) through (4).

(C) *Special reporting rules for U.S. branches not treated as U.S. persons.* A U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports the information described in paragraph (d)(2)(iii)(B)(1) through (4) of this section with respect to account holders of accounts that the U.S. branch is required to treat as U.S. ac-

counts or accounts held by owner-documented FFIs.

(3) [Reserved]. For further guidance, see § 1.1471-4(d)(3).

(i) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(ii).

(A) through (D) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(ii)(A) through (D).

(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)(v) of this section and its accompanying instructions.

(iii) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(iii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(iii)(A) through (E).

(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)(v) of this section and its accompanying instructions.

(iv) through (iv)(F) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(iv) through (d)(3)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1471-4(d)(3)(vii).

(4) through (4)(v) [Reserved]. For further guidance, see § 1.1471-4(d)(4) through (d)(4)(v).

(5) [Reserved]. For further guidance, see § 1.1471-4(d)(5).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-4(d)(5)(i) through (d)(5)(iv).

(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 end of the calendar year for which the election is made. A participating FFI may make an election under this paragraph (d)(5) either with respect to all of its U.S. accounts and recalcitrant accounts or, separately, with

respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained).

(vi) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) of this section (as a whole or with regard to any clearly identified group of accounts) by reporting the information described in paragraph (d)(3) of this section beginning on the first reporting date with respect to the calendar year that follows the calendar year for which it last reports an account under this paragraph (d)(5).

(vii) [Reserved]. For further guidance, see § 1.1471-4(d)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1471-4(d)(6).

(i) through (v) [Reserved]. For further guidance, see § 1.1471-4(d)(6)(i) through (v).

(vi) *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.

(vii) [Reserved]. For further guidance, see § 1.1471-4(d)(6)(vii).

(7) *Special reporting rules with respect to the 2014 and 2015 calendar years*

(i) *In general.* If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2015, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that it is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2014 and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii).

(A) *Reporting with respect to the 2014 calendar year.* With respect to accounts maintained during the 2014 calendar year—

(1) through (3) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(A)(1) through (3).

(B) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(B).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(B)(1) through (2).

(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 2014 calendar year. 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) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(iv).

(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)(vi) 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 2014 calendar year.* With respect to the 2014 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 July 1, 2014. Reporting for the 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 other-

wise applicable to reporting under chapter 61 with respect to the 2014 calendar year.

(8) *Reporting requirements of QIs, WPs, and WTs.* In general, the reporting requirements with respect to the U.S. accounts maintained by a participating FFI that is a QI, WP, or WT will be consistent with the reporting requirements with respect to such accounts of a participating FFI that is not a QI, WP, or WT. See the QI, WP, or WT agreement for the coordination of the chapter 4 reporting obligations of a participating FFI that also is a QI, WP, or WT.

(9) [Reserved]. For further guidance, see § 1.1471-4(d)(9).

Example 1. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 1.*

Example 2. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 2.*

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)(v) 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. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 4.*

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)(I) 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)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 6. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 6.*

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)(v) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) [Reserved]. For further guidance, see § 1.1471-4(e).

(1) *In general.* Except as otherwise provided in this paragraph (e)(1) or para-

graphs (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, deemed-compliant FFI, or exempt beneficial owner 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 other than a certified deemed-compliant FFI or exempt beneficial owner 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 other than a certified deemed-compliant FFI or exempt beneficial owner 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 its limited branches and its 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) [Reserved]. For further guidance, see § 1.1471-4(e)(2).

(i) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(i)(A) through (C).

(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 that is otherwise regulated under the laws of a country as separate from other offices, units, or branches of the FFI and also includes an entity that is disregarded as an entity separate from an FFI (including branches maintained by such disregarded entity). For purposes of this sec-

tion, a branch includes a unit, business, or office of an FFI located in a country in which it is resident, and a unit, business, or office of an FFI located in the country in which the FFI is created or organized. All units, businesses, and offices of a participating FFI located in a single country, and all entities disregarded as entities separate from a participating FFI and located in a single country, shall be treated as a single branch and may use the same GIIN. An account will be treated as maintained by a branch or disregarded entity 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 or disregarded entity.

(iii) through (v) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(iii) through (v).

(3) through (4) [Reserved]. For further guidance, see § 1.1471-4(e)(3) through (4).

(f) [Reserved]. For further guidance, see § 1.1471-4(f).

(1) through (3)(iv)(C) [Reserved]. For further guidance, see § 1.1471-4(f)(1) through (f)(3)(iv)(C).

(4) [Reserved]. For further guidance, see § 1.1471-4(f)(4).

(i) *General inquiries.* The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), 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. The IRS may request additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), 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 sub-

stantially complied with the requirements of its 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. The IRS may make these requests to a sponsoring entity with respect to any sponsored FFI.

(g) [Reserved]. For further guidance, see § 1.1471-4(g).

(1) *Defined*. An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, 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) [Reserved]. For further guidance, see § 1.1471-4(g)(1)(i).

(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, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;

(iii) through (ix) [Reserved]. For further guidance, see § 1.1471-4(g)(1)(iii) through (ix).

(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 Deputy Commissioner (International), LB&I.

(3) [Reserved]. For further guidance, see § 1.1471-4(g)(3).

(h) through (j) [Reserved]. For further guidance, see § 1.1471-4(h) through (j).

(k) *Expiration date*. The applicability of this section expires on February 28, 2017.

Par. 10. Section 1.1471-5 is amended:

1. By removing paragraphs (a)(3)(ii) (b)(3)(v)(B)(3), and (b)(3)(vi)(B)(3).

2. By redesignating paragraphs (a)(3)(iii) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(v) and paragraph (j) as paragraph (l).

3. By adding paragraphs (f)(1)(i)(F)(3)(vii), (f)(2)(v), (j), and (k).

4. By revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(2), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(1) through (2), (b)(3)(vi), (c), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* through *Example 8*, (e)(5)(i)(A)(3), (e)(5)(i)(B) introductory text, (e)(5)(i)(B)(1), (e)(5)(i)(C), (e)(5)(i)(D)(1)(iv) through (v), (e)(5)(iv)(B), (f)(1)(i)(A)(6), (f)(1)(i)(B)(1), (f)(1)(i)(B)(3), (f)(1)(i)(C)(2), (f)(1)(i)(D)(4) through (6), (f)(1)(i)(D)(7) introductory text, (f)(1)(i)(E), (f)(1)(i)(F)(1)(ii), (f)(1)(i)(F)(3)(v) through (vi), (f)(1)(i)(F)(5), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (iv), (f)(4)(i), (g)(3)(i)(D), and (i).

The additions and revisions read as follows:

§ 1.1471-5 *Definitions applicable to section 1471.*

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1471-5T(a)(3)(i).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471-5T(a)(4)(i).

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(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(2) [Reserved]. For further guidance, see § 1.1471-5T(b)(1)(iii)(B)(2).

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(3) * * *

(iv) [Reserved]. For further guidance, see § 1.1471-5T(b)(3)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471-5T(b)(3)(v)(A).

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471-5T(b)(3)(v)(B)(1).

(2) [Reserved]. For further guidance, see § 1.1471-5T(b)(3)(v)(B)(2).

(vi) [Reserved]. For further guidance, see § 1.1471-5T(b)(3)(vi) through (b)(3)(vi)(B)(2).

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(c) [Reserved]. For further guidance, see § 1.1471-5T(c).

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(e) * * *

(1) * * *

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471-5T(e)(1)(v)(A).

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(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-5T(e)(3)(ii).

* * * * *

(4) * * *

(v) * * *

Example 7. [Reserved]. For further guidance, see § 1.1471-5T(e)(4)(v), *Example 7*.

Example 8. [Reserved]. For further guidance, see § 1.1471-5T(e)(4)(v), *Example 8*.

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(5) * * *

(i) * * *

(A) * * *

(3) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(A)(3).

(B) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(B).

(I) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(B)(I).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(C).

(D) * * *

(I) * * *

(iv) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(D)(I)(iv).

(v) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(i)(D)(I)(v).

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(iv) * * *

(B) [Reserved]. For further guidance, see § 1.1471-5T(e)(5)(iv)(B).

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(f) * * *

(1) * * *

(i) * * *

(A) * * *

(6) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(A)(6).

* * * * *

(B) * * *

(I) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(B)(I).

* * * * *

(3) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(B)(3).

(C) * * *

(2) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(C)(2).

* * * * *

(D) * * *

(4) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(D)(4).

(5) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(D)(5).

(6) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(D)(6).

(7) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(D)(7).

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(E) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(E). through (f)(1)(i)(E)(2).

(F) * * *

(I) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(F)(I)(ii).

* * * * *

(3) * * *

(v) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(F)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(F)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(F)(3)(vii).

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(5) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(i)(F)(5).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-5T(f)(1)(ii)(B).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471-5T(f)(2).

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1471-5T(f)(2)(i)(B).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471-5T(f)(2)(iii) through (f)(2)(iii)(E).

(iv) [Reserved]. For further guidance, see § 1.1471-5T(f)(2)(iv) through (f)(2)(iv)(E).

(F) [Reserved]. For further guidance, see § 1.1471-5T(f)(2)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471-5T(f)(2)(v) through (f)(2)(v)(B).

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(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471-5T(f)(4)(i).

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(g) * * *

(3) * * *

(i) * * *

(D) [Reserved]. For further guidance, see § 1.1471-5T(g)(3)(i)(D).

* * * * *

(i) [Reserved]. For further guidance, see § 1.1471-5T(i) through (i)(10).

(j) [Reserved]. For further guidance, see § 1.1471-5T(j).

(k) [Reserved]. For further guidance, see § 1.1471-5T(k).

Par. 11. Section 1.1471-5T is added to read as follows:

§ 1.1471-5T Definitions applicable to section 1471 (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-5(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-5(a)(1) through (2).

(3) [Reserved]. For further guidance, see § 1.1471-5(a)(3).

(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 paragraph (a)(3)(ii) 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), 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) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(iv).

(v) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(v).

(4) [Reserved]. For further guidance, see § 1.1471-5(a)(4).

(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)(iii) and (b)(4) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471-5(a)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(a)(4)(iii).

(b) [Reserved]. For further guidance, see § 1.1471-5(b).

(1) [Reserved]. For further guidance, see § 1.1471-5(b)(1).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii).

(A) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B).

(I) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B)(I).

(2) The 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) through (4) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B)(3) through (4).

(C) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(C) through (b)(1)(iii)(C)(2).

(iv) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iv).

(2) [Reserved]. For further guidance, see § 1.1471-5(b)(2) through (b)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471-5(b)(3).

(i) through (iii) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(i) through (b)(3)(iii)(B)(3).

(iv) *Regularly traded on an established securities market.* To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472-1(c)(1)(i)(A)(2)(i) and (ii) shall apply with respect to the interests, and the principles of § 1.1472-1(c)(1)(i)(B)(I) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472-1(c)(1)(i)(C) for the definition

of an established securities market. 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 July 1, 2014, on the books of the investment entity.

(v) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(v).

(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 with-holdable payments if the return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(B) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(v)(B).

(I) Debt is convertible into equity interests in a U.S. person; or

(2) The return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(vi) *Return earned on the interest (including upon a sale, exchange, or redemption) 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 profits or assets of, or equity interests in, 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 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 the entity's expanded affiliated group if—

(I) Debt is convertible into equity interests in 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

(2) The return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, 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.

(vii) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(vii) through (b)(3)(vii)(D)(3).

(4) through (5) [Reserved]. For further guidance, see § 1.1471-5(b)(4) through (5).

(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)). 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) [Reserved]. For further guidance, see § 1.1471-5(d).

(e) [Reserved]. For further guidance, see § 1.1471-5(e).

(1) [Reserved]. For further guidance, see § 1.1471-5(e)(1).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-5(e)(1)(i) through (iv).

(v) [Reserved]. For further guidance, see § 1.1471-5(e)(1)(v).

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, specified insurance company, or investment entity described in paragraphs (e)(4)(i)(B) or (C) of this section; or

(B) [Reserved]. For further guidance, see § 1.1471-5(e)(1)(v)(B).

(2) [Reserved]. For further guidance, see § 1.1471-5(e)(2) through (e)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471-5(e)(3).

(i) [Reserved]. For further guidance, see § 1.1471-5(e)(3)(i) through (e)(3)(i)(B).

(ii) *Income attributable to holding financial assets and related financial services*. For purposes of this paragraph (e)(3), the term *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 by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

(iii) [Reserved]. For further guidance, see § 1.1471-5(e)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471-5(e)(4).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-5(e)(4)(i) through (e)(4)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1471-5(e)(4)(v).

Example 1 through Example 6 [Reserved]. For further guidance, see § 1.1471-5(e)(4)(v), *Example 1 through Example 6*.

Example 7. Individual introducing broker. IB, an individual introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an individual, notwithstanding that IB primarily conducts certain investment-related activities, IB is not an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is not an investment entity under paragraph (e)(4)(i)(B) of this section because Entity is managed by IB, an individual.

Example 8. Entity introducing broker. IB, a foreign entity introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides its services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an entity that primarily conducts certain investment-related activities, IB is an

investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by IB, an investment entity that performs certain of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of Entity.

(5) [Reserved]. For further guidance, see § 1.1471-5(e)(5).

(i) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i).

(A) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(A).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(A)(1) through (2).

(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 buy-out 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. For purposes of determining whether an entity was formed in connection with or availed of by such an arrangement or investment vehicle, any entity that existed at least six months prior to its acquisition by such arrangement or investment vehicle and that, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to have been formed in connection with or availed of by the arrangement or investment vehicle, in the absence of other facts suggesting the existence of an investment strategy described in the prior sentence.

(B) *Nonfinancial group*. An expanded affiliated group defined in § 1.1471-5(i)(2) is a *nonfinancial group* if, taking into account the application of this section—

(1) For the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending on December 31 of the year preceding the year in 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 and income derived from transactions between members of the expanded affiliated group) consists of pas-

sive income (as defined in § 1.1472-1(c)(1)(iv)); 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 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 and assets resulting from transactions between related members of the expanded affiliated group) are assets that produce or are held for the production of passive income; and

(2) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(B)(2).

(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. A partnership or any other non-corporate entity shall be treated as a holding company if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of more than one common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate expanded affiliated group for purposes of applying the rules of this section unless a non-corporate entity is treated as the common parent entity of the expanded affiliated group in accordance with § 1.1471-5(i)(10).

(D) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(D).

(1) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(D)(1).

(i) through (iii) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(D)(1)(i) through (iii).

(iv) Managing the working capital of the expanded affiliated group (or any

member thereof) such as by pooling the cash balances of affiliates (including both positive and deficit cash balances) or 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 the expanded affiliated group (or any member thereof).

(2) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(D)(2).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(D)(2)(i) through (ii).

(E) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(i)(E).

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(ii) through (iii).

(iv) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(iv)(A).

(B) The entity does not hold an account (other than a depository account in the country in which the entity is operating to pay for expenses in that country) with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) through (D) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(iv)(C) through (D).

(v) [Reserved]. For further guidance, see § 1.1471-5(e)(5)(v) through (e)(5)(vi)(D).

(6) [Reserved]. For further guidance, see § 1.1471-5(e)(6).

(f) [Reserved]. For further guidance, see § 1.1471-5(f).

(1) [Reserved]. For further guidance, see § 1.1471-5(f)(1).

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i).

(A) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(A).

(J) through (5) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(A)(J) through (5).

(6) By the later of June 30, 2014, 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) through (9) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(A)(7) through (9).

(B) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(B).

(J) By the later of June 30, 2014, 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) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(B)(2).

(3) By the later of June 30, 2014, 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) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(C).

(I) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(C)(I).

(2) Each holder of record of direct debt interests in the FFI in excess of \$50,000, of any direct equity interests in the FFI (for example the holders of its units or global certificates), and of any other account holder of the FFI is a participating FFI, a registered deemed-compliant FFI, a retirement plan described in § 1.1471-6(f), a non-profit organization described in paragraph (e)(5)(vi) of this section, a U.S. person that is not a specified U.S. person, a nonreporting IGA FFI, or an 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 the terms *FFI* and *member*), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(3) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(C)(3).

(D) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D).

(I) through (3) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D)(I) through (3).

(4) The FFI ensures that by the later of December 31, 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 NFFE's 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 NFFE's 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 December 31, 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, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(3) of this section, terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of the notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, 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 December 31, 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 June 30, 2014, 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) through (ii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D)(7)(i) through (ii).

(8) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D)(8).

(E) *Qualified credit card issuers and servicers.* 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 or servicer of credit cards that accepts deposits, on its own behalf or, in the case of a servicer, on behalf of a credit card issuer, only when a customer makes a payment in excess of a balance due with respect to the credit card account and the overpayment is not immediately returned to the customer.

(2) By the later of June 30, 2014, 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 in-

clude credit balances resulting from merchandise returns.

(F) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F).

(I) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(I).

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(I)(i).

(ii) An entity, other than a nonparticipating FFI, has agreed with the FFI to act as a sponsoring entity for the FFI.

(2) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(2) through (f)(1)(i)(F)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(3).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(3)(i) through (iv).

(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;

(vi) Performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3);

(vii) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(viii) Has not had its status as a sponsoring entity revoked.

(4) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(4).

(5) A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. 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, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(ii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii)(A).

(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 June 30, 2014;

(C) through (D) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii)(C) through (D).

(iii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(iii).

(2) *Certified deemed-compliant FFIs.* A *certified deemed-compliant FFI* means an FFI described in any of paragraphs (f)(2)(i) through (v) 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. A certified deemed-compliant FFI also includes a nonreporting FFI under a Model 1 IGA and a nonreporting FFI treated as a certified deemed-compliant FFI under a Model 2 IGA. A certified deemed-compliant FFI is not required to register with the IRS.

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(i)(A) through (f)(2)(i)(A)(2).

(B) The FFI's business consists primarily of receiving deposits from and making loans to, with respect to a bank, retail customers that are unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no such member has a greater than 5 percent interest in such credit union or cooperative credit organization. For purposes of this paragraph (f)(2)(i)(B), a customer is related to a bank if the customer and the bank have a relationship described in section 267(b). For purposes of determining whether a member has a greater than 5 percent interest in a credit union or cooperative credit organization, the member must aggregate the ownership or beneficial interests in the credit union or cooperative credit organization that are owned or held by a related member. A member of a

credit union or cooperative credit organization is related to another member if the relationship of such members is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(i)(C) through (F).

(ii) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(ii) through (f)(2)(ii)(C).

(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 (D) 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) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, 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)).

(D) 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;

(4) Performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3);

(5) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(6) The sponsoring entity has not had its status as a sponsor revoked.

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under this paragraph (f)(2)(iii)(E) with respect to any sponsored FFI. A sponsoring entity is not liable for any failure to comply with the obligations contained in this paragraph (f)(2)(iii)(E) unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to the payment made to the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in this paragraph (f)(2)(iii)(E) that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(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.

(A) The FFI is an investment entity that issued one or more classes of debt or equity interests to investors pursuant to a trust indenture or similar agreement and all of such interests were issued on or before January 17, 2013.

(B) The FFI was in existence as of January 17, 2013, and has entered into a trust indenture or similar agreement that requires the FFI to pay to investors holding substantially all of the interests in the FFI, no later than a set date or period following the maturity of the last asset held by the FFI, all amounts that such investors are entitled to receive from the FFI.

(C) The FFI was formed and operated for the purpose of purchasing or acquiring specific types of debt instruments or inter-

ests therein and holding those assets subject to reinvestment only under prescribed circumstances to maturity.

(D) Substantially all of the assets of the FFI consist of debt instruments or interests therein.

(E) All payments made to the investors of the FFI (other than holders of a de minimis interest) are either cleared through a clearing organization or custodial institution that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a transfer agent that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(F) The FFI's trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations of a participating FFI under § 1.1471-4 and no other person has the authority to fulfill the obligations of a participating FFI under § 1.1471-4 on behalf of the FFI.

(v) *Investment advisors and investment managers.* An FFI is described in this paragraph (f)(2)(v) if the FFI meets the following requirements:

(A) The FFI is a financial institution solely because it is described in § 1.1471-5(e)(4)(i)(A).

(B) The FFI does not maintain financial accounts.

(3) [Reserved]. For further guidance, see § 1.1471-5(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-5(f)(3)(ii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471-5(f)(3)(ii)(A) through (E).

(4) [Reserved]. For further guidance, see § 1.1471-5(f)(4).

(i) The distributor provides investment services to at least 30 customers unrelated to each other and fewer than half of the distributor's customers are related to each other. For purposes of this paragraph (f)(4)(i), customers are related to each other if they have a relationship with each other described in section 267(b).

(ii) through (viii) [Reserved]. For further guidance, see § 1.1471-5(f)(4)(ii) through (viii).

(g) [Reserved]. For further guidance, see § 1.1471-5(g).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-5(g)(1) through (g)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471-5(g)(3).

(i) [Reserved]. For further guidance, see § 1.1471-5(g)(3)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471-5(g)(3)(i)(A) through (C).

(D) *Preexisting accounts that become high-value accounts.* With respect to a calendar year beginning after December 31, 2015, 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 end of the calendar year in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471-5(g)(3)(ii) through (iii).

(4) [Reserved]. For further guidance, see § 1.1471-5(g)(4).

(h) [Reserved]. For further guidance, see § 1.1471-5(h) through (h)(2).

(i) *Expanded affiliated group—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).

(1) [Reserved]. For further guidance, see § 1.1471-5(i)(1).

(2) *Expanded affiliated group defined.* Except as otherwise provided in this paragraph (i), an *expanded affiliated group* is defined in accordance with the principles of section 1504(a) to mean one or more chains of members connected through ownership by a common parent entity if the common parent entity directly owns stock or other equity interests meeting the requirements of paragraph (i)(4) of this section in at least one of the other members (for purposes of this paragraph (i), the constructive ownership rules of section 318 do not apply). Generally, only a corporation shall be treated as the common parent entity of an expanded affli-

ated group, unless the taxpayer elects to follow the approach described in paragraph (i)(10).

(3) *Member of expanded affiliated group.* The term *member of an expanded affiliated group* means a corporation or any entity other than a corporation (such as a partnership or trust) with respect to which the ownership requirements of paragraph (i)(4) of this section are met, regardless of whether such entity is a U.S. person or a foreign person, but excluding corporations described in paragraphs (1), (4), (6), (7), or (8) of section 1504(b).

(4) *Ownership test.* The ownership requirements of this paragraph (i)(4) are met if—

(i) *Corporations.* For purposes of paragraph (i)(2) of this section, a corporation (except the common parent entity) will be considered owned by another member entity or by the common parent entity if more than 50 percent of the total voting power of the stock of such corporation and more than 50 percent of the total value of the stock of such corporation is owned directly by one or more other members of the group (including the common parent entity).

(A) *Stock not to include certain preferred stock.* For purposes of this paragraph (i)(4), the term *stock* does not include any stock which is described in section 1504(a)(4).

(B) *Valuation.* For purposes of section 1471(e) and this section, all shares of stock within a single class are considered to have the same value in determining the ownership percentage. Thus, control premiums and minority blockage discounts within a single class are not taken into account.

(ii) *Partnerships.* For purposes of paragraph (i)(2) of this section, a partnership will be considered owned by another member entity (including the common parent entity) if more than 50 percent (by value) of the capital or profits interest in the partnership is owned directly by one or more other members of the group (including the common parent entity).

(iii) *Trusts.* For purposes of paragraph (i)(2) of this section, a trust will be considered owned by another member entity or by the common parent entity if more than 50 percent (by value) of the beneficial interest in such trust is owned directly

by one or more other members of the group (including the common parent entity). A beneficial interest in a trust includes an interest held by an entity treated as a grantor or other owner of the trust under sections 671 through 679 and a beneficial trust interest.

(5) *Treatment of warrants, options, and obligations convertible into equity for determining ownership.* For purposes of paragraph (i)(4) of this section, ownership of warrants, options, obligations convertible into the equity of a corporation or entity other than a corporation, and other similar interests is not considered for purposes of determining whether an entity is a member of an expanded affiliated group, except as follows:

(i) Ownership of a warrant, option, obligation convertible into stock, or other similar instrument creating an interest in a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that the common parent or member of the expanded affiliated group that holds such instrument also maintains voting rights with respect to such corporation. However, interests described in § 1.1504-4(d)(2) will not be treated as options.

(ii) Ownership of a warrant, option, obligation convertible into an equity interest, or other similar instrument creating an interest in a corporation or entity other than a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that such instrument is reasonably certain to be exercised, based on all of the facts and circumstances and in accordance with the principles set forth in § 1.1504-4(g).

(6) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraphs (i)(2) and (i)(4) 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 investors that do not have a relationship with each other described in section 267(b);

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(6)(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)(6)(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.

(7) *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.

(8) *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)(4) 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)(8), a change in voting rights includes a separation of voting rights and value.

(9) *Exception for limited life debt investment entities.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an entity that meets the requirements of

§ 1.1471-5(f)(2)(iv), including the requirements to have been in existence as of January 17, 2013, and to have issued interests in the entity on or before January 17, 2013, will not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity.

(10) *Partnerships, trusts, and other non-corporate entities.* For purposes of determining the composition of an expanded affiliated group, an entity other than a corporation may elect to be treated as the common parent entity. Taxpayers following this approach may not, in a later year, follow the rule described in paragraph (i)(2) without the approval of the Commissioner. See also § 1.1471-5(e)(5)(i)(C).

(j) *Sponsoring entity verification.* [Reserved].

(k) *Sponsoring entity event of default.* [Reserved].

(l) [Reserved]. For further guidance, see § 1.1471-5(l).

(m) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 12. In § 1.1471-6, revise paragraphs (d)(1), (d)(4), (f)(2)(iii)(B) through (C), (f)(3)(ii) through (iii), (f)(5) through (6), (g), and (h)(2) to read as follows:

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

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471-6T(d)(1).

* * * * *

(4) [Reserved]. For further guidance, see § 1.1471-6T(d)(4).

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-6T(f)(2)(iii)(B).

(C) [Reserved]. For further guidance, see § 1.1471-6T(f)(2)(iii)(C).

* * * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-6T(f)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-6T(f)(3)(iii).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471-6T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471-6T(f)(6).

* * * * *

(g) [Reserved]. For further guidance, see § 1.1471-6T(g).

(h) * * *

(2) [Reserved]. For further guidance, see § 1.1471-6T(h)(2) through (h)(2)(iii).

* * * * *

Par. 13. Section 1.1471-6T is added to read as follows:

§ 1.1471-6T Payments beneficially owned by exempt beneficial owners (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1471-6(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1471-6(d).

(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 an institution that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such an institution is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) through (3) [Reserved]. For further guidance, see § 1.1471-6(d)(2) through (3).

(4) *Income on certain transactions.* 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 cash and securities, including cash and securities held as collateral or securities lending transaction, held by the foreign central bank of issue in the ordinary course of its operations as a central bank of issue.

(e) [Reserved]. For further guidance, see § 1.1471-6(e).

(f) [Reserved]. For further guidance, see § 1.1471-6(f).

(1) [Reserved]. For further guidance, see § 1.1471-6(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471-6(f)(2).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii).

(A) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii)(A).

(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), from retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or from other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA) 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), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA), or penalties apply to distributions or withdrawals made before such specified events; or

(D) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii)(D).

(3) [Reserved]. For further guidance, see § 1.1471-6(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471-6(f)(3)(i).

(ii) The fund is sponsored by one or more employers and each of these employers are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other retirement plans described in paragraph (f)(1) of this section, from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA) are limited by reference to earned income and compensation of the employee, respectively;

(iv) through (v) [Reserved]. For further guidance, see § 1.1471-6(f)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471-6(f)(4).

(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 in an applicable Model 1 or Model 2 IGA, accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

(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 or an exempt beneficial owner (other than a fund that qualifies as an exempt beneficial owner) described in an applicable Model 1 or Model 2 IGA 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) [Reserved]. For further guidance, see § 1.1471-6(f)(7).

(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 entity is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA, 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), an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA.

(h) [Reserved]. For further guidance, see § 1.1471-6(h).

(1) [Reserved]. For further guidance, see § 1.1471–6(h)(1).

(2) *Limitation.* Paragraph (h)(1) of this section will not apply to a foreign central bank of issue as described in paragraph (d) if—

(i) The 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)(C); and

(iii) The entity only maintains financial accounts that are depository accounts for current or former employees of the entity (and the spouses and children of such employees) or financial accounts for exempt beneficial owners.

(i) [Reserved]. For further guidance, see § 1.1471–6(i).

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par.14. Section 1.1472–1 is amended:

1. By redesignating paragraph (f) as paragraph (h).

2. By adding paragraphs (c)(1)(vi) through (vii), (c)(3) through (5), (f), and (g).

3. By revising paragraphs (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) through (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v), (c)(2), and (d)(1) through (2).

The additions and revisions read as follows:

§ 1.1472–1 Withholding on NFFEs.

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(b)(1).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1472–1T(b)(2).

(c) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(c)(1).

(i) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(i).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iii).

(iv) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv)(C).

(v) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(v).

(vi) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vi).

(vii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vii).

(2) [Reserved]. For further guidance, see § 1.1472–1T(c)(2).

(3) [Reserved]. For further guidance, see § 1.1472–1T(c)(3).

(4) [Reserved]. For further guidance, see § 1.1472–1T(c)(4).

(5) [Reserved]. For further guidance, see § 1.1472–1T(c)(5) through (c)(5)(iv).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(d)(1).

(2) [Reserved]. For further guidance, see § 1.1472–1T(d)(2).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1472–1T(f).

(g) [Reserved]. For further guidance, see § 1.1472–1T(g).

* * * * *

Par. 15. Section 1.1472–1T is added to read as follows:

§ 1.1472–1T Withholding on NFFEs (temporary).

(a) [Reserved]. For further guidance, see § 1.1472–1(a).

(b) [Reserved]. For further guidance, see § 1.1472–1(b).

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraphs (c)(1) or (2) of this section (providing exceptions for payments to an excepted NFFE or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–

2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is a NFFE unless—

(i) through (iii) [Reserved]. For further guidance, see § 1.1472–1(b)(1)(i) through (iii).

(2) *Transitional relief.* For any withholdable payment made prior to July 1, 2016, 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 when the NFFE has failed to provide the owner certification as required under § 1.1471–3(d)(12)(iii), 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) [Reserved]. For further guidance, see § 1.1472–1(c).

(1) *Payments to 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 made to a payee that is an excepted NFFE. For purposes of this paragraph, the term *excepted NFFE* means a payee that the withholding agent may treat as a NFFE that is a QI, WP, or WT. Additionally, the term *excepted NFFE* means, with respect to the payment, a NFFE described in paragraphs (c)(1)(i) through (vii) of this section to the extent the withholding agent may treat the NFFE as the beneficial owner of the payment.

(i) *Publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(i) if it is a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) through (C) [Reserved]. For further guidance, see § 1.1472–1(c)(1)(i)(A) through (c)(1)(i)(C)(3).

(ii) *Certain affiliated entities related to a publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(ii) if it is a corporation that is a member of the same expanded affiliated group (as de-

defined in § 1.1471-5(i) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) *Certain territory entities.* A NFFE is described in this paragraph (c)(1)(iii) if it is a 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.* A NFFE is described in this paragraph (c)(1)(iv) if it is an entity (an *active NFFE*) and less than 50 percent of its gross income for the preceding taxable year (*i.e.*, calendar or fiscal) 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) through (B) [Reserved]. For further guidance, see § 1.1472-1(c)(1)(iv)(A) through (c)(1)(B)(2)(ii).

(C) *Methods of measuring assets.* For purposes of this paragraph (c)(1)(iv), the value of a 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 (as determined under either a U.S. or an international financial accounting standard).

(v) *Excepted nonfinancial entities.* A NFFE is described in this paragraph (c)(1)(v) if it is an 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).

(vi) *Direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vi) if it meets the requirements described in § 1.1472-1(c)(3) to be treated as a direct reporting NFFE.

(vii) *Sponsored direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vii) if it meets the requirements described in § 1.1472-1(c)(5) to be

treated as a sponsored direct reporting NFFE.

(2) *Payments made to 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 treat the payment as made to an exempt beneficial owner.

(3) *Definition of direct reporting NFFE.* A *direct reporting NFFE* means a NFFE that elects to report information about its direct or indirect substantial U.S. owners to the IRS and meets the following requirements—

(i) The NFFE must register on Form 8957, "FATCA Registration," (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS;

(ii) The NFFE must report directly to the IRS on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) the following information for each calendar year (or, may be required by the IRS to certify on Form 8966, or in such other manner as the IRS may prescribe, that the NFFE has no substantial U.S. owners):

(A) The name, address, and TIN of each substantial U.S. owner (as defined in § 1.1473-1(b)) of such NFFE;

(B) The total of all payments made to each substantial U.S. owner (including the gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the NFFE during the calendar year, which include payments in redemption or liquidation (in whole or part) of the substantial U.S. owner's equity interest in the NFFE);

(C) The value of each substantial U.S. owner's equity interest in the NFFE determined by applying the rules described in § 1.1471-5(b)(4) (substituting the term *equity* for the terms *account* and *financial account*);

(D) The name, address, and GIIN of the NFFE, and

(E) Any other information as required by Form 8966 (or such other form as the IRS may prescribe) and its accompanying instructions;

(iii) The NFFE must obtain a written certification (contained on a withholding certificate or in a written statement) from

each person that would be treated as a substantial U.S. owner of the NFFE if such person were a specified U.S. person. Such written certification must indicate whether the person is a substantial U.S. owner of the NFFE, and if so, the name, address and TIN of the person. If the NFFE has reason to know that such written certification is unreliable or incorrect, it must contact the person and request a revised written certification. If no revised written certification is received, the NFFE must treat the person as a substantial U.S. owner and report on Form 8966 the information required under paragraph (c)(3)(ii) of this section. The NFFE has reason to know that such a written certification is unreliable or incorrect if the certification is inconsistent with information in the NFFE's possession, including information that the NFFE provides to a financial institution in order for the financial institution to meet its AML or other account identification due diligence procedures with respect to the NFFE's account, information that is publicly available, and U.S. indicia as described in § 1.1441-7(b) and for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in § 1.1441-7(b)(8) has not been obtained.

(iv) The NFFE must keep records that it produces in the ordinary course of its business that summarize the activity (including the gross amounts described in paragraph (c)(3)(ii)(B) that are paid or credited to each of its substantial U.S. owners) relating to its transactions with respect to the equity of the NFFE held by each of its substantial U.S. owners for any calendar year in which the owner was required to be reported under paragraph (c)(3)(ii) of this section. The records must be retained for the longer of six years or the retention period under the NFFE's normal business procedures. A NFFE 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;

(v) The NFFE must respond to requests made by the IRS for additional information with respect to any substantial U.S. owner that is subject to reporting by the NFFE or with respect to the records described in paragraphs (c)(3)(iii) or (iv) of this section;

(vi) The NFFE must make a periodic certification to the IRS within each six-month period following the end of each certification period relating to its compliance with respect to the election described in paragraphs (c)(3) and (4) of this section. The first certification period begins on the date a GIIN is issued and ends at the close of the third full calendar year following that date. Each subsequent certification period is the three calendar year period following the close of the previous certification period. The certification will require an officer of the NFFE to certify to the following statements—

(A)(I) The NFFE has not had any events of default described in paragraph (c)(4)(v) of this section; or

(2) If there are any events of default, appropriate measures were taken to remediate such failures and to prevent such failures from recurring; and

(B) With respect to any failure to report to the extent required under paragraph (c)(3)(ii), the NFFE has corrected such failure by filing the appropriate information returns; and

(vii) The NFFE has not had its status as a direct reporting NFFE revoked by the IRS.

(4) *Election to be treated as a direct reporting NFFE*—(i) *Manner of making election.* A NFFE may elect to be treated as a direct reporting NFFE by registering on Form 8957 (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS.

(ii) *Effective date of election.* The election is effective upon the issuance of a GIIN to the NFFE.

(iii) *Revocation of election by NFFE.* The election may not be revoked by the NFFE without the consent of the Commissioner. The NFFE must notify its sponsoring entity (if applicable) and all relevant withholding agents if it revokes its election.

(iv) *Revocation of election by Commissioner.* The election may be revoked by the Commissioner upon an event of default described in paragraph (v) of this section.

(v) *Event of default.* An event of default occurs if a direct reporting NFFE fails to perform any of the obligations described in (c)(3)(i) through (vi) of this

section. An event of default also includes any misrepresentation of a material fact to the IRS.

(vi) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the NFFE a notice of default specifying the event of default. The IRS will request that the NFFE remediate the event of default within a specified time period. The NFFE must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the NFFE does not agree that an event of default has occurred. If the NFFE does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice to the NFFE that its election to be treated as a direct reporting NFFE has been revoked. A NFFE may request, within 90 days of receipt, reconsideration of a notice of default or notice of revocation by written request to the Deputy Commissioner (International), LB&I.

(vii) *Remediation of event of default.* A NFFE will be permitted to remediate an event of default to the extent it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the NFFE.

(5) *Election by a direct reporting NFFE to be treated as a sponsored direct reporting NFFE.*

(i) *Definition of sponsored direct reporting NFFE.* A NFFE is a *sponsored direct reporting NFFE* if the NFFE is a direct reporting NFFE and if another entity, other than a nonparticipating FFI, has agreed with the NFFE to act as its sponsoring entity, as described in paragraph (c)(5)(ii) of this section.

(ii) *Requirements for sponsoring entity of a sponsored direct reporting NFFE.* A sponsoring entity meets the requirements of this paragraph (c)(5)(ii) if the sponsoring entity—

(A) Is authorized to act on behalf of the NFFE;

(B) Has registered with the IRS as a sponsoring entity;

(C) Has registered the NFFE with the IRS as a sponsored direct reporting NFFE;

(D) Agrees to perform, on behalf of the NFFE, all due diligence, reporting, and other requirements that the NFFE would

have been required to perform as a direct reporting NFFE;

(E) Identifies the NFFE in all reporting completed on the NFFE's behalf;

(F) Complies with the certification and other requirements in paragraphs (f) and (g) of this section;

(G) Has not had its status as a sponsoring entity revoked; and

(H) Agrees to notify all relevant withholding agents and the IRS if its status as a sponsoring entity is revoked, if it otherwise ceases to be the sponsoring entity of any of its sponsored direct reporting NFFEs (for example, if the sponsored direct reporting NFFE changes sponsors), or if the status of any of its sponsored direct reporting NFFEs has been revoked.

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (c)(5)(ii) of this section with respect to any sponsored direct reporting NFFE.

(iv) *Liability of sponsoring entity.* A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (c)(5)(ii) of this section. A sponsored direct reporting NFFE will remain liable for all of its chapter 4 obligations without regard to any failure of its sponsoring entity to comply with the obligations contained in paragraph (c)(5)(ii) of this section that the sponsoring entity has agreed to undertake on behalf of the NFFE.

(d) [Reserved]. For further guidance, see § 1.1472-1(d).

(1) *In general.* For purposes of this section, except in the case of a payee that is a QI, 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 (other than a QI, WP, or WT) 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 a NFFE that is a QI, WP, or WT.* A withholding agent may

treat the payee of a withholdable payment as a NFFE that is a QI, 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) through (5) [Reserved]. For further guidance, see § 1.1472-1(d)(3) through (5).

(e) [Reserved]. For further guidance, see § 1.1472-1(e) through (e)(2).

(f) *Sponsoring entity verification.* [Reserved].

(g) *Sponsoring entity event of default.* [Reserved].

(h) [Reserved]. For further guidance, see § 1.1472-1(h).

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 16. Section 1.1473-1 is amended by revising paragraphs (a)(2)(vi), (a)(3)(iii)(B)(4), (a)(4)(vi), (a)(5)(i) through (vi), and (b)(2)(v) and by adding new paragraph (a)(4)(vii) to read as follows:

§ 1.1473-1 Section 1473 definitions.

- (a) * * *
- (2) * * *
- (vi) [Reserved]. For further guidance, see § 1.1473-1T(a)(2)(vi).
* * * * *
- (3) * * *
- (iii) * * *
- (B) * * *
- (4) [Reserved]. For further guidance, see § 1.1473-1T(a)(3)(iii)(B)(4).
* * * * *
- (4) * * *
- (vi) [Reserved]. For further guidance, see § 1.1473-1T(a)(4)(vi).
- (vii) [Reserved]. For further guidance, see § 1.1473-1T(a)(4)(vii).
- (5) * * *
- (i) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(i).
- (ii) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(ii).
- (iii) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(iii).
- (iv) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(iv).
- (v) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(v).
- (vi) [Reserved]. For further guidance, see § 1.1473-1T(a)(5)(vi).
* * * * *

- (b) * * *
- (2) * * *
- (v) [Reserved]. For further guidance, see § 1.1473-1T(b)(2)(v).
* * * * *

Par. 17. Section 1.1473-1T is added to read as follows:

§ 1.1473-1T Section 1473 definitions (temporary).

- (a) [Reserved]. For further guidance, see § 1.1473-1(a).
- (1) [Reserved]. For further guidance, see § 1.1473-1(a)(1) through (a)(1)(ii).
- (2) [Reserved]. For further guidance, see § 1.1473-1(a)(2).
- (i) through (v) [Reserved]. For further guidance, see § 1.1473-1(a)(2)(i) through (v).
- (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 and is not part of a plan described in § 1.1441-3(b)(2)(ii).
- (vii) [Reserved]. For further guidance, see § 1.1473-1(a)(2)(vii) through (a)(2)(vii)(B).
- (3) [Reserved]. For further guidance, see § 1.1473-1(a)(3).
- (i) through (ii) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(i) through (a)(3)(ii)(C).
- (iii) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(iii).
- (A) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(iii)(A).
- (B) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(iii)(B).
- (1) through (3) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(iii)(B)(1) through (3).
- (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 other than an amount described in paragraph (a)(2)(vi) of this section that is treated as U.S. source FDAP income; and
- (5) [Reserved]. For further guidance, see § 1.1473-1(a)(3)(iii)(B)(4).

(4) [Reserved]. For further guidance, see § 1.1473-1(a)(4).

(i) through (v) [Reserved]. For further guidance, see § 1.1473-1(a)(4)(i) through (v).

(vi) *Offshore payments of U.S. source FDAP income prior to 2017 (transitional).* A payment with respect to an offshore obligation made prior to January 1, 2017, if such payment is U.S. source FDAP income and made by a person that is not acting as an intermediary or as a WP or WT 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), or in the case of payments made with respect to debt or equity issued by a U.S. person (excluding interest payments made by a foreign branch of a U.S. financial institution with respect to depository accounts it maintains for retail customers). 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 and does not include a person acting as an insurance broker with respect to premiums.

(vii) *Collateral arrangements prior to 2017 (transitional).* A payment made prior to January 1, 2017, by a secured party with respect to collateral securing one or more transactions under a collateral arrangement, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement. For purposes of this paragraph (a)(4)(vii), the term *transaction* generally includes a debt instrument, a derivative financial instrument (including a notional principal contract, future, forward, and option), and any securities lending transaction, sale-repurchase transaction, margin loan, or substantially similar transaction that is subject to a collateral arrangement.

(5) [Reserved]. For further guidance, see § 1.1473-1(a)(5).

(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 a payment of U.S. source FDAP income that is

also a withholdable payment 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 that is also a withholdable payment 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 that is also a withholdable payment 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 that is also a withholdable payment is treated as being 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 that is also a withholdable payment 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 that is also a withholdable payment is treated as being paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) [Reserved]. For further guidance, see § 1.1473-1(a)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1473-1(a)(6).

(7) [Reserved]. For further guidance, see § 1.1473-1(a)(7).

(b) [Reserved]. For further guidance, see § 1.1473-1(b).

(1) [Reserved]. For further guidance, see § 1.1473-1(b)(1) through (b)(1)(iii)(B).

(2) [Reserved]. For further guidance, see § 1.1473-1(b)(2).

(i) through (iv) [Reserved]. For further guidance, see § 1.1473-1(b)(2)(i) through (iv).

(v) *Interests owned or held by a related person*. For purposes of determining whether a specified U.S. person is a substantial U.S. owner in a foreign entity described in paragraphs (b)(2)(i) through (iv) of this section, if a specified U.S. person owns or holds, directly or indirectly, any interest in the foreign entity, that interest must be aggregated with any such interest in the foreign entity owned or held, directly or indirectly, by a related person. For purposes of the preceding sentence, a related person is a person or spouse of a person described in § 1.267(c)-1(a)(4), determined by reference to such specified U.S. person.

(3) through (7) [Reserved]. For further guidance, see § 1.1473-1(b)(3) through (7).

(c) through (f) [Reserved]. For further guidance, see § 1.1473-1(c) through (f).

(g) *Expiration date*. The applicability of this section expires on February 28, 2017.

Par. 18. Section 1.1474-1 is amended:

1. By removing paragraphs (d)(1)(ii)(A)(I)(ix), (d)(3)(iii), (d)(4)(ii)(C), and (i)(1)(iv) through (v).

2. By redesignating paragraphs (d)(1)(ii)(A)(I)(x) through (xii) as (d)(1)(ii)(A)(I)(ix) through (xi), and paragraphs (d)(3)(iv) through (x) as (d)(3)(iii) through (ix).

3. By revising paragraphs (d)(1)(i), (d)(1)(ii)(A)(I)(viii) through (ix), (d)(1)(ii)(B)(I)(i), (d)(1)(ii)(B)(I)(vi) through (vii), (d)(1)(ii)(B)(I)(ix), (d)(2)(i), (d)(4)(i)(B), (d)(4)(i)(E), (d)(4)(ii)(B), (d)(4)(iii), (i)(1) introductory text, (i)(1)(i) through (iii), (i)(2) introductory text, and (i)(2)(iii).

The additions and revisions read as follows:

§ 1.1474-1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(i).

(ii) * * *

(A) * * *

(I) * * *

(viii) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(A)(I)(viii).

(ix) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(A)(I)(ix).

* * * * *

(B) * * *

(I) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(I)(i).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(I)(vi).

(vii) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(I)(vii).

* * * * *

(ix) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(I)(ix).

* * * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(A).

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(B).

(C) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(C).

* * * * *

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(i)(B).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(i)(E).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(ii)(C).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(iii) through (d)(4)(iii)(C).

* * * * *

(i) * * *

(1) [Reserved]. For further guidance, see § 1.1474-1T(i)(1).

(i) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(i).

(ii) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(iii) through (i)(1)(iii)(E).

(2) [Reserved]. For further guidance, see § 1.1474-1T(i)(2).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1474-1T(i)(2)(iii).

* * * * *

Par. 19. Section 1.1474-1T is added to read as follows:

§ 1.1474-1T Liability for withheld tax and withholding agent reporting (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1474-1(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1474-1(d).

(1) [Reserved]. For further guidance, see § 1.1474-1(d)(1).

(i) *In general.* Except as otherwise provided in paragraph (d)(4) of this section or in the instructions to Form 1042-S, 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 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) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A).

(I) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(I).

(i) through (vii) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(I)(i) through (vii).

(viii) An excepted NFFE and passive NFFE that also is not a flow-through entity and that is not acting as an agent or intermediary with respect to the payment;

(ix) A foreign person that is a partner or beneficiary in a flow-through entity that is a NFFE (looking through a partner or beneficiary that is a foreign intermediary or flow-through entity);

(x) through (xi) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(I)(x) through (xi).

(2) through (3) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(2) through (3).

(B) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(B).

(I) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(B)(I).

(i) A certified deemed-compliant FFI that is an NQI, NWP, or NWT and that fails to provide its withholding agent with sufficient information to allocate the payment to its account holders and payees;

(ii) through (v) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(B)(I)(ii) through (v).

(vi) An account holder or payee of a nonparticipating FFI except to the extent

described in paragraph (d)(1)(ii)(A)(I)(x) of this section for an exempt beneficial owner;

(vii) Except as provided in paragraph (d)(1)(ii)(A)(I) of this section, an entity that is disregarded under § 301.7701-2(c)(2) as an entity separate from its owner;

(viii) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(B)(I)(viii).

(ix) A passive NFFE or an excepted NFFE that is a flow-through entity or acts as an intermediary;

(2) through (3) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(B)(2) through (3).

(2) [Reserved]. For further guidance, see § 1.1474-1(d)(2).

(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) An amount of a withholdable payment that is subject to withholding under chapter 4 paid after June 30, 2014;

(B) An amount of a withholdable payment of U.S. source FDAP income that is also reportable on Form 1042-S under § 1.1461-1(c)(2)(i); or

(C) A foreign passthru payment subject to withholding under chapter 4.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1474-1(d)(2)(ii) through (iii).

(3) [Reserved]. For further guidance, see § 1.1474-1(d)(3) through (d)(3)(x).

(4) [Reserved]. For further guidance, see § 1.1474-1(d)(4).

(i) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(i).

(A) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(i)(A).

(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 withhold-

ing agent receives an FFI withholding statement allocating the payment (or portion of the payment) to a chapter 4 withholding rate pool, 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 identified on an FFI withholding statement, described in § 1.1471-3(c)(3)(iii)(B)(2). If, however, a participating FFI, deemed-compliant FFI, or QI (as applicable) has made an election under § 1.1471-4(b)(3)(iii), for the portion of the payment that the FFI allocates to each recalcitrant account holder that is subject to backup withholding under section 3406, the withholding agent must report on Form 1099 the amount of the payment and tax withheld in accordance with the form's requirements and accompanying instructions. 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 or deemed-compliant FFIs 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) through (D) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(i)(C) through (d)(4)(i)(D)(3).

(E) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an excepted or passive NFFE shall complete Forms 1042-S treating the NFFE as the recipient, except when the NFFE is a flow-through entity or acting as an inter-

mediary and the partner or beneficiary is treated as the payee. In cases in which the chapter 4 reportable amount is also an amount of U.S. source FDAP income reportable on Form 1042-S (described in § 1.1441-2(a)), see also § 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) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(ii)(A).

(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)(3)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(I)(x) 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 and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042-S treating the single owner as the recipient in accordance with the instructions to the Form 1042-S.

(iii) *Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs)* — (A) *In general.* Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and § 1.1471-4(d)(2)(ii)(F) (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 a participating FFI 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 a participating 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 § 1.1471-4(d)(2)(ii)(F), 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 a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount paid 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 § 1.1471-4(d)(2)(ii)(F), a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating 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 a U.S. branch of a participating FFI or registered deemed-compliant FFI 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) through (vi) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(iv) through (vi).

(e) through (h) [Reserved]. For further guidance, see § 1.1474-1(e) through (h).

(i) [Reserved]. For further guidance, see § 1.1474-1(i).

(1) *Reporting by certain withholding agents with respect to owner-documented FFIs.*

(i) Beginning on July 1, 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) makes a withholdable payment 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 July 1 through December 31, 2014, with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(ii) Beginning in calendar year 2015, 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 re-

spect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(iii) The information that a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) is required to report under paragraphs (i)(1)(i) and (i)(1)(ii) of this section 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—

(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)(I) and (2);

(C) For the period from July 1 through December 31, 2014, the total of all payments made to the owner-documented FFI and with respect to payments made after the 2014 calendar year the total of all payments made to the owner-documented FFI during the calendar year;

(D) The account balance or value of the account held by the owner-documented FFI; and

(E) 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 on July 1, 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 a NFFE that is not an excepted NFFE as defined in § 1.1472-1(c) shall file a report with the IRS for the period from July 1 through December 31, 2014, and in each subsequent 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 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 form or instructions may require. The report must contain the following information—

(i) through (ii) [Reserved]. For further guidance, see § 1.1474-1(i)(2)(i) through (ii).

(iii) For the period from July 1, 2014 through December 31, 2014, the total of all payments made to the NFFE and, with respect to payments made after the 2014 calendar year, the total of all payments made to the NFFE during the calendar year; and

(iv) [Reserved]. For further guidance, see § 1.1474-1(i)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1474-1(i)(3).

(j) [Reserved]. For further guidance, see § 1.1474-1(j).

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 20. Section 1.1474-6 is amended by revising paragraph (b)(1), by redesignating paragraph (f) as (g), and by adding new paragraph (f) to read as follows:

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

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1474-6T(b)(1).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1474-6T(f).

* * * * *

Par. 21. Section 1.1474-6T is added to read as follows:

§ 1.1474–6T Coordination of chapter 4 with other withholding provisions (temporary).

(a) [Reserved]. For further guidance, see § 1.1474–6(a).

(b) [Reserved]. For further guidance, see § 1.1474–6(b).

(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) through (3) [Reserved]. For further guidance, see § 1.1474–6(b)(2) through (3).

(c) through (e) [Reserved]. For further guidance, see § 1.1474–6(c) through (e).

(f) *Coordination with section 3406.* A participating FFI that makes a withholdable payment that is also a reportable payment (as defined in the relevant sections of chapter 61) to a recalcitrant account holder that is a U.S. non-exempt recipient is not required to withhold under section 3406 if it withholds on the payment at a 30-percent rate in accordance with its withholding obligations under chapter 4. See, however, § 1.1471–4(b)(3)(iii) for the election to withhold on recalcitrant account holders that are non-exempt U.S. recipients under section 3406 instead of withholding under chapter 4.

(g) [Reserved]. For further guidance, see § 1.1474–6(g).

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

John Dalrymple
Deputy Commissioner for Services and
Enforcement.

Approved February 14, 2014.

Mark J. Mazur
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register on February 28, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 6, 2014, 79 F.R. 12812)

Section 1441.—Withholding of tax on nonresident aliens

T.D. 9658

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, and 301

Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that revise certain provisions of the final regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, portfolio interest paid to nonresident alien individuals and foreign corporations, and the associated requirements governing collection, refunds, and credits of withheld amounts under these rules. The revisions are necessary to coordinate these regulations with the documentation, withholding, and reporting provisions included in regulations 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 under chapter 4 of Subtitle A of the Internal Revenue Code (Code). The temporary regulations also revise certain provisions of the final regulations relating to the statutory exemption for portfolio interest in light of amendments to the statute. Moreover, these temporary regulations remove certain transitional documentation rules from the regulations relating to withholding of tax on certain U.S. source income paid to foreign persons. These temporary regula-

tions affect persons making payments of U.S. source income to foreign persons, persons making payments to certain U.S. persons subject to reporting, and foreign persons making claims for refund or credit of income tax withheld or claiming the exclusion from tax provided for portfolio interest. The text of these temporary regulations also serves as the text of the proposed regulations (REG–134361–12) set forth in the Proposed Rules section in this issue of the **Bulletin**.

DATES: *Effective date:* These regulations are effective on March 6, 2014.

Applicability dates: For dates of applicability, see §§ 1.1441–1(g), 1.1441–3(j), 1.1441–4(g)(3), 1.1441–5(g)(3), 1.1441–6(i)(3), 1.1441–7(h), 1.1461–1(i), 1.1461–2(e), 1.6041–1(j)(2), 1.6041–4(d)(2), 1.6042–3(b)(5)(ii), 1.6045–1(c)(3)(xv), 1.6049–4(h), 1.6049–5(g)(2).

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 317-6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 871, 1441, 1461, 6041, 6042, 6045, and 6049 of the Code, the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 6402 of the Code. These temporary regulations are necessary to coordinate the final regulations under chapters 3 and 61 with the final regulations under chapter 4. Certain of the revisions to the final regulations under chapters 3 and 61 contained in these temporary regulations were previewed in Notice 2013–69, 2013–46 IRB 503 (November 12, 2013), Rev. Proc. 2014–13, 2014–3 IRB 419 (January 13, 2014), and draft forms related to chapter 4.

Information Reporting and Withholding Regimes

A. Chapters 3 and 61

On October 14, 1997, the IRS and the Treasury Department published final and temporary regulations (TD 8734) in the

Federal Register (62 FR 53387) dealing with the withholding of tax under sections 1441, 1442, and 1443 (contained in chapter 3 of Subtitle A of the Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the statutory exemptions for portfolio interest under sections 871(h) and 881(c) (1997 final regulations). In addition, the 1997 final regulations finalized changes that were included in proposed regulations applicable to the reporting provisions of sections 6041, 6042, 6044, 6045, and 6049 under chapter 61 of the Code. On May 22, 2000, the IRS and the Treasury Department published final regulations (TD 8881) in the **Federal Register** (65 FR 32152) amending certain provisions of the 1997 final regulations under sections 1441, 1442, 1443, 6041, 6041A, 6042, 6045, and 6049 (collectively the final regulations under chapters 3 and 61 are referred to herein as the final regulations).

1. Chapter 3

Generally, under sections 871(a) and 881(a), foreign persons are subject to tax at a 30-percent rate on the gross amount of certain payments of U.S. source fixed or determinable annual or periodical (FDAP) income, which includes, among other things, interest, dividends, and other similar types of investment income, unless the beneficial owner of the payment is entitled to a reduced rate of, or exemption from, withholding tax under domestic law, including an income tax treaty. This substantive tax liability generally is collected through a withholding tax imposed at source pursuant to chapter 3 and the regulations under chapter 3. The chapter 3 regulations provide comprehensive rules for withholding agents to identify the proper treatment of a payee for information reporting and withholding tax purposes based on documentation provided by the payee. The regulations under chapter 3 generally allow withholding agents to rely on a withholding certificate (for example, Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") furnished by a payee that certifies the payee's status as a foreign person, and whether such person is entitled to a reduction in or

exemption from withholding. The chapter 3 regulations recognize that foreign intermediaries and flow-through entities that receive U.S. source FDAP income payments on behalf of their customers, partners, or beneficiaries may have privacy and competitiveness concerns about sharing beneficial ownership information with other intermediaries (or chains of intermediaries) and competing financial institutions. Accordingly, the chapter 3 regulations permit certain types of foreign persons to assume primary withholding and reporting responsibility with respect to U.S. source FDAP income that is subject to chapter 3 withholding by becoming, respectively, qualified intermediaries, withholding foreign partnerships, or withholding foreign trusts.

A withholding agent generally is required to file an annual income tax return on Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," to report amounts that are actually withheld under chapter 3, or that would have been withheld but for an applicable exception, and, with respect to each recipient, to file an information return on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," to report each recipient's identifying information, the amount paid, and tax withheld, if any. A copy of Form 1042-S generally is required to be furnished to the recipient. The withholding and information reporting rules under chapter 3 facilitate the compliance of foreign persons with their U.S. tax obligations.

2. Chapter 61 and section 3406

U.S. persons are subject to U.S. income tax at graduated rates on their worldwide income, regardless of source, and irrespective of whether such U.S. persons reside within or without the United States. Generally, under chapter 61, a payor must report to the IRS certain payments or transactions with respect to U.S. persons that are not exempt recipients (U.S. non-exempt recipients, generally U.S. individuals, partnerships, estates, and trusts) using the appropriate form in the 1099 series (Form 1099) and furnish a copy to the payee. The scope of payments subject to reporting under chapter 61 depends, in part, on whether the payor is a

U.S. payor (as defined in § 1.6049-5(c)(5), which generally includes U.S. persons and their foreign branches, as well as controlled foreign corporations within the meaning of section 957(a)) or non-U.S. payor (which is a payor other than a U.S. payor). For a U.S. payor, payments subject to reporting generally include certain gross income, such as dividends and interest (including short-term original issue discount and bank deposit interest), from U.S. and non-U.S. sources, and gross proceeds from, among other things, the disposition of certain securities through a broker. A non-U.S. payor generally is required to report only on payments of certain U.S. source income and, under narrow circumstances, foreign source income and gross proceeds from broker transactions.

Similar to the chapter 3 information reporting and withholding regime, the chapter 61 regime provides comprehensive rules for a payor to identify the proper treatment of a payee for information reporting purposes, which generally are based on documentation or information about the payee. Additionally, a payor that does not have sufficient information with respect to a payee to satisfy its reporting obligations under chapter 61, such as a U.S. taxpayer identification number (TIN), may be required to backup withhold on a payment made to the payee at the statutory backup withholding rate (currently 28 percent) under section 3406.

A payor must file an annual income tax return on Form 945, "Annual Return of Withheld Federal Income Tax," to report amounts withheld under section 3406. A payor must also file a Form 1099 to report payments made to a U.S. non-exempt recipient and any amounts withheld under section 3406. A copy of the Form 1099 must be furnished to the payee.

These information reporting rules assist U.S. taxpayers in complying with their income tax obligations. The information reported under chapter 61 and section 3406 is also an integral part of IRS compliance efforts to identify U.S. taxpayers who fail to properly report income.

B. Chapter 4

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111-147 (the HIRE Act), added to the Code chapter 4 of Subtitle A, comprised of sections 1471 through 1474 (commonly known as FATCA). Chapter 4 generally requires withholding agents to withhold 30 percent on withholdable payments (as defined in § 1.1471-1(b)(136) and sometimes referred to herein as chapter 4 withholdable payments) made to FFIs that do not agree to report certain information to the IRS regarding their U.S. accounts (as defined in § 1.1471-1(b)(134), which generally includes accounts held by specified U.S. persons and U.S. owned foreign entities, as defined in § 1.1471-1(b)(141) and § 1.1471-1(b)(138), respectively), and on withholdable payments made to passive non-financial foreign entities (passive NFFEs, as defined in § 1.1471-1(b)(94)) that do not provide information on their substantial U.S. owners (as defined in § 1.1471-1(b)(128)) to withholding agents. Chapter 4 thus extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. In order to avoid withholding tax under chapter 4, FFIs generally must agree to perform prescribed due diligence procedures to identify the chapter 4 status of their account holders, report information on U.S. accounts, and, in certain circumstances, withhold tax on certain account holders. Chapter 4 also imposes on withholding agents certain withholding, documentation, and information reporting requirements with respect to withholdable payments made to passive NFFEs. Amounts withheld under chapter 4 generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, or refunded to the extent there is an overpayment of tax.

On February 15, 2012, the IRS and the Treasury Department published a notice of proposed rulemaking (REG-121647-10) in the **Federal Register** (77 FR 9022) addressing FATCA's due diligence, withholding, reporting, and associated requirements. On October 24, 2012, the IRS and

the Treasury Department advance released Announcement 2012-42, 2012-47 IRB 561 (November 19, 2012) which announced the intention to amend certain provisions of the proposed chapter 4 regulations in final regulations. On January 28, 2013, the IRS and the Treasury Department published final regulations under chapter 4 (TD 9610) in the **Federal Register** (78 FR 5874), and on September 10, 2013, published correcting amendments to these regulations (78 FR 55202) (final chapter 4 regulations). The final chapter 4 regulations include comprehensive due diligence, withholding, and reporting requirements for withholding agents and FFIs that were to begin on January 1, 2014. On July 12, 2013, the IRS and the Treasury Department published Notice 2013-43, 2013-31 I.R.B. 113, which announced, among other things, that withholding agents generally will be required to begin chapter 4 withholding on withholdable payments made after June 30, 2014, and that the requirements of participating FFIs (as defined in § 1.1471-1(b)(91), which includes reporting Model 2 FFIs) under the agreement described in § 1.1471-4 (FFI agreement) will begin after June 30, 2014. On October 29, 2013, the IRS and the Treasury Department published Notice 2013-69 containing a draft of the FFI agreement, which an FFI may enter into with the IRS in order to be treated as a participating FFI that is generally exempt from FATCA withholding under chapter 4. Notice 2013-69 also previewed some of the changes to the final regulations that, among other things, would coordinate the information reporting and backup withholding rules in chapter 61 and section 3406 with the rules under chapter 4. On January 13, 2014, the IRS and the Treasury Department published the final FFI agreement in Revenue Procedure 2014-13. In addition, temporary regulations (temporary chapter 4 regulations) amending the final chapter 4 regulations are being published contemporaneously with these temporary regulations. The temporary chapter 4 regulations amend and revise the final chapter 4 regulations, in part, to coordinate with these temporary regulations.

To address situations where foreign law would prevent an FFI from reporting directly to the IRS the information

required by chapter 4, the Treasury Department, in collaboration with certain foreign governments, developed two alternative model intergovernmental agreements (IGAs) that facilitate the effective and efficient implementation of FATCA information reporting in a manner that removes foreign law impediments to compliance, fulfills the information reporting objectives of chapter 4, and further reduces burdens on FFIs located in partner jurisdictions. Specifically, a partner jurisdiction signing an agreement with the United States based on the first model (Model 1 IGA) generally agrees to adopt rules to require all relevant FFIs located in the jurisdiction (reporting Model 1 FFIs, as defined in § 1.1471-1(b)(114)) to identify U.S. accounts pursuant to due diligence rules specified in the agreement and to report the information required under FATCA for U.S. accounts to the partner jurisdiction, which, in turn, will report the information to the IRS. A partner jurisdiction signing an agreement based on the second model (Model 2 IGA) agrees to direct all relevant FFIs located in the jurisdiction (reporting Model 2 FFIs, as defined in § 1.1471-1(b)(115)) to follow the terms of an FFI Agreement by reporting information about U.S. accounts directly to the IRS in a manner consistent with the final chapter 4 regulations, except as expressly modified by the Model 2 IGA. Under a Model 2 IGA, the information reported to the IRS directly by FFIs is supplemented by government-to-government exchange of information in order to overcome legal impediments to direct FFI reporting with respect to account holders that refuse to consent to having their information reported.

Under the final chapter 4 regulations, a participating FFI (including a reporting Model 2 FFI) generally is required to report information on U.S. accounts to the IRS on Form 8966, "FATCA Report," including the account number, certain payment information, and account balance and, in the case of an account held by a U.S. person, the U.S. person's name, address, and TIN, or, in the case of an account held by a U.S. owned foreign entity, the name of the entity and the name, address, and TIN of each substan-

tial U.S. owner. With respect to accounts held by a U.S. person, an FFI may instead elect to satisfy its chapter 4 reporting obligations by electing to report on Form 1099 the information required under chapter 61, as modified to include the account number. A payor that makes the election must report under chapter 61 as if it were a U.S. payor and each holder of a U.S. account was a U.S. citizen and without regard to whether a payment was made on the account.

Chapter 4 also requires withholding agents to report on Form 8966 information on withholdable payments to passive NFFEs with substantial U.S. owners. A copy of Form 8966 is not currently required to be furnished to the account holder or passive NFFE. Additionally, a withholding agent that withholds on a payment under chapter 4 generally is required to file an annual income tax return on Form 1042 to report the payment and amount of tax withheld, and an information return on Form 1042-S to report, with respect to each recipient or pool, the payment and amount of tax withheld. A copy of Form 1042-S generally is required to be furnished to the recipient, except in cases where the chapter 4 rules allow pooled reporting on Form 1042-S.

The information reporting regime implemented under the final chapter 4 regulations and the IGAs will enhance IRS compliance efforts by enlisting the FFIs, which are in the best position to provide information on their accounts, to report on offshore accounts held by U.S. persons and by passive foreign entities with substantial U.S. owners. Like the Form 1099 reporting that already occurs primarily with respect to domestic accounts, this new information reporting will help the IRS identify U.S. taxpayers that may have failed to properly report and pay taxes on income earned or hidden offshore. This new enforcement tool will also strengthen the integrity of the U.S. voluntary tax compliance system by reassuring compliant taxpayers that the IRS will be able to enforce our tax laws on those who would attempt to avoid paying their fair share of taxes through the use of offshore accounts or offshore entities.

Explanation of Provisions

I. Overview of Changes to Coordinating Chapter 4 (Including Information Reporting Provided by FFIs under an IGA) with the Regulations under Chapters 3 and 61

Payors of payments that are subject to the information reporting and withholding regimes under chapters 3, 4, and 61 and section 3406 play an important role in U.S. tax compliance by providing information about payments made to, and income earned by, U.S. and foreign taxpayers. These temporary regulations provide guidance necessary to coordinate the regulations under chapters 3 and 61 and section 3406 with the final chapter 4 regulations and the IGAs. The preexisting regimes under chapters 3 and 61 were already coordinated to establish an integrated set of rules that enabled payors to identify payments and payees subject to reporting and to determine which of the two information reporting and withholding regimes, chapter 3 (information reporting and withholding on foreign persons) or chapter 61 and section 3406 (information reporting and backup withholding on U.S. non-exempt recipients), applied to a particular payment. The regulations under chapter 4 also provide comprehensive rules for withholding agents and FFIs with respect to the identification of payees and account holders, withholding, and information reporting. The IGAs similarly set forth a framework for FFIs to identify account holders and determine which accounts must be reported as U.S. accounts. These temporary regulations provide guidance coordinating the requirements under chapters 3 and 61 and section 3406 with the requirements under chapter 4 in order to develop a more integrated set of rules that reduces burdens (including certain duplicative information reporting obligations) and conforms the due diligence, withholding, and reporting rules under these provisions to the extent appropriate in light of the separate objectives of each chapter or section.

The remainder of this overview discusses the three main areas in which these temporary regulations revise the final regulations under chapters 3 and 61 and section 3406 in order to coordinate with the final chapter 4 regulations.

A. Identification of Payee Status

The documentation requirements (including the applicable presumption rules in the absence of documentation) for withholding agents, participating FFIs (including reporting Model 2 FFIs), and registered deemed-compliant FFIs (as defined in § 1.1471-1(b)(111), which includes reporting Model 1 FFIs) under the final chapter 4 regulations or an applicable IGA differ in certain respects from the corresponding documentation requirements for withholding agents under the final chapter 3 regulations for determining when chapter 3 withholding is required, and from the documentation requirements of payors and middlemen under the final chapter 61 regulations for determining when payments are made to persons for which reporting is required. These temporary regulations remove inconsistencies in the documentation requirements (including inconsistencies regarding presumption rules in the absence of valid documentation) based, in part, on stakeholder comments to the final chapter 4 regulations. Examples of such coordination rules, discussed in greater detail in sections II and III later in this preamble, include rules that conform the requirements of a valid withholding certificate by requiring that a global intermediary identification number (GIIN) be included on the form if the payee is an FFI (when applicable); provide for indefinite validity periods for certain withholding certificates and extended periods of validity for certain documentation; conform the rules for electronic transmission of withholding certificates and statements; coordinate rules regarding the required content of a withholding statement provided by an FFI or flow-through entity; revise the presumption rules applicable to joint accounts; and provide uniform limits on when a withholding agent will be treated as having reason to know of a payee's U.S. or foreign status.

B. Information Reporting with Respect to U.S. Persons

The final chapter 4 regulations require participating FFIs (including reporting Model 2 FFIs) and, when appli-

cable, registered deemed-compliant FFIs, but excluding reporting Model 1 FFIs, to report their U.S. accounts on Form 8966, irrespective of the type of payments made to the account holders. This reporting and similar reporting received pursuant to Model 1 IGAs may in some cases be duplicative of the information required to be reported on Form 1099 for payments made to the same account holders if they are U.S. non-exempt recipients under chapter 61. As discussed in the Background section of this preamble, FFIs may be able to mitigate this duplication by electing to satisfy their chapter 4 reporting obligations with respect to such accounts by reporting on Form 1099 the information required under chapter 61, as modified to include certain information required under chapter 4. This election, however, is not expected to relieve burden for FFIs that are required to report on U.S. accounts pursuant to local laws implementing a Model 1 IGA. As previewed in Notice 2013–69, in order to further reduce burdens and mitigate instances of duplicative reporting under chapters 4 and 61 and based, in part, on stakeholder comments requesting relief, these temporary regulations provide that non-U.S. payors that are also participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) are excepted from the requirement to report on payments made to accounts held by U.S. non-exempt recipients under chapter 61 to the extent the payor reports on the account under chapter 4 or an applicable IGA.

These temporary regulations do not provide a similar exception to reporting under chapter 61 for U.S. payors that are FFIs required to report under chapter 4. While some of the information reported on Form 8966 and Form 1099 may overlap, there are also significant differences. Most notably, the requirement under chapter 61 to furnish a copy of Form 1099 to the payee facilitates voluntary compliance, and there is no equivalent requirement for payee statements under chapter 4. Moreover, U.S. payors generally have well-established systems for reporting and are subject to reporting on a broader range of pay-

ments under chapter 61 than non-U.S. payors. In light of these differences, the benefits of chapter 61 reporting by U.S. payors to the voluntary compliance system outweigh the reduction in burden that would be achieved by eliminating this reporting for U.S. payors that report on the same account under chapter 4 or an applicable IGA.

These temporary regulations do provide a limited exception to reporting under chapter 61 for both U.S. payors and for non-U.S. payors that are FFIs required to report under chapter 4 or an applicable IGA with respect to payments that are not subject to withholding under chapter 3 or section 3406 and that are made to an account holder that is a presumed (but not known) U.S. non-exempt recipient. FFIs that are required to report under chapter 4 or an applicable IGA will provide information regarding account holders who are presumed U.S. non-exempt recipients. Moreover, such presumed U.S. non-exempt recipients may not actually be U.S. persons for whom the recipient copy of Form 1099 would be relevant to facilitate voluntary compliance. As a result, the IRS and the Treasury Department believe that reporting under chapter 61 should be eliminated on payments to account holders who are presumed U.S. non-exempt recipients and for whom there is FATCA reporting.

These temporary regulations also provide a new exception from reporting under chapter 61 that will generally benefit U.S. persons acting as stock transfer agents or paying agents of certain passive foreign investment companies (PFICs). This exception is based, in part, on comments suggesting ways to reduce duplicative reporting with respect to PFIC shareholders without significantly impacting taxpayer compliance. Comments indicated that, due to the manner in which shareholders of PFICs are taxed under sections 1291 through 1298, the current Form 1099 reporting performed by transfer agents or paying agents of a PFIC generally does not assist taxpayers in properly reporting PFIC income on their tax returns, although it could remind taxpayers that they may have had a taxable event with respect to the PFIC. In light of the lim-

ited benefit of such 1099 reporting and the burden reduction that would result from its elimination, the IRS and the Treasury Department have concluded that this reporting should be eliminated to the extent the PFIC will report information with respect to the payment (or the account to which the payment is made) under chapter 4 or an applicable IGA.

C. *Withholding*

In certain cases, the payments subject to withholding under chapter 4 are also payments that could be subject to either withholding under chapter 3 or backup withholding under section 3406. These temporary regulations provide rules to address the potential for overwithholding to ensure that payments are not subject to withholding under both chapters 3 and 4, or under both chapter 4 and section 3406. Additionally, as previewed in Notice 2013–69, these temporary regulations also allow participating FFIs (including reporting Model 2 FFIs) and registered deemed-compliant FFIs to satisfy their chapter 4 withholding requirements by electing to continue to perform backup withholding under section 3406 at the statutory backup withholding rate (28 percent) in certain circumstances. A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI may make the election to continue to apply backup withholding under section 3406 only if it complies with the requirements of chapter 61 and section 3406 with respect to the payment. Thus, for example, if an FFI is unable to report the information required with respect to a payment because local law prohibits payee specific reporting without the consent of the account holder and such consent is not given, the FFI cannot elect to report under chapter 61 or apply backup withholding with respect to such payment. When available, the election allows payors that have preexisting backup withholding systems to continue to perform backup withholding under such systems rather than to switch between withholding systems under chapter 4 and section 3406.

In addition to amending and revising the regulations under chapters 3 and 61 and section 3406 to coordinate with the

final chapter 4 regulations, other revisions are included in the temporary regulations. For example, these temporary regulations amend the regulations under section 871 (and make conforming changes to the withholding requirements of the regulations under section 1441) in response to the HIRE Act's repeal of section 163(f)(2)(B) with respect to registration-required obligations and amendment of section 871(h)(2), the regulations under which provided when interest with respect to obligations not in registered form and targeted to foreign markets qualified as deductible interest and portfolio interest.

II. Changes to Chapter 3 Withholding Provisions

A. U.S. agent of a foreign person

Under § 1.1441-1(b)(2)(ii) of the final regulations, a withholding agent making a payment to a U.S. person, and who has actual knowledge that the U.S. person receives the payment on behalf of a foreign person, must treat the payment as made to the foreign person, unless the U.S. person is a financial institution (as defined in § 1.165-12(c)(1)(iv)) and the withholding agent has no reason to believe the financial institution will not comply with its obligation to withhold. A similar payee provision is included in the chapter 4 regulations. These temporary regulations revise the scope of U.S. persons that are financial institutions under § 1.1441-1(b)(2)(ii) and that the withholding agent may treat as payees by defining the term financial institution consistent with the chapter 4 definition of a financial institution, which, in addition to depository and custodial institutions, includes certain investment entities and certain insurance companies.

B. U.S. branch treated as a U.S. person

For purposes of the withholding requirements of chapter 3, a U.S. branch of a regulated foreign bank or foreign insurance company (including a territory financial institution) may agree to be treated as a U.S. person if it meets the requirements of § 1.1441-1(b)(2)(iv) of the final regulations. Under the chapter 4 regulations, a U.S. branch of an FFI may be treated as

a U.S. person only if it is also a branch of a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and it meets the requirements of § 1.1441-1(b)(2)(iv). To be consistent with the chapter 4 regulations, these temporary regulations add a new requirement in § 1.1441-1(b)(2)(iv) that a U.S. branch of an FFI must be a branch of a participating FFI or registered deemed-compliant FFI in order for it to be treated as a U.S. person for purposes of chapter 3. In addition, these temporary regulations clarify that a territory financial institution that is a flow-through entity receiving a payment on behalf of its owners or partners may also be treated as a U.S. person (in addition to a territory financial institution that is acting as an intermediary on behalf of third-parties). These temporary regulations also provide a requirement that if a U.S. branch is treated as a U.S. person for purposes of chapter 3, it must also be treated as a U.S. person for purposes of chapter 4. Moreover, as a result of the account documentation requirements in the chapter 4 regulations that apply to a participating FFI (including a reporting Model 2 FFI) that is not treated as a U.S. person, these temporary regulations provide that a U.S. branch that agrees to be treated as a U.S. person must be treated as a U.S. person with respect to all withholding agents from which it receives payments.

Under § 1.1441-1(b)(2)(iv)(B)(3) of the final regulations, a withholding agent that makes a payment to a U.S. branch of a foreign person must treat the payment as a payment to a foreign person of income effectively connected with a U.S. trade or business if it cannot reliably associate the payment with a withholding certificate from the branch or with other documentation from another person. These temporary regulations add a requirement that a withholding agent obtain an employment identification number (EIN) from a U.S. branch before it may treat a payment to the branch as effectively connected income. For payments to which this presumption does not apply because no EIN is provided, these temporary regulations require that the withholding agent treat the payment as made to a foreign person of income that is not effectively connected

with the conduct of a trade or business in the United States. Further, these temporary regulations include a similar provision under § 1.1441-4 that requires a withholding agent to obtain an EIN from a U.S. branch in order to presume the payment to the branch is effectively connected income. The requirement to obtain an EIN from a U.S. branch is consistent with the requirements under chapter 4.

C. Other payees (authorized foreign agents)

Under § 1.1441-1(b)(2)(vi) of the final regulations, an authorized foreign agent (as described in § 1.1441-7(c)(2) of the final regulations) of a withholding agent is treated as a payee. The chapter 4 regulations do not have a special provision to treat a foreign agent of a withholding agent as a payee with respect to payments it collects on behalf of the withholding agent. See § 1.1474-1(a)(3). Accordingly, these temporary regulations remove the rules under § 1.1441-1(b)(2)(vi) that treat an authorized foreign agent as a payee, consistent with chapter 4, and the person to whom the authorized agent (as defined in § 1.1441-7(c)(2) of these temporary regulations) is making the payment on behalf of the withholding agent is treated as a payee by applying the payee rules under § 1.1441-1(b)(2) to such person. A series of other revisions have been made by these temporary regulations with respect to the use of authorized agents consistent with chapter 4 and are discussed throughout this preamble. In particular, see section II.S of this preamble for a description of changes to a withholding agent's use of an authorized agent.

D. Reliable association with documentation

Section 1.1441-1(b)(2)(vii)(A) of the final regulations generally describes the situations in which a withholding agent can reliably associate a payment with valid documentation to determine when withholding applies. Sections 1.1441-1(b)(2)(vii)(B) through (b)(2)(vii)(F) of the final regulations provide special rules for situations in which a withholding agent can reliably associate a payment with documentation for a payment

made to a foreign intermediary (including a qualified intermediary). These temporary regulations revise § 1.1441-1(b)(2)(vii)(B) through (b)(2)(vii)(F) and the examples under those sections consistent with the documentation and withholding requirements of chapter 4.

With respect to nonqualified intermediaries, these temporary regulations revise the rules for reliable association to allow a withholding agent to associate a withholdable payment with a chapter 4 withholding rate pool (as defined in § 1.1441-1(c)(48)) consistent with the reliable association requirements of withholding statements provided by nonqualified intermediaries for chapter 4 purposes. Accordingly, these temporary regulations provide that a withholding agent need not associate a payment with documentation for payees included in any chapter 4 withholding rate pool. These temporary regulations also revise the examples relating to when a withholding agent can reliably associate payments to nonqualified intermediaries with valid documentation and clarify that each example refers to a payment that is not a withholdable payment under chapter 4. These temporary regulations add an example under § 1.1441-1(e)(3)(iv)(C) that illustrates the requirements of a withholding statement provided by a nonqualified intermediary for a withholdable payment under chapter 4 that is also a payment subject to withholding under chapter 3.

With respect to qualified intermediaries, these temporary regulations revise the rules for reliable association to allow a withholding agent to associate a withholdable payment with a chapter 4 withholding rate pool (in addition to the withholding rate pools provided for chapter 3 purposes) consistent with the reliable association requirements of withholding statements provided by qualified intermediaries for chapter 4 purposes. Under the revised rule, a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees in a case in which the qualified intermediary does not assume primary Form 1099 and backup withholding responsibilities. A withholding agent that makes a payment to a qualified intermediary that does not elect to assume pri-

mary Form 1099 and backup withholding responsibilities must continue to reliably associate the payment to the qualified intermediary with Forms W-9, "Request for Taxpayer Identification Number and Certification," for each U.S. non-exempt recipient not included in a chapter 4 withholding rate pool of U.S. payees on whose behalf the qualified intermediary is receiving the payment. The revised rule further provides that a withholding agent that makes a payment to a qualified intermediary that assumes primary Form 1099 and backup withholding responsibilities and primary withholding responsibility for purposes of both chapters 3 and 4 need not obtain any withholding statement from the qualified intermediary. These temporary regulations also add an example in § 1.1441-1(e)(5)(v)(D) to illustrate when a withholding agent can reliably associate payments made to qualified intermediaries providing chapter 4 withholding rate pools with respect to a withholdable payments under chapter 4.

E. *Presumption rules and joint payees*

Section 1.1441-1(b)(3) of the final regulations provides presumption rules for withholding agents that apply in the absence of valid documentation and provides that a payment made to an exempt recipient (as determined based on the indicia of such status described in § 1.6049-4(c)(1)(ii) or similar provision under chapter 61 for a payment other than interest) generally is presumed made to a U.S. person unless one of the indicia of foreign status described in § 1.1441-1(b)(3)(iii)(A) is present. These temporary regulations modify what constitutes indicia of foreign status for purposes of the presumption rule applicable to exempt recipients. In particular, these temporary regulations provide that references to the terms *corporation* or *company* in the name of the payee are not indications that the payee is an entity included on the list of per se corporations under § 301.7701-2(b)(8)(i) for purposes of treating the payee as a foreign person. These temporary regulations also remove the term *a payment made outside the U.S.* under new § 1.1441-1(b)(3)(iii)(A)(I)(iv) and

replace it with the term *a payment made with respect to an offshore obligation*. These temporary regulations further coordinate the regulations under chapters 3 and 61 with the regulations under chapter 4 by making a similar change to the term used in § 1.6049-5(c)(1).

In addition, these temporary regulations add a presumption rule under § 1.1441-1(b)(3)(iii)(A)(2) consistent with chapter 4 to provide that a payment that is also a withholdable payment under chapter 4 made to specified classes of exempt recipients (that is, generally those without an apparent U.S. status) will be presumed made to a foreign payee absent documentary evidence establishing U.S. status. This presumption will not apply, however, to a withholdable payment made with respect to a preexisting obligation determined by a withholding agent prior to July 1, 2014, to be held by a U.S. exempt recipient. A withholding agent will be allowed to apply this rule to all payments (including payments other than withholdable payments) made with respect to an obligation.

These temporary regulations also modify the presumption rules applicable to payments made to certain payees to coordinate with presumptions that apply under the chapter 4 regulations. These temporary regulations modify § 1.1441-1(b)(3)(iii) to coordinate with the presumptions under § 1.1471-3(f) for withholding agents making withholdable payments subject to the presumption rules of § 1.1441-1(b)(3) and chapter 4. Section 1.1441-1(b)(3)(iii) of the temporary regulations provides that in the case of a withholdable payment under chapter 4, a withholding agent must apply the presumption rules under § 1.1471-3(f) to determine the payee's status for chapter 4 purposes. Furthermore, § 1.1441-1(b)(3)(v)(B) provides that a withholding agent making a withholdable payment to a foreign intermediary should apply the presumption rules of § 1.1471-3(f)(5) to determine whether withholding applies under chapter 4 (instead of applying the presumption rules in § 1.1441-1(b)(3)). For example, if a withholding agent makes a withholdable payment to a foreign intermediary and cannot reliably associate the payment with documentation for a

payee, the withholding agent must apply the presumption rule of § 1.1471-3(f)(5) to treat the unidentified payee as a nonparticipating FFI (as defined in § 1.1471-1(b)(82)) and withhold on the payment at a 30-percent rate under chapter 4. Accordingly, no withholding or reporting under chapter 3 would be required to apply with respect to the payment.

Consistent with the chapter 4 presumption rules, these temporary regulations also provide that if a withholding agent makes a withholdable payment to joint payees and one or more of the payees does not appear, by name or other information in the account file, to be an individual, then the payment will be presumed to be made to a nonparticipating FFI. See § 1.1471-3(f)(7).

F. Grace period

Under § 1.1441-1(b)(3)(iv) of the final regulations, a withholding agent may apply the 90-day grace period provided under § 1.6049-5(d)(2)(ii) to amounts described in §§ 1.1441-6(c)(2) and 1.1441-4(b)(2)(ii) to treat a payee as an undocumented foreign person, and withhold under chapter 3, while waiting for new documentation. The chapter 4 regulations allow a withholding agent to apply a 90-day grace period following a change in circumstances during which the withholding agent may rely on the payee's claimed chapter 4 status. These temporary regulations do not provide a similar allowance for chapter 3 purposes to avoid potential deficits in withholding that could apply during the grace period allowed under chapter 4 because of the different objectives between chapters 3 and 4. These temporary regulations remove the requirement that a withholding agent withhold on payments during the grace period when a form is received by facsimile since these temporary regulations also provide that such forms may be generally relied upon under § 1.1441-1(e)(4)(iv)(C).

G. Exemptions from chapter 3 withholding

Section 1.1441-1(b)(4) of the final regulations specifies certain types of pay-

ments that may be fully or partially exempt from withholding under chapter 3. To distinguish these exemptions from the withholding exemptions that apply for purposes of chapter 4, these temporary regulations add language to clarify that the exemptions specified under § 1.1441-1(b)(4) apply only for purposes of chapter 3 and that withholding under chapter 4 may still apply. In addition, these temporary regulations add the applicable sunset dates to the descriptions of payments that are portfolio interest to coordinate with the elimination of portfolio interest treatment for foreign-targeted bearer obligations under section 502 of the HIRE Act (for obligations issued after March 18, 2012) and the elimination of portfolio interest treatment for foreign-targeted registered obligations under § 1.871-14(e) for obligations issued on or after January 1, 2016.

H. Establishing foreign status under chapter 61

These temporary regulations add section 6050W to the list of provisions referenced in § 1.1441-1(b)(5) for which the foreign status of a payee may be established for chapter 61 purposes based on the documentation provided for chapter 3 purposes.

I. Curing late or incomplete documentation

Section 1.1441-1(b)(2) of the final regulations provides that a withholding agent must reliably associate a payment with documentation by the date of the payment. Notwithstanding the general rule under § 1.1441-1(b)(2), § 1.1441-1(b)(7) of the final regulations allows a withholding agent to rely on documentation obtained after the date of a payment to avoid liability for underwithholding during the period that the withholding agent had no documentation. The final regulations also specify that the IRS may require a withholding agent to obtain additional documentation, however, when the IRS determines that delays in obtaining the documentation affect its reliability. The chapter 4

regulations specify the documentation that must be obtained by a withholding agent after the date of a payment to determine a payee's chapter 4 status, depending on the length of the delay. Consistent with the chapter 4 regulations, these temporary regulations incorporate the chapter 4 requirements for documentation obtained after the date of the payment (including documentation to support a claim for treaty benefits). These temporary regulations also add a provision consistent with the chapter 4 regulations that permits a withholding agent to cure a withholding certificate containing inconsequential errors with respect to a claim of status for chapter 3 purposes.

J. Definitions

Section 1.1441-1(c) of the final regulations provides definitions used for purposes of the chapter 3 regulations. First, these temporary regulations modify the definitions in § 1.1441-1(c)(1) through (c)(30) as appropriate to provide consistency with certain definitions in the chapter 4 regulations. For example, the term *financial institution* in § 1.1441-1(c)(5) is amended to be consistent the term financial institution in the chapter 4 regulations.

Second, these temporary regulations also add new terms that are referenced for chapter 3 purposes. These terms are added to § 1.1441-1(c) of these temporary regulations in order to help navigate the regulations and to reflect more completely the terms used throughout these regulations. Finally, these temporary regulations also add new definitions adopted from chapter 4 that are relevant for chapter 3 purposes. For example, § 1.1441-1(c)(48) of these temporary regulations incorporates the term *chapter 4 withholding rate pool* (modified as appropriate for chapter 3 purposes with respect to the chapter 4 withholding rate pool of U.S. payees) in order to provide for situations in which intermediaries may provide withholding statements to withholding agents that include these pools rather than the documentation otherwise required for chapter 3 purposes.

K. Withholding certificates

1. Beneficial Owner Withholding Certificate

Section 1.1441-1(e)(2)(ii) of the final regulations provides the requirements of a valid beneficial owner withholding certificate. For a payment made to an entity that is a beneficial owner of a withholdable payment, these temporary regulations provide that the withholding certificate must also include the chapter 4 status of the entity on the same form to coordinate with the requirements of the certification provided for chapter 4 purposes.

2. Withholding Certificate Provided by a Qualified Intermediary or Nonqualified Intermediary

Sections 1.1441-1(e)(3)(ii) and (e)(3)(iii) of the final regulations provide the requirements of a valid qualified intermediary (QI) or nonqualified intermediary (NQI) withholding certificate, respectively. These temporary regulations amend these sections to include the information required for purposes of chapter 4 with respect to a QI or an NQI that receives a withholdable payment. Additionally, these temporary regulations add a requirement that a QI or an NQI certify its chapter 4 status and provide its GIIN (if applicable) on the withholding certificate. A GIIN will be required, for example, when a QI or an NQI is also a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI). These temporary regulations also require a QI or an NQI to certify that it is fulfilling its reporting obligations under chapter 4 with respect to any U.S. persons included in a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to the withholding agent.

3. Withholding Certificate Provided by a U.S. Branch or Territory Financial Institution

As discussed in section II.B of this preamble, the requirements for a U.S. branch or territory financial institution

to be treated as a U.S. person under § 1.1441-1(b)(2)(iv) are modified by these temporary regulations consistent with the chapter 4 regulations. To further coordinate with chapter 4, these temporary regulations amend § 1.1441-1(e)(3)(v), which provides the requirements for a valid U.S. branch withholding certificate provided by a U.S. branch (or territory financial institution treated as a U.S. branch under § 1.1441-1(b)(2)(iv)) that is not the beneficial owner of the income, as well as the requirements for when a withholding agent may treat the branch as a U.S. person. For example, a U.S. branch of an FFI will be required to provide a GIIN on the withholding certificate to certify to its chapter 4 status in order to be treated as a U.S. person when receiving a withholdable payment. In addition, a U.S. branch or territory financial institution will be required to provide its EIN on a withholding certificate in order to be treated as a U.S. person.

4. Who May Sign Withholding Certificates

The chapter 4 regulations provide examples in § 1.1471-3(c)(6)(i) of persons authorized to sign a withholding certificate. To clarify the persons authorized to sign a withholding certificate for chapter 3 purposes consistent with the chapter 4 regulations, these temporary regulations incorporate into § 1.1441-1(e)(4)(i) the examples of persons described in § 1.1471-3(c)(6)(i). The list of persons authorized to sign a withholding certificate 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 foregoing titles, and any other person authorized in writing to sign documentation on behalf of the individual or entity named on the certificate.

5. Period of Validity of Withholding Certificates

Section 1.1441-1(e)(4)(ii)(A) of the final regulations provides that a withholding certificate or documentary evidence generally remains valid until the last day of the third calendar year following the

year in which the withholding certificate is signed or documentary evidence is provided to the withholding agent, or until a change in circumstances makes any information on the withholding certificate incorrect.

Under certain circumstances described in § 1.1441-1(e)(4)(ii)(B) of the final regulations, a withholding certificate or documentary evidence may remain valid indefinitely until a withholding agent knows or has reason to know of a change in circumstances that makes any information on the withholding certificate incorrect. These circumstances include when a withholding agent obtains a TIN for a payee and reports a payment to the payee annually on Form 1042-S, as well as withholding certificates provided by certain foreign entities such as intermediaries, flow-through entities, foreign central banks, and integral parts of foreign governments.

These temporary regulations modify § 1.1441-1(e)(4)(ii)(B) in appropriate cases to coordinate the chapter 3 regulations with the chapter 4 regulations and expand the circumstances under which a withholding agent may treat documentation as having indefinite validity for chapter 3 purposes. These temporary regulations also provide that certain types of documentary evidence may remain valid for purposes of establishing a payee's foreign status for a longer period if the documentary evidence contains an expiration date that is beyond the three-year period, in which case the documentary evidence will remain valid until the expiration date. Because of the changes to the rules for indefinite validity, these temporary regulations remove and replace the allowance that permits a withholding agent to treat a withholding certificate with a TIN as being valid indefinitely provided that the withholding agent reports a payment each year on a Form 1042-S with respect to the person providing the certificate.

Consistent with the chapter 4 regulations and in response to comments requesting further transitional relief during the period when withholding agents will be obtaining documentation for pre-existing accounts for both chapter 4 and chapter 3 purposes, these temporary regulations provide that a withholding certificate or documentary evidence that would otherwise expire under § 1.1441-

1(e)(4)(ii)(A) on December 31, 2013, will not be treated as invalid until January 1, 2015, unless a change in circumstances occurs before that date. See § 1.1441-1(e)(4)(ii)(D).

6. Change in Circumstances

As discussed in section II.K.5 of this preamble, under § 1.1441-1(e)(4)(ii)(D) of the final regulations, a withholding agent may no longer rely on a withholding certificate or documentation when the withholding agent knows or has reason to know of a change in circumstances that makes the withholding certificate or documentation incorrect. The regulations under chapter 4 adopt a similar requirement for documentation provided for chapter 4 purposes and further provide that an intermediary (including a U.S. branch or territory financial institution not treated as a U.S. person) that becomes aware of a change in circumstances with respect to a person for whom it furnishes documentation to a withholding agent must notify the withholding agent within 30 days of the date the intermediary knows or has reason to know of the change in circumstances. Consistent with the chapter 4 regulations, these temporary regulations revise § 1.1441-1(e)(4)(ii)(D) to adopt this 30-day requirement.

7. Retention of Withholding Certificates or Documentary Evidence

Section 1.1441-1(e)(4)(iii) of the final regulations requires a withholding agent to retain a withholding certificate or documentation for as long as it may be relevant for purposes of determining the withholding agent's liability under section 1461. This paragraph is amended to be consistent with retention requirements applicable to a withholding agent under chapter 4 by permitting a withholding agent to retain an original, certified copy, or scanned version of a withholding certificate. A withholding agent may also retain a withholding certificate by other means (such as microfiche) provided that the withholding agent is able to produce a hard copy of the form or document and maintains a record of the receipt of the document. For documentary evidence, this paragraph cross references the reten-

tion requirements provided in § 1.6049-5(c)(1) (as amended by these temporary regulations), which coordinate with chapter 4 by permitting a withholding agent to retain a photocopy of the documentary evidence.

8. Electronic and Other Transmission of Forms and Documentation

The chapter 4 regulations required a withholding agent to authenticate the identity of a person furnishing a withholding certificate or documentary evidence in the form of a facsimile or scanned documentation. In response to comments, these temporary regulations do not incorporate this requirement. These temporary regulations instead provide that a withholding agent may rely on a signed form or a document received by facsimile or scanned and sent by e-mail unless the withholding agent knows that the person transmitting the form or documentary evidence is not authorized to do so. This rule is intended to apply to a withholding agent that does not receive the document as part of a system established by a withholding agent described in § 1.1441-1(e)(4)(iv)(B), the requirements for which are unchanged by these temporary regulations except for a provision clarifying that the IRS may provide written guidance to its examiners regarding the requirements acceptable for the system. This same rule applies for chapter 4 purposes under a revision made by the temporary chapter 4 regulations (to cross-reference this paragraph).

9. Substitute Certification Forms

A withholding agent may substitute its own certification form for an official Form W-8 or Form 8233, "Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual," so long as the substitute form satisfies the requirements described in § 1.1441-1(e)(4)(vi) of the final regulations. Consistent with the chapter 4 regulations, these temporary regulations allow a withholding agent to use a substitute form written and completed in a language other than English, provided that an English translation is available

upon request. In addition, these temporary regulations clarify that, consistent with the current regulations, a substitute form may omit provisions that are not relevant to the transaction or purpose for which the form is furnished, and specifically provide that a substitute form need not contain a chapter 4 status for a payee when the withholding agent is not required to determine a payee's chapter 4 status. See § 1.1471-3(c)(6)(v). Although the chapter 4 regulations also allow a withholding agent to rely on a non-IRS form in lieu of Forms W-8 or substitute forms for a payee who is an individual, this provision is not incorporated into these temporary regulations for chapter 3 purposes. The IRS and the Treasury Department have determined that an official Form W-8 or Form 8233 (or acceptable substitute form or acceptable documentary evidence when permitted) should be required for a payment subject to chapter 3 withholding.

10. TIN Requirement for Withholding Certificate

In the circumstances described in § 1.1441-1(e)(4)(vii) of the final regulations, a withholding certificate must include a TIN in order for a withholding agent to treat the withholding certificate as valid for purposes of chapter 3, such as a withholding certificate provided for purposes of claiming treaty benefits (other than treaty benefits with respect to publicly traded securities) or a withholding certificate provided by a beneficial owner claiming the income is effectively connected with a U.S. trade or business. To update these circumstances to reflect guidance issued for purposes of chapter 3 after the effective date of the current regulations, these temporary regulations add to the list of withholding certificates requiring a TIN a withholding certificate provided by a withholding foreign trust or by an entity acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction. See Notice 2010-46, 2010-24 IRB 757 (June 14, 2010). These temporary regulations also provide in § 1.1441-6(c)(2) an exception from the TIN requirement for a withholding certificate on which a beneficial

owner claims treaty benefits and instead provides its foreign TIN, as an alternative to providing a U.S. TIN for this purpose.

11. Coordinated Account Information Systems

Section 1.1441-1(e)(4)(ix) of the final regulations generally requires a withholding agent that is a financial institution to obtain documentation (including withholding certificates) on an account-by-account basis subject to certain exceptions. Section 1.1441-1(e)(4)(ix)(A) of the final regulations allows a withholding agent to rely on documentation provided by a customer for another account held at the same branch location. If the accounts are not located at the same branch location, § 1.1441-1(e)(4)(ix)(A) of the final regulations allows a withholding agent to rely on documentation for an account held at another branch location of the withholding agent or a related person provided that the withholding agent and related person are part of the same universal account system or a system described in § 1.1441-1(e)(4)(ix)(A)(3).

The final chapter 4 regulations generally incorporate the provisions of § 1.1441-1(e)(4)(ix)(A) of the final regulations but modify certain of the requirements for account systems. The final chapter 4 regulations require that the withholding agent treat the accounts as consolidated obligations, a requirement not described in the final regulations, for documentation shared at the same branch location or through a universal account system. For universal account systems and shared account systems, the final chapter 4 regulations require that the withholding agent and the branch with which it is sharing information be part of the same expanded affiliated group (rather than be related persons as under the final regulations). In addition, the final chapter 4 regulations require a withholding agent to produce upon request any documentation upon which it relies for purposes of determining the status of the payee and clarify that a withholding agent is liable for any underwithholding attributable to failing to assign the correct status to the payee based on the available information. Finally, although the final chapter 4 regula-

tions do not require a withholding agent to document how and when it accesses the shared account system, the withholding agent is required to be able to obtain a copy of the documentation.

To provide consistent standards for when withholding agents may share documentation for purposes of both chapters 3 and 4, these temporary regulations delete the existing text of § 1.1441-1(e)(4)(ix) and replace it with a cross-reference to the requirements for documentation sharing in the final chapter 4 regulations. These temporary regulations also replace § 1.1441-1(e)(4)(ix)(A)(4) with the rule under the chapter 4 regulations for documentation collected by an agent of the withholding agent. The revised requirements apply to a shared account system other than a shared account system in use by a withholding agent as of July 1, 2014. Section 1.1441-1(e)(4)(ix)(B) allows for a single withholding certificate for shares in multiple mutual funds that have a common investment advisor or common principal underwriter with respect to shares owned or acquired in any of the funds. The chapter 4 regulations address this issue to achieve a similar result through the general principal-agent rule of § 1.1471-3(c)(9)(i), which is incorporated into these temporary regulations.

The final regulations provide other exceptions to the requirement to obtain a withholding certificate for each account that allow a withholding agent to rely on a certification from a U.S. broker stating that the broker holds beneficial owner withholding certificates of payees for which the broker acts as an agent with respect to any readily tradable instrument. The final chapter 4 regulations also provide a similar exception that permits a withholding agent to rely on a certification from a qualified intermediary in addition to a U.S. broker. To coordinate with the final chapter 4 regulations, these temporary regulations add a provision allowing a withholding agent to rely for chapter 3 purposes on a similar certification from a qualified intermediary that receives a payment from the withholding agent.

With respect to accounts acquired in mergers and bulk acquisitions for value,

these temporary regulations add a new § 1.1441-1(e)(4)(ix)(D) to clarify that a withholding agent may rely on valid documentation collected by a predecessor or transferor, consistent with the rule that applies for purposes of chapter 4. Also consistent with the chapter 4 regulations, these temporary regulations allow a withholding agent that acquires accounts in a merger or bulk acquisition for value from an unrelated person to rely on the predecessor's or transferor's determination of an account holder's chapter 3 status for a transition period of six months, subject to certain requirements that apply at the end of the transition period. However, this provision is modified to require the predecessor or transferor to be a U.S. withholding agent or qualified intermediary rather than a participating FFI as provided in the chapter 4 regulations in light of the different purposes of chapters 3 and 4.

Finally, the final chapter 4 regulations allow a withholding agent to rely upon documentation collected by a third-party data provider in order to establish the chapter 4 status of an entity. The IRS and the Treasury Department do not believe that this allowance is appropriate for purposes of chapter 3 and instead expect withholding agents to utilize the other document sharing provisions discussed earlier in this section II.K.11. However, see § 1.1441-7 of these temporary regulations for rules permitting a withholding agent (acting as a principal) to rely on documentation collected by an agent, subject to the qualification that as principal it remains liable for its agent's performance.

L. *Withholding statement of a nonqualified intermediary*

1. General Requirements Other than Alternative Procedures

Section 1.1441-1(e)(3)(iv) of the final regulations describes the requirements of a withholding statement provided by an NQI (NQI withholding statement) to a withholding agent with respect to reportable amounts (including amounts subject to chapter 3 withholding). This provision is amended by these temporary regulations to coordinate with the chapter 4 requirements for withholding

statements when an NQI receives a withholdable payment by permitting the NQI to include chapter 4 withholding rate pools on the statement in lieu of payee-specific information. To coordinate with the chapter 4 requirements for reporting on Form 1042-S, this provision is further modified to require an NQI receiving a withholdable payment to provide on the withholding statement the chapter 4 status of each payee that is a foreign person not included in a chapter 4 withholding rate pool.

For reportable amounts received by an NQI (including reportable amounts that are not withholdable payments under chapter 4), the requirements for an NQI withholding statement are modified to specify when an NQI may provide to a withholding agent a withholding statement that includes an allocation of the payment to a chapter 4 withholding rate pool of U.S. payees in lieu of providing Forms W-9 for each U.S. non-exempt recipient and identifying each such recipient on the statement. For this purpose, an NQI that is a participating FFI or registered deemed-compliant FFI may include a U.S. payee in the pool to the extent permitted under § 1.6049-4(c)(iii), which coordinates with the allowance for when an NQI that has reporting obligations under chapter 4 need not also report under chapter 61 with respect to a payment.

These temporary regulations also add an example to illustrate when a withholding agent can reliably associate a withholdable payment with a chapter 4 withholding statement that allocates the payment (or portion of the payment) to one or more chapter 4 withholding rate pools.

2. Alternative Procedures for an NQI Withholding Statement

An NQI generally is required to provide payee-specific information (treating a chapter 4 withholding rate pool as a payee) to a withholding agent at the time of payment, as described in section II.L.1 of this preamble. However, the alternative procedures described in § 1.1441-1(e)(3)(iv)(D) of the final regulations permit an NQI to provide a withholding agent with pooled information (by withholding rate) prior to re-

ceiving the payment if the NQI will provide information sufficient to allocate the payment to specific payees by January 31 of the year following the payment. These temporary regulations retain the alternative procedures but expand the circumstances under which the procedures may be used in order to coordinate with when a chapter 4 withholding rate pool may be included on a withholding statement provided by an NQI. Section 1.1441-1(e)(3)(iv)(D) of the final regulations is modified in the case of an NQI receiving a reportable amount that is also a chapter 4 withholdable payment to permit the NQI to include payees that are nonparticipating FFIs or recalcitrant account holders includable in a chapter 4 withholding rate pool in a single withholding rate pool that includes payees subject to withholding under chapter 3 at a 30-percent rate for reporting to a withholding agent. Similarly, payees includable in a chapter 4 withholding rate pool of U.S. payees may be included in a zero-percent rate pool with other payees to which no withholding applies. Thus, an NQI may provide withholding rate pools under alternative procedures irrespective of whether withholding is applied under chapter 3 or chapter 4 or when withholding is excepted under chapters 3 and 4 and section 3406.

Because of the allowance to include payees in withholding rate pools under the alternative procedures for purposes of both chapters 3 and 4, these temporary regulations add a provision that, in addition to the allocation information required to be provided by the NQI for each payee for chapter 3 purposes by January 31 following the year of the payment, the NQI must provide the withholding agent with sufficient information to allocate the income to each applicable chapter 4 withholding rate pool and may treat each such pool as a payee for the purpose of determining whether an NQI has provided a withholding agent with sufficient information to allocate the income by such date. See § 1.1441-1(e)(3)(iv)(D)(3) and (e)(3)(iv)(D)(4). Any payments allocated to a specific payee for whom documentation has not been provided shall be allocated to an undocumented payee

in accordance with the presumption rules, and these temporary regulations add a reference to the presumption rule in § 1.1471-3(f)(5) for a case in which an NQI fails to allocate a withholdable payment in the time prescribed.

3. Electronic Transmission of NQI Withholding Statement

As discussed in section II.K.8 of this preamble, these temporary regulations provide new procedures allowing the electronic transmission of withholding certificates and documentary evidence. Section 1.1441-1(e)(3)(iv)(B) is amended to provide that a withholding statement may also be transmitted by e-mail or facsimile under the same procedures provided in § 1.1441-1(e)(4)(iv)(C) for withholding certificates and documentary evidence when the statement is not provided as part of a system established by the NQI or withholding agent.

M. Qualified intermediaries

1. In General

Section 1.1441-1(e)(5) of the final regulations provides rules for entering into a qualified intermediary agreement (QI agreement) with the IRS, generally describes the requirements of the QI agreement, provides the requirements of a QI withholding statement, and establishes the persons eligible to enter into the QI agreement. Consistent with the intent of chapter 4 that a QI's reporting of U.S. account holders be expanded from the present requirements to report as a payor or middleman for chapter 61 purposes, these temporary regulations provide that, in order to enter into a QI agreement, a QI that is an FFI must assume the chapter 4 reporting obligations of a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), or an FFI treated as certified deemed-compliant pursuant an applicable IGA and that is subject to due diligence and reporting requirements with respect to its accounts similar to those of registered deemed-compliant FFIs under the chapter 4 regulations. Under this new requirement, a QI will be required to

report its U.S. accounts without regard to whether the QI designates the account as an account covered by the QI agreement (as applicable under the current QI agreement). Subject to IRS approval, an NFFE may also become a QI for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders or when acting as an intermediary for persons other than its shareholders.

Section 1.1441-1(e)(5)(iii) of these temporary regulations reflects changes to the requirements of the QI agreement. Specifically, these temporary regulations provide that the QI agreement will provide the requirements for a QI acting as a qualified securities lender with respect to the payment of U.S. source substitute dividends. Moreover, to provide compliance procedures generally similar to those applicable to a participating FFI under chapter 4, the QI agreement will provide that the QI must establish procedures to ensure compliance with its agreement, arrange for a periodic review, and provide certain factual information to the IRS. Furthermore, in appropriate cases, the IRS may require that an approved auditor perform review procedures concerning the QI's compliance with its QI agreement in addition to the review procedures performed under the periodic review. In such a case, the IRS may conduct a review of the auditor's findings.

2. Assumption of Primary Withholding Responsibility

The current regulations provide that a QI may assume the primary obligation to withhold, deposit, and report amounts under chapter 3 or under chapter 61 and section 3406 (or under both chapters 3 and 61, including backup withholding under section 3406). These temporary regulations coordinate with chapter 4 with respect to both a QI's chapter 3 and chapter 61 requirements. First, to coordinate with the withholding requirements of chapter 4, a QI assuming primary withholding responsibility under chapter 3 with respect to an account will also be required to assume such responsibility for purposes of chapter 4 with respect to the account. Second, a QI that

is an FFI may represent on a withholding certificate provided to a withholding agent that it assumes primary chapter 61 reporting and section 3406 responsibility for an account that it maintains if the QI complies with its obligations as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under the chapter 4 regulations or an applicable IGA. See § 1.6049-4(c)(4)(i) and (c)(4)(ii) of these temporary regulations for when an FFI that reports an account under chapter 4 is not required to report a payment made to the account under chapter 61.

3. Withholding Statement Provided by a QI

Section 1.1441-1(e)(5)(v) of the final regulations provides the requirements of a withholding statement provided by a QI. These temporary regulations permit a QI that assumes primary reporting and withholding responsibility under chapters 3, 4, and 61 and section 3406 to provide an intermediary withholding certificate without attaching a withholding statement (including under the circumstances described above when a QI reports under chapter 4). However, if a QI does not assume primary reporting and withholding responsibility under chapters 3 and 4 or under chapter 61 and section 3406, then the QI is required to provide a withholding statement. A QI may provide a withholding statement to allocate the payment to a chapter 4 withholding rate pool of U.S. payees to the extent permitted for a NQI when the QI does not assume primary chapter 61 reporting and backup withholding responsibilities. See section II.L.1 of this preamble.

These temporary regulations modify the requirements for a withholding statement provided by a QI with respect to a withholdable payment. These temporary regulations permit pooled information (for each chapter 3 withholding rate pool by applicable chapter 4 exemption code based on Form 1042-S and the related instructions) with respect to foreign payees subject to withholding under chapter 3 and not subject to chapter 4 withholding. For payments to which chapter 4 withholding applies, these

temporary regulations permit a QI that is an FFI to report chapter 4 withholding rate pools for nonparticipating FFIs and recalcitrant account holders on an FFI withholding statement (as described in 1.1471-3(c)(3)(iii)(B)(2)), and, for a QI other than an FFI, permit the QI to provide a chapter 4 withholding statement to report payees that are nonparticipating FFIs in a chapter 4 withholding rate pool. The revised QI agreement will further provide the circumstances in which a QI may provide a chapter 4 withholding rate pool on a withholding statement, including a chapter 4 withholding rate pool provided to the QI by another intermediary or flow-through entity.

4. Electronic Transmission of QI Withholding Statement

These temporary regulations provide the same allowances for the electronic transmission of a QI withholding statement as for an NQI withholding statement. See section II.L.3 of this preamble regarding the electronic transmission of an NQI withholding statement.

N. Coordination of § 1.1441-3 with chapter 4 withholding

Section 1.1441-3 of the final regulations provides rules for determining the amount to be withheld for purposes of section 1441. These temporary regulations add provisions to coordinate withholding under chapters 3 and 4 by providing that when a payment is both a chapter 4 withholdable payment and an amount subject to withholding under chapter 3, a withholding agent must apply the withholding provisions of chapter 4 to determine whether withholding is required under chapter 4 (and does not need to withhold under chapter 3 to the extent that it has withheld under chapter 4). The coordination rule cross references § 1.1474-6(b)(1), which allows a withholding agent to credit withholding applied on a payment under chapter 4 against any tax liability due under chapter 3 with respect to such payment, and cross references § 1.1474-6(b)(2) for determining when withholding is considered applied by a withholding agent.

These temporary regulations do not, however, include provisions specifically addressing a credit for taxes withheld under chapter 4 in a series of securities lending transactions using the same underlying security. Notice 2010-46 outlines a proposed regulatory framework to address potential overwithholding that may occur in such transactions and provides transition rules applicable until the issuance of regulations to ensure that the withholding does not exceed 30 percent in the aggregate. Under the transition rules, a withholding agent that is obligated to make a substitute dividend payment pursuant to a securities lending transaction may presume that U.S. tax has been paid in an amount equal to the amount implied by the net payment received by the withholding agent provided certain conditions are satisfied, including that the withholding agent does not know or have reason to know that tax was not withheld and deposited or paid. For purposes of the transition rules and pending further guidance, the IRS will permit a withholding agent to apply this presumption absent information on whether the net payment resulted from taxes withheld under chapter 3 or chapter 4. The IRS will, however, treat a withholding agent as having reason to know that the tax was not withheld and deposited or paid to the extent that (i) the withholding agent knows that withholding was applied under chapter 4 to a dividend or substitute dividend paid to a nonparticipating FFI (which may be the withholding agent) that is entitled to a refund of the tax, and (ii) the nonparticipating FFI participated in such transaction with a purpose of reducing the aggregate amount of gross basis tax that would have otherwise been due had it not participated in the series of transactions. See section 1474(b)(2).

Section 1.1441-3(c)(4) of the final regulations provides rules that coordinate withholding under section 1441 (or 1442 or 1443) with withholding under section 1445 on distributions by U.S. real property holding companies and real estate investment trusts. Under these temporary regulations, the coordination rules also apply to distributions made by qualified investment entities (as defined under section 897(h)(4)). These temporary regulations also clarify that to the extent a payment is

subject to withholding under section 1441 (rather than section 1445) under these coordination rules, a withholding agent must apply the withholding provisions of chapter 4 before determining whether withholding is required under chapter 3 (and, therefore, will not need to withhold under this section if withholding is applied under chapter 4).

Section 1.1441-3(d) of the final regulations permits a withholding agent making a payment of an undetermined amount of income to make a reasonable estimate of the amount from U.S. sources or of the taxable amount and place a corresponding amount in escrow until the amount from U.S. sources or the taxable amount can be determined. To coordinate with the chapter 4 regulations, this rule is modified to state that a withholding agent may retain 30 percent of a payment of an undetermined amount of income in escrow until the earlier of the date that the amount from U.S. sources or the taxable amount can be determined or one year from the date the amount is placed in escrow. Upon such date, the withholding becomes due or, to the extent that withholding under chapter 3 has been determined not to apply, the escrowed amount must be paid to the payee.

O. Presumption rule for payments to U.S. branches and removal of transitional documentation rules

Section 1.1441-4 of the final regulations provides an exception to withholding under section 1441 on income that is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States. A presumption rule under the final regulations allows a withholding agent to treat a payment of income as effectively connected income when it is made to a U.S. branch of a foreign bank or foreign insurance company described in § 1.1441-2(b)(iv)(A). These temporary regulations revise the presumption rule to require a withholding agent to obtain an EIN for a U.S. branch before it may presume the payment to the U.S. branch is a payment of effectively connected income. In addition, these temporary regulations remove the transitional documentation

provisions that applied to payments made before January 1, 2001.

P. Coordination of § 1.1441-5 with chapter 4 withholding and removal of transitional documentation rules

These temporary regulations revise § 1.1441-5 to coordinate with the documentation, withholding, and reporting requirements of chapter 4 that apply to U.S. and foreign partnerships, trusts, and estates, and they remove a transition rule applicable to withholding certificates.

Section 1.1441-5(b) of the final regulations prescribes withholding rules for U.S. partnerships, trusts, and estates with respect to their partners, beneficiaries, and owners. These temporary regulations add a coordination rule in § 1.1441-5(b) to clarify that a U.S. partnership, trust, or estate that makes a payment of U.S. source FDAP income that is a withholdable payment subject to chapter 4 withholding must apply the special rules included in the final chapter 4 regulations for determining when an amount that is a chapter 4 withholdable payment is treated as paid to a partner, beneficiary, or owner. These temporary regulations also cross reference the general rule coordinating withholding under chapter 3 with withholding under chapter 4 to clarify that, for payments included in the gross income of a partner, beneficiary, or owner, a withholding agent must apply the withholding provisions of chapter 4 before determining whether withholding is required under chapter 3 (and, therefore, does not need to withhold under this section when withholding is applied under chapter 4).

Sections 1.1441-5(c) and (e) of the final regulations include requirements for withholding agents to determine the status of a payee of a payment made to a foreign partnership or to a foreign simple or grantor trust, including the requirements for withholding certificates and withholding statements provided by such entities, the requirements for determining when reduced withholding applies with respect to payments made to such entities, and the presumption rules that apply in the absence of

reliable documentation. These temporary regulations amend § 1.1441-5(c) and (e) to include revised rules for determining the status of a partner, beneficiary, or owner as a payee of a payment (and when reduced withholding applies). These temporary regulations also amend § 1.1441-5(c) and (e) consistent with the allowance in the chapter 4 regulations for both nonqualified and qualified intermediaries that are foreign partnerships or trusts to provide withholding statements that report chapter 4 withholding rate pools instead of specific payee information. In addition, these temporary regulations amend § 1.1441-5(c) and (e) to coordinate withholding under chapter 3 with withholding applied under chapter 4 on payments made to foreign partnerships and trusts by permitting a withholding agent that has withheld on a withholdable payment made to the partnership or trust under chapter 4 to not also withhold on the payment under chapter 3. The partnership or trust is also not required to withhold with respect to a partner, beneficiary, or owner if withholding under chapter 4 was applied by a withholding agent based on the status of the partnership or trust for chapter 4 purposes.

Sections 1.1441-5(c) and (e) of the final regulations also describe the requirements of withholding foreign partnerships (WPs) and withholding foreign trusts (WTs). These temporary regulations revise these rules to coordinate with the requirements applicable to these entities under the final chapter 4 regulations by requiring WPs and WTs to assume chapter 4 withholding responsibilities (in addition to their chapter 3 withholding responsibilities) with respect to their partners, beneficiaries, and owners. The temporary regulations also add the requirement that a WP or WT that is an FFI obtain status as a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1). The requirements for withholding certificates provided by WPs and WTs are amended by these temporary

regulations to provide that an FFI that is a WP or WT receiving a withholdable payment must include its chapter 4 status and GIIN (if applicable) on the certificate, in addition to its WP-EIN or WT-EIN. The temporary regulations also reference certain compliance-related provisions that will be included in the revised WP and WT agreements.

The presumption rules for determining a payee's status applicable to foreign partnerships and trusts in § 1.1441-5(c) and (e) of the final regulations are amended by these temporary regulations consistent with the chapter 4 presumption rules that apply to a withholdable payment made to a partnership or trust. Section 1.1441-5(e)(6)(ii) of the final regulations is also amended to provide a revised presumption rule for determining the classification of a foreign trust. The current presumption rule generally provides that a withholding agent may presume a foreign entity to be a complex trust when it cannot determine the status of the trust. Under the revised rule, a withholding agent that has the U.S. TIN and U.S. address for the settlor of a trust must presume such trust to be a U.S. grantor trust when the settlor is a U.S. person. In such a case, the withholding agent would issue an applicable Form 1099 to the U.S. settlor rather than withhold and report the payment under the requirements of chapter 3.

These temporary regulations remove the transition rule in § 1.1441-5(g)(2), for withholding certifications obtained before January 1, 2001.

Q. Coordination with chapter 4 withholding for payments subject to reduced withholding under an income tax treaty

Section 1.1441-6 of the final regulations specifies the conditions under which withholding under sections 1441, 1442, and 1443 on a payment to a foreign person may be applied at a reduced rate under the terms of an applicable income tax treaty. These temporary regulations add certain provisions to this section to coordinate with withholding and documentation retention requirements applicable under the final chapter 4 regulations.

First, the allowance for reduced withholding at source under § 1.1441-6 of the final regulations is revised to state that even if the requirements of this section are met, withholding under chapter 4 may still apply to payments that are withholdable payments. Second, for payments to fiscally transparent entities, language is added to indicate that a withholding agent must apply the rules of chapter 4 to determine the payee of a withholdable payment for purposes of determining its withholding obligations under chapter 4. This provision clarifies that even when the interest holders of a fiscally transparent entity are eligible for reduced withholding under an applicable treaty, chapter 4 withholding may still apply to a payment made to such entity depending on its chapter 4 status. Finally, based on comments received, the rules regarding the maintenance of documentary evidence for purposes of this section are revised to clarify that a withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy of such documents, without regard to whether the withholding agent notes the person who reviewed the documentation. The revised rule conforms to the documentation-maintenance requirements applicable under the final chapter 4 regulations and the new rules in these temporary regulations for maintaining documentary evidence under § 1.6049-5(c).

R. U.S. TIN requirement and removal of transitional documentation rules

For payments of certain types of income, § 1.1441-6 of the final regulations provides that a withholding agent can reliably associate a payment with a beneficial owner withholding certificate to support a claim for treaty benefits only if the certificate contains the beneficial owner's U.S. TIN. These temporary regulations revise this rule to allow a withholding agent to rely on a withholding certificate that contains the beneficial owner's foreign TIN issued by a country with which the United States has in effect an income tax treaty or tax information exchange agreement. The Treasury and the IRS believe that, in such cases, a foreign TIN is an

effective alternative to a U.S. TIN for purposes of supporting a claim for treaty benefits with respect to income for which a TIN is required. In addition, these temporary regulations remove the transitional documentation provisions that applied to payments made before January 1, 2001.

S. Coordination of § 1.1441-7 with chapter 4 withholding

Section 1.1441-7 of the final regulations provides general provisions regarding when a withholding agent has reason to know that it cannot rely on a claim of status for chapter 3 purposes. These temporary regulations revise § 1.1441-7, primarily to coordinate with the standards of knowledge applicable to withholding agents and participating FFIs for purposes of determining the foreign status of a payee under chapter 4.

Section 1.1441-7(b)(3) of the final regulations provides reason to know standards for financial institutions, which limit when a withholding agent that is a financial institution has a reason to know that documentation is unreliable or incorrect to when certain U.S. indicia are associated with the account holder based on the institution's account information. These temporary regulations define a financial institution for this purpose by reference to the definition of financial institution that applies for chapter 4 purposes. In addition, the temporary regulations define account information to include documentation collected for purposes of AML due diligence (as defined under § 1.1471-1(b)(4)), but provide that a withholding agent will not be considered to have reason to know that documentation collected for AML due diligence conflicts with the account holder's claim until the date that is 30 days after the obligation is executed (or the account is opened, in the case of an obligation that is an account with a financial institution). These temporary regulations also add § 1.1441-7(b)(3)(ii) to provide that a withholding agent that has previously documented a preexisting obligation for purposes of chapter 3 or chapter 61 before July 1, 2014 will not be required to review such documentation or the account information associated with the obligation to search for U.S. indicia. If, however, a withholding agent reviews

such documentation and it contains a U.S. place of birth for the account holder, or if there is a change in circumstances, the withholding agent will then have reason to know as of the date of the review or change in circumstances that the documentation is unreliable or incorrect and that it must cure such U.S. indicia in order to continue to treat the account holder as a foreign person. This rule therefore provides withholding agents a transition period to address new U.S. indicia, such as a U.S. birthplace for an account holder, which were added in the chapter 4 regulations and are incorporated in these temporary regulations.

Sections 1.1441-7(b)(5) through (b)(9) of the final regulations describe the scope of review by a withholding agent that is a financial institution of withholding certificates and documentary evidence, and are revised to incorporate the same U.S. indicia referenced in the final chapter 4 regulations and the same cures specified in those regulations in order for a withholding agent to continue to treat a payee as a foreign person notwithstanding such U.S. indicia. Section 1.1441-7(b)(5) of the final regulations describes when a withholding certificate furnished by a direct account holder is unreliable or incorrect for establishing foreign status and is revised to add new U.S. indicia for this purpose. The new indicia are a withholding agent's classification of the account holder as a U.S. person in the withholding agent's account files and a current telephone number for the person in the United States (and no telephone number for the person outside of the United States). The cures to treat a payee as a foreign person notwithstanding these indicia conform to the cures provided under chapter 4 and are the same cures that are applicable to a U.S. address. Specifically, § 1.1441-7(b)(5)(i)(A) and (b)(5)(i)(B) are revised to adopt the chapter 4 definition of documentary evidence required to treat a payee as a foreign person notwithstanding U.S. indicia. For a payment made with respect to an offshore obligation, these temporary regulations modify § 1.1441-7(b)(5)(i)(A)(2) to coordinate with the chapter 4 cure rules pertaining to participating FFIs (including reporting Model 2 FFIs) by adding that a withholding agent may treat an account holder as a foreign person if the withhold-

ing agent obtains documentary evidence establishing foreign status, even if the documentary evidence contains a U.S. address.

These temporary regulations add § 1.1441-7(b)(5)(ii) to provide that a withholding agent has reason to know that a withholding certificate claiming foreign status provided by an individual is unreliable or incorrect if the withholding agent has an unambiguous indication of a place of birth for the individual in the United States. Section 1.1441-7(b)(5)(ii) is consistent with the chapter 4 rules in providing the same documentation requirements as those provided in § 1.1471-4(c)(5)(iv)(B)(2)(ii) applicable to a participating FFI (including a reporting Model 2 FFI) to cure a U.S. place of birth in order to treat an account holder as a foreign person.

To coordinate with the chapter 4 regulations, § 1.1441-7(b)(5)(iii) of these temporary regulations (formerly § 1.1441-7(b)(5)(ii)) is revised to allow documentary evidence establishing foreign status as an alternative to providing a reasonable explanation to cure standing instructions with respect to an offshore obligation directing the withholding agent to pay amounts to an address or an account maintained in the United States. Similarly, for purposes of an account holder's claim for treaty benefits, § 1.1441-7(b)(6)(iii) is revised to add documentary evidence establishing residence in a treaty country as a cure for standing instructions provided with respect to an offshore obligation directing the withholding agent to pay amounts to an address or an account maintained outside the country in which the account holder claims benefits under an income tax treaty.

Section 1.1441-7(b)(8) of the final regulations provides the standards of knowledge applicable to documentary evidence used to establish a payee's foreign status. Under § 1.1441-7(b)(8) of the final regulations, a withholding agent may not rely on documentary evidence to treat a payee as a foreign person if the withholding agent has U.S. indicia for the payee. These temporary regulations revise § 1.1441-7(b)(8)(ii), consistent with the chapter 4 regulations, to include as U.S. indicia: (i) a classification in the withholding agent's

account files that the recipient is a U.S. person, and (ii) a current telephone number for the person in the United States as part of the withholding agent's customer information, provided that the customer information does not include a telephone number for the person outside of the United States. In addition, these temporary regulations revise § 1.1441-7(b)(8)(iii) to add a U.S. place of birth as U.S. indicia. Section 1.1441-7(b)(8)(iii) also provides the same documentation requirements as those in the chapter 4 regulations for treating an account holder as a foreign person notwithstanding a U.S. place of birth. These temporary regulations also add § 1.1441-7(b)(8)(iv) (formerly § 1.1441-7(b)(8)(iii) of the final regulations) and (b)(9)(ii), which treat standing instructions to pay amounts to an address or account maintained in the United States or outside of a treaty country as U.S. indicia, to coordinate with the chapter 4 regulations by allowing the account holder to cure the U.S. indicia by providing a valid beneficial owner withholding certificate to establish foreign status or residence in a treaty country (as applicable).

These temporary regulations add § 1.1441-7(b)(11) to provide limits on reason to know for withholding agents that are financial institutions in the case of multiple obligations belonging to a single person, which limits are consistent with those provided in the chapter 4 regulations. Also, in response to comments seeking clarification, § 1.1441-7(b)(12) is added to define what constitutes a reasonable explanation supporting a claim of foreign status (which also applies under the chapter 4 regulations).

Section 1.1441-7(c) of the final regulations provides that a withholding agent may designate an agent to fulfill its obligations under chapter 3. These temporary regulations revise § 1.1441-7(c) to harmonize with the chapter 4 regulations for the requirements of a withholding agent's use of an agent to fulfill its withholding obligations. The revised rules allow a withholding agent to appoint an agent (including a foreign person) if there is a written agreement between the withholding agent and the person acting as agent, the books and records of the agent are available to the withholding agent, and the

agent files Form 8655, "Reporting Agent Authorization," with the IRS if the agent (including any sub-agent) is acting as a reporting agent for purposes of filing Form 1042 or making tax deposits and payments. These rules replace the rules that pertained to authorized foreign agents, which required that the foreign agent's books and records be available to the IRS for examination and that the withholding agent notify the IRS of its appointment of a foreign agent. Under the new rules, the withholding agent remains liable for the acts of its agent (including a foreign agent) and thus the withholding agent, rather than its agent, is required to substantiate its compliance with its withholding obligations.

T. Coordination of § 1.1461-1 with chapter 4 withholding

Section 1.1461-1(b) of the final regulations provides requirements for making an income tax return on Form 1042 for income paid that the withholding agent is required to report on an information return on Form 1042-S. These temporary regulations revise § 1.1461-1(b) consistent with chapter 4 to allow a withholding agent to file a single Form 1042 to report amounts under chapters 3 and 4.

Section 1.1461-1(c)(1)(i) of the final regulations provides requirements regarding the manner in which withholding agents report information about payments made to foreign persons for purposes of chapter 3. This section states that the Form 1042-S shall be prepared in such manner as the form and accompanying instructions prescribe. The instructions to Form 1042-S (as previewed in draft form on November 1, 2013) are being revised to incorporate the requirements for reporting on Form 1042-S for chapter 4 purposes and to remove language that currently permits a withholding agent to include more than one type of income or other payment on a recipient copy of the Form 1042-S. To allow sufficient time for withholding agents to adapt to these requirements, however, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of the Form 1042-S for calendar year 2014. Starting with calendar year 2015, the Form 1042-S and accom-

panying instructions will require a separate Form 1042-S for each type of income or other payment.

Section 1.1461-1(c)(1)(ii) of the final regulations lists categories of persons that are treated as recipients with respect to amounts subject to chapter 3 reporting and other categories of persons that are not treated as recipients of such amounts. These temporary regulations amend § 1.1461-1(c)(1)(ii) consistent with chapter 4 to add as recipients: (i) territory financial institutions treated as U.S. persons under § 1.1441-1(b)(2)(iv)(A); (ii) foreign intermediaries and nonwithholding foreign partnerships and trusts that are participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) with respect to a chapter 4 withholding rate pool of U.S. payees; and (iii) participating FFIs (including reporting Model 2 FFIs) or registered deemed-compliant FFIs (including reporting Model 1 FFIs) that are recipients of withholdable payments under § 1.1474-1(d)(1)(ii)(A)(I)(iii). These temporary regulations amend § 1.1461-1(c)(1)(ii) consistent with chapter 4 to treat as persons that are not recipients: (i) payees included in chapter 3 and chapter 4 withholding rate pools; (ii) authorized foreign agents (to coordinate with revised rules for authorized agents under § 1.1441-7(c) of these temporary regulations); (iii) NQIs and flow-through entities unless they are FFIs treated as recipients under § 1.1474-1(d)(1)(ii)(A)(I)(iii) (because they have identified the payment as allocable to a chapter 4 withholding rate pool); and (iv) certain territory financial institutions that are not treated as U.S. persons under § 1.1441-1(b)(2)(iv)(A). These temporary regulations also add new § 1.1461-1(c)(1)(ii)(C), which provides that, with respect to the reporting of a chapter 4 reportable amount, a withholding agent must report the chapter 4 status of the recipient consistent with § 1.1474-1(d)(1)(ii)(A).

Section 1.1461-1(c)(3) of the final regulations describes the specific information required to be reported on Form 1042-S. These temporary regulations revise § 1.1461-1(c)(3)(i) to require the reporting of a withholding agent's chapter 3 status code. The chapter 3 status codes are

listed in the instructions to Form 1042-S for calendar year 2014 and, with respect to an entity, the chapter 3 status code is generally the entity's classification for U.S. tax purposes. These temporary regulations also revise § 1.1461-1(b)(3)(iii) to require that, in the case of a payment subject to withholding under chapter 3 but not subject to withholding under chapter 4, a withholding agent must report the basis for exempting the payment from withholding under chapter 4. The instructions to Form 1042-S for calendar year 2014 will add chapter 4 exemption codes to Form 1042-S for this purpose.

These temporary regulations also add provisions in § 1.1461-1(c)(4)(i) and (c)(4)(ii) to coordinate the reporting requirements for payments to intermediaries and flow-through entities when a withholding agent is provided information for a chapter 4 withholding rate pool. Also, § 1.1461-1(c)(4)(i)(D) is removed by these temporary regulations to coordinate with the removal of the rules pertaining to authorized foreign agents in § 1.1441-7 of these temporary regulations.

Section 1.1461-1(c)(5) of the final regulations provides the magnetic media filing requirements for withholding agents filing Forms 1042-S. These temporary regulations revise this rule for financial institutions consistent with chapter 4 to require financial institutions to file information reports on magnetic media without regard to whether the financial institution files 250 or more information returns annually. See § 301.1474-1(a).

III. Changes to Information Reporting Provisions Under Chapter 61

A. General coordination of information reporting under § 1.6049-4 with chapter 4

Section 1.6049-4 of the final regulations provides rules for determining whether an information return is required under section 6049 for a payment of interest or for certain original issue discount (OID) and includes definitions of terms used for purposes of section 6049 and other sections of chapter 61.

1. Exceptions to Reporting Under § 1.6049-4(c)(4) to Coordinate with Information Reporting under FATCA

Section 1.6049-4(c) of the final regulations provides exceptions with respect to whether an information return is required with respect to a payment of interest or certain OID. These temporary regulations add a new exception in § 1.6049-4(c)(4)(i) for a non-U.S. payor that is also a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) that reports an account holder of a U.S. account pursuant to the requirements under chapter 4 (or an applicable IGA), provided that such information includes the account holder's TIN. For the requirements to report an account as a U.S. account, see the FFI agreement for participating FFIs (including reporting Model 2 FFIs), § 1.1471-5(f)(1) for registered deemed-compliant FFIs, and the applicable Model 1 IGA for reporting Model 1 FFIs.

These temporary regulations also add a new exception in § 1.6049-4(c)(4)(ii) for a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI), regardless of whether the FFI is a U.S. payor or non-U.S. payor, from the requirement to report a payment of interest for the year in which the interest is paid. The exception applies if the account holder of an account maintained by the FFI receives a payment of interest that is not subject to withholding under chapter 3 or backup withholding under section 3406 and either the FFI reports the account consistent with the pools described in § 1.1471-4(d)(6) (referring to recalcitrant account pools) or, in the case of a reporting Model 1 FFI, the account holder has not provided information sufficient for the FFI to confirm the U.S. or non-U.S. status of the account holder and the FFI treats and reports the account as a U.S. reportable account under an applicable IGA. This new exception to reporting may apply to payments made by an FFI to an account holder that it must presume to be a U.S. non-exempt recipient if the payment is not subject to withholding under chapter 3 and is not subject to backup withholding under section 3406 because

the amount is paid outside the United States with respect to an offshore obligation.

Finally, the temporary regulations add § 1.6049-4(c)(4)(iii) to specify the circumstances in which an FFI may, on a withholding statement provided to a payor, allocate an interest payment to a U.S. non-exempt recipient within a pool (referred to as a "U.S. payee pool"), in lieu of providing payee-specific information with respect to each U.S. non-exempt recipient, for purposes of applying the exceptions described in paragraphs § 1.6049-4(c)(4)(i) and (c)(4)(ii). These temporary regulations provide that a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) may allocate a payment to a chapter 4 withholding rate pool of U.S. payees on an applicable withholding statement to the extent the FFI is excepted from reporting the payment under § 1.6049-4(c)(4)(i) or both the FFI is excepted from reporting under § 1.6049-4(c)(4)(ii) and the payment is not subject to withholding under chapter 4.

The coordination rules in § 1.6049-4(c)(4) that provide an exception from the requirement to report information with respect to certain account holders of an FFI also apply for purposes of information reporting under sections 6041, 6042, and 6045.

2. Additions and Revisions to Definitions in § 1.6049-4(f) Related to Interest Reporting Under §§ 1.6049-4 and 1.6049-5

Section 1.6049-4(f) of the final regulations provides definitions that apply for purposes of section 6049 and that are also relevant for other sections of chapter 61. These temporary regulations amend certain of the definitions and add additional definitions to coordinate with terms used under chapter 4. First, these temporary regulations add to § 1.6049-4(f) the terms *chapter 4 withholding rate pool*, *participating FFI*, *registered deemed-compliant FFI*, *reporting Model 1 FFI*, *reporting Model 2 FFI*, *recalcitrant account holder*, *non-consenting U.S. account*, and *intergovernmental agreement*

(IGA) to coordinate and provide helpful cross-references to navigate these rules.

Second, these temporary regulations add the term *offshore obligation*, which includes accounts of banks and other financial institutions and obligations (other than such accounts) maintained outside the United States, in § 1.6049-5(c)(1) (as discussed in section III.D of this preamble).

Finally, these temporary regulations add to § 1.6049-4(f)(16) the term *paid and received outside the United States*. The definition of paid and received outside the United States is relevant for purposes of determining the circumstances under which (i) a payment of interest from non-U.S. sources is reportable by a non-U.S. payor, (ii) the exception to backup withholding under § 31.3406(g)-1(e) applies with respect to a payment of interest, and (iii) an agent of a payee (other than a U.S. middleman) is excluded from reporting a payment of interest on an obligation described in § 1.6049-5(b)(10). This new term is largely based on the description of amounts paid outside the United States in § 1.6049-5(e) of the final regulations. Section 1.6049-5(e) (as modified by these temporary regulations) describes when a payment is made outside the United States, which is relevant for determining cases in which a payor may rely upon documentary evidence in lieu of an applicable withholding certificate to establish a payee's foreign status for a payment made with respect to an offshore obligation.

The new definition of an amount paid and received outside the United States under § 1.6049-4(f)(16) also applies for purposes of information reporting rules under sections 6041 and 6042 and for determining whether the exception to backup withholding under section 3406 applies to payments reportable under sections 6041 and 6042 and to gross proceeds reportable under section 6045.

B. Further coordination of interest reporting under § 1.6049-5(b) with chapter 4

Section 1.6049-5(b) of the final regulations describes payments that are not treated as interest or OID for purposes of section 6049. Accordingly, payments described in § 1.6049-5(b) of the final reg-

ulations are not subject to reporting under section 6049. These temporary regulations modify the rule for payments with respect to foreign intermediaries (which has been renumbered as new § 1.6049-5(b)(15)) and add a new exception in § 1.6049-5(b)(14) for certain payments that a payor or middleman can reliably associate with documentation or certain other information provided by a foreign intermediary or flow-through entity.

1. Exception to Reporting Interest Payments Made to Foreign Intermediary or Flow-Through Entity Under New § 1.6049-5(b)(14)

These temporary regulations add a new exception from reporting in § 1.6049-5(b)(14). The exception applies to payments made by a payor or middleman that can be reliably associated with documentation to treat the payments as made to a foreign intermediary or flow-through entity, provided that the payor or middleman has obtained a withholding statement from the foreign intermediary or flow-through entity allocating the payment (or portion thereof) to a chapter 4 withholding rate pool or to specific payees to which withholding under chapter 4 applies. This exception for payments made to a chapter 4 withholding rate pool coordinates with the requirements under the chapter 4 regulations describing the circumstances under which a withholding agent may, with respect to a chapter 4 withholdable payment, rely on an FFI withholding statement (described in § 1.1471-3(c)(3)(iii)(B)(2)) that allocates the payment to a chapter 4 withholding rate pool of nonparticipating FFIs and recalcitrant account holders or a chapter 4 withholding statement that allocates the payment to a chapter 4 withholding rate pool of nonparticipating FFIs, instead of requiring payee-specific information with respect to such payees and account holders. For purposes of applying this exception, these temporary regulations also provide that a payor or middleman may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided by an FFI if the payor or middleman identifies the intermediary or flow-through entity receiving the payment as either a par-

ticipating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) (by applying the due diligence requirements described in § 1.1471-3(d)(4)).

The exception to reporting added by these temporary regulations in § 1.6049-5(b)(14) shall also apply for purposes of information reporting under sections 6041 and 6042.

2. Exception to Reporting Interest Payments Made by a Foreign Intermediary Under Renumbered § 1.6049-5(b)(15)

These temporary regulations renumber the exception from reporting that was included in § 1.6049-5(b)(14) of the final regulations as new § 1.6049-5(b)(15) for a foreign intermediary (or a U.S. branch not treated as a U.S. person under § 1.1441-1(b)(2)(iv)) receiving a payment from a payor, if the intermediary furnishes to the payor or middleman the information required for the payor or middleman to report the payment under section 6049. This exception does not apply to a foreign intermediary that knows that the payments are required to be reported by the payor or middleman under § 1.6049-4 and were not so reported. These temporary regulations also clarify that a territory financial institution that is not treated as a U.S. person under § 1.1441-1(b)(2)(iv) is excepted from reporting under this paragraph if it provides the information required for the payor or middleman from which it is receiving a payment to report. These temporary regulations incorporate by cross-reference the exception from reporting provided in § 1.6049-4(c)(4) (referring to rules that exempt certain FFIs that are non-U.S. payors from reporting under chapter 61 if the payments are made to account holders that will be reported by the FFI and, in narrower circumstances, rules that exempt certain FFIs that are U.S. or non-U.S. payors from reporting under chapter 61 on certain presumed U.S. non-exempt recipients), such that an intermediary need not report under this paragraph if the payment is not required to be reported under § 1.6049-4(c)(4).

The exception to reporting in § 1.6049-5(b)(15) also applies for pur-

poses of information reporting under sections 6041, 6042, and 6045. (For a discussion of the applicable exemptions from reporting under sections 6041, 6042, and 6045 for certain FFIs that report information about their account holders under chapter 4 or an applicable IGA, see the discussion of the coordination rules under § 1.6049–4(c)(4) in section III.A.1 of this preamble.)

C. Exceptions to reporting for certain payments made on behalf of a PFIC

These temporary regulations add two new exceptions to reporting that apply to paying agents and stock transfer agents making certain payments on behalf of a corporation described in section 1297(a) (a passive foreign investment company or PFIC). The first exception relates to dividend payments made by a paying agent on behalf of a PFIC as described in § 1.6042–2(a)(1)(i)(B). The second exception relates to certain payments made by a stock transfer agent with respect to a redemption of PFIC stock as described in § 1.6045–1(c)(3)(xiv). Both exceptions apply if the agent (that is, the paying agent or stock transfer agent, as applicable) satisfies four requirements. First, the agent must obtain, for each year that the agent relies on this exception, a written statement from the PFIC that states that the corporation is described in section 1297(a). This written certification from the PFIC must be signed by an officer of the corporation, and the agent must have no reason to know that the written certification is unreliable or incorrect. Second, the agent must identify, prior to payment, the PFIC as a participating FFI (including a reporting Model 2 FFI) or a reporting Model 1 FFI in accordance with the requirements of § 1.1471–3(d)(4) (as if, for purposes of that section, the paying agent or stock transfer agent were a withholding agent and as if the PFIC were a payee). Third, the agent must obtain, before the year the payment would otherwise be reported, a written certification representing that the PFIC will report information with respect to the payment (or the account to which the payment is made) as required by its reporting obligations under chapter 4 or an applicable IGA. If the agent, however, knows that the PFIC is not reporting

the information as represented in the written certification, the agent must report all payments reportable under sections 6041 or 6045 that are made during the year for which the agent knows the PFIC is not reporting such information. Finally, the agent must not also be acting in its capacity as a custodian, nominee, or other agent of the payee (that is, the PFIC shareholder).

D. Reliance on documentary evidence under § 1.6049–5(c)

Section 1.6049–5(c) of the final regulations provides rules for determining whether a payor may rely upon documentary evidence instead of a withholding certificate for purposes of determining a payee's status under section 6049, prescribes the types of documentation that constitutes documentary evidence for this purpose, and describes the requirements for maintaining the documentary evidence. To provide consistency between the documentation standards applicable to withholding agents in determining whether withholding applies under chapters 3 and 4, or an applicable IGA, these temporary regulations revise the final regulations in several respects.

1. Modification to § 1.6049–5(c)(1) and Coordinating Change to § 1.6045–1(g)

Section 1.6049–5(c)(1) of the final regulations provides that a payor may rely on documentary evidence described in § 1.6049–5(c)(1) (which may include, but is not limited to, a certificate of residence issued by an appropriate tax official of the foreign government or other official documents issued by an authorized governmental body) for payments made outside the United States to an offshore account. These temporary regulations modify this rule in several respects.

First, these temporary regulations in § 1.6049–5(c)(1) replace the term *offshore account* with the term *offshore obligation* for purposes of determining whether a payor may rely upon documentary evidence with respect to a payment made outside the United States. These temporary regulations define an offshore obligation that is not an account of a bank or other financial institution as, among

other things, an obligation with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution defined in § 1.1471–5(e). Thus, these temporary regulations expand the circumstances in which documentary evidence may be relied upon by, among other things, allowing for the use of documentary evidence beyond payments made to accounts of banks and other financial institutions and allowing for the use of documentary evidence by a withholding agent consistent with chapter 4.

Second, the use of documentary evidence is further expanded as a result of changes made by these temporary regulations to the description of payment outside the United States under § 1.6049–5(e), which eliminates the requirement for payors to monitor whether certain U.S. connections are present as a condition for using documentary evidence (see section III.F of this preamble for a description of changes to § 1.6049–5(e)).

Third, these temporary regulations modify the types of documentation that qualify as documentary evidence under § 1.6049–5(c)(1) by prescribing rules regarding the types of documentary evidence that may be relied upon that are the same as those in the chapter 4 regulations.

Fourth, the requirements for payors to maintain documentary evidence under § 1.6049–5(c)(1) of the final regulations are also modified by these temporary regulations to be consistent with the requirements for maintaining documentary evidence applicable to withholding agents in the chapter 4 regulations.

In addition, § 1.6049–5(c)(1) of the final regulations includes a rule providing that a payor of broker proceeds described in § 1.6045–1(c)(2) may rely on documentary evidence described in § 1.6049–5(c)(1) of the final regulations if the broker completes the acts necessary to effect the sale outside the United States. Because reporting of gross proceeds is governed by section 6045 and not section 6049, these temporary regulations remove this rule from § 1.6049–5(c)(1) and add a cross-reference to a revised rule that is provided in § 1.6045–1(g)(1)(i) addressing the circumstances under which a broker paying gross proceeds may determine a payee's status using documentary evidence. The revised rule under § 1.6045–5(c)(1) de-

finances a sale effected outside the United States as a sale with respect to which a broker completes the acts necessary to effect the sale outside of the United States provided that no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The revised rule also removes the limitations on the use of documentary evidence described in § 1.6045-1(g)(3)(iii)(B) of the final regulations, except in circumstances in which the broker completes the acts necessary to effect to sale at an office of the same broker in the United States.

Finally, consistent with § 1.1441-1(e)(3)(iii), these temporary regulations clarify that documentary evidence is permitted to be used with respect to payments made to a foreign intermediary (in addition to a foreign partnership or foreign trust), regardless of whether the obligation with respect to which the payment is made is maintained outside the United States.

The new definition of the term *offshore obligation* in § 1.6049-5(c)(1) also applies for purposes of information reporting under sections 6041 and 6042.

2. Modifications to Documentation Standards Under § 1.6049-5(c)(4)

Section 1.6049-5(c)(4) of the final regulations provides special documentation rules for certain offshore accounts maintained at a bank or other financial institution, which modify the documentation standards of § 1.6049-5(c)(1) of the final regulations for payments that are not subject to withholding under chapter 3 and are not payments of certain U.S. source short-term OID or bank deposit interest paid to foreign intermediaries and flow-through entities. These temporary regulations in § 1.6049-5(c)(4) retain the modified documentation standards in paragraph § 1.6049-5(c)(1) for such payments and provide additional allowances for payors to determine the status of payees receiving such payments to be consistent with the documentation rules prescribed under the chapter 4 regulations for participating FFIs (including reporting Model 2 FFIs) to identify their account holders. In particular, these temporary regulations allow a payor that is a partic-

ipating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI to establish a payee's status based on identification by a third-party credit agency to the extent permitted in § 1.1471-4(c)(4)(ii). A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or a certification establishing a payee's status under an applicable IGA. A payor that is an FFI may also rely on a written statement (as defined in § 1.1471-1(b)(150)) to establish a payee's foreign status in circumstances in which the statement is allowed to be used by the FFI to establish the chapter 4 status of the payee without documentary evidence under the chapter 4 regulations. Consistent with the provision in the chapter 4 regulations that permits reliance on documentary evidence without a definitive renewal period for payments made with respect to offshore obligations, these temporary regulations provide the same treatment for documentation permitted to be relied upon by a payor under § 1.6049-5(c)(4). Thus, a payor may rely upon documentation under § 1.6049-5(c)(4) if the payor does not have for the payee any of the indicia of U.S. status described in § 1.1471-3(c)(6)(ii)(C)(I) until the payor knows or has reason to know of a change in circumstances. Finally, these temporary regulations allow a payor to maintain a record of documentary evidence instead of retaining the actual documentation reviewed, which is consistent with the rules for a participating FFI under chapter 4.

E. Coordination of chapter 4 with presumption rules under § 1.6049-5(d)

Section 1.6049-5(d) of the final regulations provides general requirements for identifying payees (referencing the relevant requirements of § 1.1441-1) and presumptions that apply in the absence of valid documentation for determining the status of a payee as a U.S. or foreign person for purposes of reporting under section 6049.

1. Payee Identification

In general, § 1.6049-5(d)(1) of the final regulations provides that a payee of a payment that is otherwise reportable un-

der section 6049 is identified pursuant to certain provisions that apply to identify the payee for purposes of chapter 3, with two exceptions that apply to payments that are not subject to withholding under chapter 3. The first exception modifies the treatment of a payment made to a U.S. agent by treating any such payment as a payment made to a U.S. payee (even if the U.S. agent is an agent of a foreign payee). The second exception modifies the treatment of a payment to a U.S. branch of a foreign bank or of a foreign insurance company by treating the payment as made to a foreign payee, regardless of the fact that the U.S. branch is treated as a U.S. person for payments of amounts subject to withholding and is a U.S. payor.

The temporary regulations modify these two exceptions to be consistent with the rules under chapter 4 by clarifying that these exceptions also do not apply with respect to amounts that are withholdable payments. The chapter 4 regulations provide that withholdable payments made to U.S. agents and intermediaries and certain U.S. branches are treated as made to U.S. persons. In addition, these temporary regulations, consistent with the chapter 4 regulations, add that the first exception applies to a U.S. intermediary in addition to a U.S. agent, and they clarify that the second exception applies to payments made to a territorial financial institution that is treated as a U.S. person under § 1.1441-1(b)(2)(iv) (as well as to a U.S. branch of a foreign bank or of a foreign insurance company treated as a U.S. person under that section).

2. Presumptions in the Absence of Documentation Under § 1.6049-5(d)(2)

a. General rule under § 1.6049-5(d)(2)(i)

In general, § 1.6049-5(d)(2)(i) of the final regulations incorporates the presumption rules of § 1.1441-1(b)(3) and 1.1441-5(d) and (e)(6) (general presumption rules) to determine the classification and other relevant characteristics of the payee if a payment cannot be reliably associated with valid documentation. The chapter 61 regulations incorporate these rules regardless of whether a payment is subject to withholding under chapter 3. The presumption rule for payments with

respect to offshore obligations provided under the general presumption rules does not apply to a payment that is not subject to withholding under chapter 3.

These temporary regulations modify this exception (which would not apply the general presumption rules to a payment that is not subject to withholding under chapter 3) in the case of a withholdable payment made to a payee that is an entity by applying the presumption rule for payments with respect to offshore obligations under § 1.1441-1(b)(3)(iii)(D) and (b)(3)(vii)(B) regardless of whether the payment is an amount subject to withholding under chapter 3. This avoids conflicting presumptions under chapters 4 and 61 given that § 1.1471-3(f) treats such payments as made to a nonparticipating FFI (and therefore as made to a foreign entity).

These temporary regulations also add a new presumption rule that applies to a payment that is not subject to withholding under chapter 3 made to a payee that is an individual with respect to an offshore obligation. This new presumption rule will limit the cases in which individuals are presumed U.S. non-exempt recipients to cases where a payor has U.S. indicia associated with the individual.

b. Grace period under § 1.6049-5(d)(2)(ii)

For purposes of applying the presumption rules, § 1.6049-5(d)(2)(ii) of the final regulations provides a 90-day grace period during which a payor may treat an account as held by a foreign person if certain indications of foreign status are present to avoid reporting under chapter 61 and backup withholding under section 3406. The chapter 61 regulations also provide rules for determining when the grace period begins, depending on whether an account is a new or preexisting account of the payor. These temporary regulations retain the 90-day grace period in § 1.6049-5(d)(2)(ii) without modification but expand the types of accounts that will be treated as existing accounts to include accounts treated as consolidated obligations for purposes of chapter 4 (defined in § 1.1471-1(b)(23)) as long as all payments made to the account are not subject to withholding under chapter 3.

c. Joint owners under § 1.6049-5(d)(2)(iii)

These temporary regulations modify the presumption rule with respect to withholdable payments made to joint owners of a joint account consistent with the presumption rule described in § 1.1471-3(f)(7). Thus, in the case of an amount that is a withholdable payment made to a joint account, the payment is presumed made to a foreign payee that is a nonparticipating FFI if any joint payee does not appear to be an individual. This modification creates consistency between the presumption rules applicable under chapters 4 and 61 with respect to withholdable payments made to joint accounts.

The joint account holder presumption rule described in § 1.1471-3(f)(7) also applies for purposes of reporting under sections 6041 and 6042 and backup withholding under section 3406.

3. Foreign Intermediaries or Flow-Through Entities Under § 1.6049-5(d)(3)

Section 1.6049-5(d)(3)(i) of the final regulations provides a presumption rule for determining whether a payment of an amount subject to withholding under chapter 3 may be treated as made to a foreign intermediary or flow-through entity by cross-references to the applicable presumption rules under §§ 1.1441-1(b)(3) and 1.1441-5(d) and (e)(6). These temporary regulations add a cross-reference to the chapter 4 regulations for an amount that is a withholdable payment under chapter 4 for purposes of both identifying the payee and providing the presumption rule that applies to the payment. In addition, these temporary regulations clarify that the presumption rule under § 1.6049-5(d)(3)(ii), applicable to payments not subject to withholding under chapter 3, does not apply to amounts that are withholdable payments under chapter 4, consistent with the presumption rule under chapter 4.

The chapter 61 regulations also provide a presumption rule for payments of certain U.S. source short-term interest or OID and bank deposit interest paid to a foreign intermediary or flow-through entity that treats the payment as made to a U.S. non-exempt recipient. These temporary regulations under § 1.6049-

5(d)(3)(iii) remove bank deposit interest from the existing rule to make it consistent with the chapter 4 presumption rule applicable to withholdable payments (which includes such interest) made to a foreign intermediary or flow-through entity. See § 1.1471-3(f)(5) (treating the payment as made to a nonparticipating FFI). These temporary regulations also provide that this presumption rule is not required to be applied with respect to a payment of U.S. source short-term OID allocated on a withholding statement to a chapter 4 withholding rate pool of U.S. payees by an intermediary or flow-through entity receiving the payment that the payor documents to be a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under the identification requirements of chapter 4.

F. Paid outside the United States under § 1.6049-5(e)

Section 1.6049-5(e) of the final regulations describes the circumstances in which an amount is considered paid outside the United States for purposes of, among other things, determining whether a payor may rely upon documentary evidence under § 1.6049-5(c)(1) of the final regulations to document a payee. It requires that the payor or middleman (i) complete the acts necessary to effect payment outside the United States and (ii) verify that the obligation or payee does not have certain specified connections with the United States (U.S. connections), such as a U.S. mailing address for the payee. See § 1.6049-5(e)(1)(i) through (e)(1)(ii) and (e)(2) through (e)(4) of the final regulations. These temporary regulations retain the requirement that a payor or middleman complete the acts necessary to effect payment outside the United States, but remove the other U.S. connections described in § 1.6049-5(e) of the final regulations for the purpose of being allowed to use documentary evidence under § 1.6049-5(c). This modification reduces burdens by eliminating the need for a payor or middleman to monitor whether these U.S. connections are present for purposes of determining if the payor or middleman may rely upon documentary evidence under § 1.6049-5(c)(1). (For a

discussion of the documentary evidence rule in § 1.6049–5(c), see section III.D of this preamble.) The U.S. connections, however, are still retained for other purposes under chapter 61 and section 3406, and have been included in the definition of the term *paid and received outside the United States* under § 1.6049–4(f)(16) (as discussed in section III.A of this preamble).

IV. Other Changes With Respect to Backup Withholding Under Section 3406, Claims for Refund or Credit Under Section 6402, and Repeal of Portfolio Interest Treatment for Certain Obligations Under Section 871

A. Coordination of withholding under § 31.3406(g)–1(e) with chapter 4

Section 31.3406(g)–1 of the final regulations requires backup withholding with respect to certain reportable payments and provides an exception to backup withholding for such payments if they are made outside the United States to payees other than known U.S. persons or are payments to which withholding under chapter 3 has been applied. The final regulations also provide the same exception for payments to which the documentary evidence rule under § 1.6049–5(c) applies. These temporary regulations modify this exception (consistent with the changes made by these temporary regulations in §§ 1.6049–4 and 1.6049–5) so that it applies to a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16)) with respect to an offshore obligation (or a sale effected outside the United States).

In addition, these temporary regulations do not require backup withholding under section 3406 for certain payments with respect to which withholding under chapter 4 has been applied, regardless of whether the payee is a known U.S. person to prevent duplicative withholding with respect to the same payment.

B. Claims for credit or refund of chapter 4 withholding under § 301.6402–3(e)

Section 6402 provides authority for the Secretary to make a credit or refund of an

overpayment, and § 301.6402–3(e) of the final regulations provides the general requirements applicable to a claim for credit or refund of income tax made by a non-resident alien individual or foreign corporation, including a claim for amounts withheld under chapter 3. These temporary regulations modify these rules to also apply to claims for refund or credit of amounts withheld under chapter 4. Similar to the request for a claim for refund or credit of an amount withheld under chapter 3, these temporary regulations provide that, for an overpayment of tax that resulted from withholding under chapter 4, a taxpayer must attach a copy of the Form 1042–S to the income tax return on which the claim for refund or credit is made. These temporary regulations eliminate, however, the requirement that the Form 1042–S include the TIN of the recipient in order for the claim to be valid. In addition, these temporary regulations clarify that the “other statement” that a taxpayer may attach in lieu of the Form 1042–S or Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax,” is a statement described in § 1.1446–3(d)(2). Finally, to coordinate claims under chapter 3 with those under chapter 4, which permits a participating FFI (including a reporting Model 2 FFI) to file a collective claim for refund for amounts withheld under chapter 4 with respect to its account holders, these temporary regulations provide that no claim for refund or credit may be made by a taxpayer for an amount repaid to the taxpayer pursuant to a collective refund claim filed by a participating FFI (including a reporting Model 2 FFI).

C. Repeal of portfolio interest treatment for foreign-targeted obligations under § 1.871–14

Section 1.871–14 of the final regulations provides procedures for interest to qualify as portfolio interest under section 871(h)(2) or section 881(c). Section 502 of the HIRE Act, among other things, repealed section 163(f)(2)(B) with respect to obligations that are not issued in registered form. In response to the elimination of the foreign targeting rules by the HIRE Act, the IRS and Treasury Department issued Notice 2012–20, 2012–13 IRB 574

(March 26, 2012), which clarified the circumstances in which an obligation held in a book entry system by a clearing organization qualifies as an obligation in registered form and postponed until January 1, 2014, the elimination of the treatment of interest paid with respect to foreign-targeted registered obligations under § 1.871–14(e) as portfolio interest. Notice 2012–20 was amplified by Notice 2013–43, 2013–31 IRB 113 (July 29, 2013), which further postpones the elimination of the allowance for foreign-targeted registered obligations to apply to obligations issued before July 1, 2014. In response to comments, these temporary regulations provide an additional transitional extension until January 1, 2016, for the portfolio interest treatment of foreign-targeted registered obligations issued before that date in order to afford the time for foreign institutions to become qualified intermediaries in accordance with the forthcoming amendment of the qualified intermediary agreement and governing revenue procedure. Because of the continuing applicability of Notice 2012–20 (as amplified), these temporary regulations do not revise the requirements for determining whether an obligation is in registered form under § 5f.103–1(c). Instead, these temporary regulations include updated citations to sections 871(h)(2)(A) and (B) and 881(c)(2)(A) and (B) for the applicable sunset dates of obligations issued in non-registered form and of foreign-targeted registered obligations and include provisions to coordinate the exception from withholding for portfolio interest with the withholding requirements of chapter 4. In addition, § 1.871–14(c)(2) of the final regulations describes cases in which a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5), which permits receipt of the statement by an authorized foreign agent (as described in § 1.1441–7(c)(2)) of a U.S. person. To further coordinate with revisions made by these temporary regulations to § 1.1441–7(c)(2), including the removal of the allowance for the use of an authorized foreign agent, these temporary regulations update references in § 1.871–14(c)(2) to remove the term *authorized foreign agent* and replace it with the term *authorized agent*.

The IRS and the Treasury Department intend to issue additional amendments to this and other regulatory provisions affected by section 502 of the HIRE Act (for example, the definition of an obligation in registered form) in separate published guidance and seek comments on the requirements that should apply under such amendments. Until such guidance is issued, taxpayers may continue to rely on Notice 2012-20 to treat an obligation as an obligation in registered form.

D. Removal of example in § 1.6045-1(g)(4)

In general, § 1.6045-1(c)(2) of the final regulations requires a broker to make a return of information for each sale by a customer of the broker if the broker effects the sale in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others. Exceptions to the reporting requirement of § 1.6045-1(c)(2) of the final regulations include sales effected for exempt recipients within the meaning of § 1.6045-1(c)(3) and sales made by a broker with respect to a customer who is considered to be an exempt foreign person under § 1.6045-1(g). *Example 8* in § 1.6045-1(g)(4) of the final regulations deals with the sale of an obligation payable 183 days or less from the date of original issue. These temporary regulations remove *Example 8* from the final regulations because the sale of a short-term obligation is generally no longer subject to reporting under section 6045, and former *Example 9* is renumbered to be *Example 8*.

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 section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1441-1, 1.1441-3, 1.1441-4, and

1.1441-5. The IRS intends that the information collection requirements of these temporary regulations will be implemented through use of the W-8 series of forms, Form W-9, Form 1042, Form 1042-S, the 1099 series of forms, and Form 8966, as well as certain income tax returns (for example, Forms 1040, 1040-NR, and 1120F) and Form 843 relating to refunds. 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 temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Bulletin**. Pursuant to sec-

tion 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are John Sweeney, Joshua Rabon, Subin Seth, and Nancy Lee of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects

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Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.871-14 is amended by:

1. Revising paragraph (b).
2. In the last sentence of paragraph (c)(1)(i)(B), removing the first instance of the word “in”.
3. Revising paragraphs (c)(2), (c)(3)(i), (c)(4), and (e)(1).
4. Adding paragraph (i)(3).

The additions and revisions read as follows:

§ 1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(b) [Reserved]. For further guidance, see § 1.871-14T(b).

(c) * * *

(2) through (3)(i) [Reserved]. For further guidance, see § 1.871-14T(c)(2) through (c)(3)(i).

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(4) [Reserved]. For further guidance, see § 1.871-14T(c)(4).

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(e)(1) [Reserved]. For further guidance, see § 1.871-14T(e)(1).

* * * * *

(i) * * *

(3) [Reserved]. For further guidance, see § 1.871-14T(i)(3).

Par. 3. Section 1.871-14T is added to read as follows:

§ 1.871-14T Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments (temporary).

(a) [Reserved]. For further guidance, see § 1.871-14(a).

(b) *Rules concerning obligations in bearer form before March 19, 2012—(1) In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, and issued before March 19, 2012, that is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111-147, and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441-1(b)(4)(i). See § 1.1471-2 for rules relating to withholding under chapter 4 of the Code that may apply to withholdable payments (as defined in § 1.1471-4(b)(145)) made on or after July 1, 2014, with respect to an agreement or instrument that is not treated as an obligation outstanding before March 19, 2012. For purposes of the preceding sentence, the terms *obligation* and *outstanding* are described in § 1.1471-2(b)). See also § 1.1471-4(d)(6) for the reporting requirements of participating

foreign financial institutions (as defined in § 1.1471-1(b)(91)) with respect to accounts held by recalcitrant account holders (as defined in § 1.1471-5(g)). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049-5(b)(8) for the payment of interest and § 1.6045-1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c)(1) through (c)(1)(ii)(D) [Reserved]. For further guidance, see § 1.1871-14(c)(1) introductory text through (c)(1)(ii)(D).

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section (to the extent applicable).

(i) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii). See § 1.1441-1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441-5(c)(2)(iv) from a person claiming to be a withholding foreign partnership or § 1.1441-5(e)(v) for a person claiming to be a withholding foreign trust.

(iii) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441-1(e)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility for the payment in accordance with § 1.1441-1(e)(5)(iv) or a qualified intermediary that has provided a withholding statement that meets the requirements of § 1.1441-1(e)(5)(v)(C) or that includes the payment in a withholding rate

pool for payments excepted from withholding.

(iv) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441-1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441-1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441-1(b)(2)(iv)(E).

(3) *Time for providing certificate or documentary evidence—(i) General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, § 1.1441-1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§ 1.1464-1 and 301.6402-3(e) of this chapter. See § 1.1474-5 and § 301.6402-3(e) for the allowance and requirements for a refund with respect to an amount (including a payment of interest) that was withheld upon under chapter 4 of the Code. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461-2(a) for a payment withheld upon under chapter 3 of the Code or in § 1.1474-2 for a payment withheld upon under chapter 4 of the Code.

(ii) [Reserved]. For further guidance, see § 1.871-14(c)(3)(ii).

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c)(4), see § 1.1441-1(b)(4)(i). For rules applicable to withholding certifi-

icates, see § 1.1441–1(e)(4). For rules regarding documentary evidence, see § 1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1(b) and (c). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to withholding under sections 1471 and 1472 that may apply notwithstanding the exemption for payments of portfolio interest under section 1441, see §§ 1.1471–2(a), 1.1471–4(b), and 1.1472–1(b).

(d) [Reserved]. For further guidance, see § 1.871–14(d) introductory text through (d)(3)(iv).

(e) *Foreign-targeted registered obligations*—(1) *General rule*. The statement described in paragraph (c)(1)(ii) of this section is not required with respect to interest paid on an obligation issued before January 1, 2016, that is a registered obligation targeting foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

(2) through (i)(2) [Reserved]. For further guidance, see § 1.871–14(e)(2) through (i)(2).

(3) *Effective/applicability date*. The rules of paragraphs (b)(2), (c)(3)(i), and (c)(4) of this section apply to payments of interest made after June 30, 2014. (For payments of interest made before July 1, 2014, see paragraphs (b)(2), (c)(3)(i), and (c)(4) of this section as in effect prior to February 28, 2017.)

(j) *Expiration date*. The applicability of this section expires on or before February 28, 2017.

Par. 4. Section 1.1441–1 is amended by:

1. Revising paragraph (a).
2. Revising paragraphs (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), (b)(2)(iv)(B)(2) and (b)(2)(iv)(B)(3).
3. Adding paragraph (b)(2)(iv)(B)(4).
4. Revising paragraphs (b)(2)(iv)(C), (b)(2)(iv)(E), (b)(2)(vi), (b)(2)(vii), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) introductory text, and (b)(3)(iii)(A).
5. Revising paragraphs (b)(3)(iii)(D), (b)(3)(iv) introductory text, (B)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, (b)(4)(i).
6. Adding paragraph (b)(5)(ix).
7. Revising paragraphs (b)(6), (b)(7)(i) introductory text, (b)(7)(i)(A), (b)(7)(i)(B), (b)(7)(i)(C), (b)(7)(ii), and (b)(7)(iv).
8. Adding paragraph (b)(7)(v).
9. Revising paragraphs (c) introductory text, (c)(2), (c)(5), (c)(10), (c)(12), (c)(16), (c)(17), (c)(25), (c)(28), (c)(29), and (c)(30).
10. Adding paragraphs (c)(31) through (56).
11. Revising paragraph (d)(4).
12. Revising paragraphs (e)(1)(ii)(A)(2), (e)(1)(ii)(A)(3), (e)(2)(ii), (e)(3)(ii) introductory text, (e)(3)(ii)(A), (e)(3)(ii)(C), and (e)(3)(ii)(D).
13. Adding paragraph (e)(3)(ii)(E).
14. Revising paragraphs (e)(3)(iii) introductory text, (e)(3)(iii)(A), (e)(3)(iii)(C), and (e)(3)(iii)(D).
15. Adding paragraph (e)(3)(iii)(E).
16. Revising paragraphs (e)(3)(iv)(A), (e)(3)(iv)(B), and (e)(3)(iv)(C).
17. Revising paragraphs (e)(3)(iv)(D)(1) through (6), (e)(3)(iv)(E), and (e)(3)(v).
18. Revising paragraphs (e)(4) introductory text, (e)(4)(i), (e)(4)(ii)(A), (e)(4)(ii)(B)(1) through (6), and (e)(4)(ii)(B)(8), and adding paragraphs (e)(4)(ii)(B)(9) through (12).

ing paragraphs (e)(4)(ii)(B)(9) through (12).

19. Revising paragraphs (e)(4)(ii)(C) and (D).

20. Revising paragraphs (e)(4)(iii), (e)(4)(iv)(A), (e)(4)(iv)(C), (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), and (e)(4)(vii)(H).

21. Adding paragraph (e)(4)(vii)(I).

22. Revising paragraph (e)(4)(viii)(B) and adding paragraph (e)(4)(viii)(C).

23. Revising paragraphs (e)(4)(ix) and (e)(5).

24. Adding paragraph (f)(3).

The revisions and additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) [Reserved]. For further guidance, see § 1.1441–1T(a).

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1441–1T(b)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(i).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iii)(A).

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(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(A).

(B) * * *

(2) through (4) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(B)(2) through (b)(2)(iv)(B)(4).

(C) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(C).

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(E) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(iv)(E).

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(vi) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vi).

(vii) * * *

(B) * * *

(b)(2)(vii)(B)(1) through (b)(2)(vii)(E)(2) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vii)(B)(1) through (b)(2)(vii)(E)(2).

(F) [Reserved]. For further guidance, see § 1.1441–1T(b)(2)(vii)(F).

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(i).

(ii) * * *

(A) through (C) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(ii)(A) through (b)(3)(ii)(C).

(iii) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A).

(I) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A)(I).

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(iii) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A)(I)(iii).

(iv) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A)(I)(iv).

(v) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A)(I)(v).

(2) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(A)(2).

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(D) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iii)(D).

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(iv) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iv).

(A) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(iv)(A).

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(v) * * *

(B) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(v)(B).

(vi) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(vii).

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(ix) * * *

(A) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(ix)(A).

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(x) [Reserved]. For further guidance, see § 1.1441-1T(b)(3)(x).

(4) [Reserved]. For further guidance, see § 1.1441-1T(b)(4).

(i) [Reserved]. For further guidance, see § 1.1441-1T(b)(4)(i).

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(5) * * *

(ix) [Reserved]. For further guidance, see § 1.1441-1T(b)(5)(ix).

(6) [Reserved]. For further guidance, see § 1.1441-1T(b)(6).

(7) * * *

(i) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(i)(A) through (b)(7)(i)(C).

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(ii) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(ii).

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(iv) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(iv).

(v) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(v).

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(c) [Reserved]. For further guidance, see § 1.1441-1T(c).

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(2) [Reserved]. For further guidance, see § 1.1441-1T(c)(2).

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(5) [Reserved]. For further guidance, see § 1.1441-1T(c)(5).

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(10) [Reserved]. For further guidance, see § 1.1441-1T(c)(10).

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(12) [Reserved]. For further guidance, see § 1.1441-1T(c)(12).

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(c)(16) through (c)(17) [Reserved]. For further guidance, see § 1.1441-1T(c)(16) through (c)(17).

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(25) [Reserved]. For further guidance, see § 1.1441-1T(c)(25).

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(c)(28) through (c)(56) [Reserved]. For further guidance, see § 1.1441-1T(c)(28) through (c)(56).

(d) * * *

(4) [Reserved]. For further guidance, see § 1.1441-1T(d)(4).

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(2) through (e)(1)(ii)(A)(3) [Reserved]. For further guidance, see § 1.1441-1T(e)(1)(ii)(A)(2) through (e)(1)(ii)(A)(3).

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(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441-1T(e)(2)(ii).

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(ii).

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(ii)(A).

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(C) through (E) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(ii)(C) through (e)(3)(ii)(E).

(iii) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iii)(A).

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(C) through (E) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iii)(C) through (e)(3)(iii)(E).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(A) through (C).

(D) * * *

(I) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(I).

(2) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(2).

(3) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(3).

(4) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(4).

(5) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(5).

(6) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(D)(6).

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(E) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(E).

(v) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(v).

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(4) [Reserved]. For further guidance, see § 1.1441-1T(e)(4).

(i) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B).

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(8) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B)(8).

(9) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B)(9).

(10) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B)(10).

(11) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B)(11).

(12) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(B)(12).

(C) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(C).

(D) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(D).

(iii) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(iii).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(iv)(A).

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(C) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(iv)(C).

(v) through (vii) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(v) through (e)(4)(vii).

(A) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(vii)(A).

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(F) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(vii)(F).

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(H) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(vii)(H).

(I) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(vii)(I).

(viii) * * *

(B) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(viii)(B).

(C) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(viii)(C).

(ix) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ix).

(5) [Reserved]. For further guidance, see § 1.1441-1T(e)(5).

(f) * * *

(3) [Reserved]. For further guidance, see § 1.1441-1T(f)(3).

Par. 5. Section 1.1441-1T is added to read as follows:

§ 1.1441-1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) *Purpose and scope.* This section, §§ 1.1441-2 through 1.1441-9, and 1.1443-1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent

may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441-2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441-3 provides rules regarding the amount subject to withholding and rules for coordinating withholding under this section with withholding under section 1445 and under chapter 4 of the Code. Section 1.1441-4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441-5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441-6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441-7 defines the term withholding agent and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441-8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441-9 and 1.1443-1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding—(1) Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a

foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441-5(c)(2)(i)), or as a withholding foreign trust (see § 1.1441-5(e)(5)(v)). Withholding is also not required under this section when withholding under chapter 4 was applied to the payment. See § 1.1441-3(a)(2). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§ 1.1441-4, 1.1441-5, 1.1441-6, 1.1441-8, 1.1441-9, and 1.1443-1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for determining who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (*i.e.*, as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405 or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (for example, in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph

(b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441-7(a) for a definition of withholding agent. See § 1.1441-2(a) for the determination of an amount subject to withholding. See § 1.1441-2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2) and § 1.1441-5(c)(1) and (e)(3), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (e.g., as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W-8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W-9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441-5 (c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation, apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441-2(a)). However, for a payment that is both an amount subject to withholding under chapter 3 and a withholdable payment under chapter 4, first apply the rules of § 1.1471-3 for determining the payee of a withholdable payment un-

der chapter 4 and applicable presumptions in the absence of documentation applicable to such payments. See also § 1.6049-5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441-5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

(ii) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(ii).

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701-2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701-3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W-9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701-3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049-4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W-9 because it may not represent that it is a U.S. person

for purposes of the provisions of chapters 3, 4, and 61 of the Code, and section 3406. Therefore, A must furnish a Form W-8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894-1T(d) and 1.1441-6(b)(2) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

(B) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(iii)(B).

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch of a participating FFI, registered deemed compliant FFI or NFFE that is described in this paragraph (b)(2)(iv)(A) may agree to be treated as a U.S. person for purposes of withholding on specified payments to the U.S. branch. See § 1.1471-3(d) for rules regarding how a withholding agent may determine the chapter 4 status of an entity. If a U.S. branch agrees to be treated as a U.S. person with a withholding agent, it is required to act as a U.S. person with respect to all other withholding agents, including when acting as an intermediary with respect to withholdable payments for purposes of chapter 4. See § 1.1471-3(a)(3)(iv). In such cases, the U.S. branch is treated as a payee that is a U.S. person. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042-S under § 1.1461-1(c) and § 1.1474-1(d)(1)(i) for a payment of U.S. source FDAP income that is a chapter 4 reportable amount as defined in § 1.1471-1(b)(16). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it provides to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on a Form

W-8IMY as provided in paragraph (e)(3)(v) of this section and not a Form W-9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any 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. In addition, a territory financial institution (including a territory financial institution that is a flow-through entity) will be treated as a U.S. branch for purposes of this paragraph (b)(2)(iv)(A). The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049-5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Internal Revenue Code. Also see § 1.6049-5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Internal Revenue Code.

(B) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(iv)(B).

(I) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(iv)(B)(I).

(2) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation;

(3) As a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from a U.S. branch (or any other certificate or other appropri-

ate documentation from another person). See § 1.1441-4(a)(2)(ii); or

(4) As a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States if the withholding agent has not obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from the U.S. branch.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a separate person for purposes of section 1441(a) and all other provisions of chapters 3 and 4 of the Internal Revenue Code and the regulations thereunder (other than for purposes of reporting the payment to the U.S. branch under § 1.1461-1(c) and § 1.1474-1(d)(1)(i) for a chapter 4 reportable amount) or for purposes of the documentation such a branch must furnish under paragraph (e)(3)(v) of this section) for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapters 3 and 4 of the Internal Revenue Code and the regulations thereunder and other applicable withholding provisions of the Internal Revenue Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section and § 1.1441-4(a)(2)(ii).

(D) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(iv)(D).

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by

the IRS. Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the IRS and unless the IRS is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

(v) [Reserved]. For further guidance, see § 1.1441-1(b)(2)(v).

(vi) *Other payees.* A payment to a person described in § 1.6049-4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A) (6) or (7) of this section). Further, a payment that the withholding agent can reliably associate with documentary evidence described in § 1.6049-5(c)(1) relating to the payee is treated as a payment to a foreign payee. See § 1.1441-

5(b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) [Reserved]. For further guidance, see § 1.1441–1(b)(2)(vii) introductory text and (b)(2)(vii)(A).

(B) *Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity*—(1) In the case of a payment made to a nonqualified intermediary, a flow-through entity (as defined in paragraph (c)(23) of this section), or a U.S. branch described in paragraph (b)(2)(iv) of this section (other than a U.S. branch that is treated as a U.S. person), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent can allocate the payment to a valid nonqualified intermediary, flow-through, or U.S. branch withholding certificate (and a withholding certificate provided by a nonparticipating FFI with respect to a portion of a payment that is a withholdable payment allocated to an exempt beneficial owner as described in § 1.1471–3(c)(3)(iii)(B)(4)); the withholding agent can reliably determine how much of the payment relates to valid documentation provided by a payee as determined under paragraph (c)(12) of this section (*i.e.*, a person that is not itself an intermediary, flow-through entity, or U.S. branch); and the withholding agent has sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See, however, paragraph (e)(3)(iv) of this section for when a nonqualified intermediary may report payees to the withholding agent in a chapter 4 withholding rate pool, in which case a withholding agent need not associate the portion of the payment attributable to such payees with documentation from each such payee. See also paragraph (e)(3)(iii) of this section for the requirements of a nonqualified intermediary withholding certificate, paragraph (e)(3)(v) of this section for the requirements of a U.S. branch certificate, and §§ 1.1441–5(c)(3)(iii) and (e)(5)(iii) for the requirements of a flow-through withholding certificate (including the requirements for a withholding certificate associated with a withholdable payment).

Thus, a payment cannot be reliably associated with valid documentation provided by a payee to the extent such documentation is lacking or unreliable, or to the extent that information required to allocate and report all or a portion of the payment to each payee is lacking or unreliable. If a withholding certificate attached to an intermediary, U.S. branch, or flow-through withholding certificate is another intermediary, U.S. branch, or flow-through withholding certificate, the rules of this paragraph (b)(2)(vii)(B) apply by treating the share of the payment allocable to the other intermediary, U.S. branch, or flow-through entity as if the payment were made directly to such other entity. See paragraph (e)(3)(iv)(D) of this section for rules permitting information allocating a payment to documentation to be received after the payment is made.

(2) The rules of paragraph (b)(2)(vii)(B)(1) of this section are illustrated by the following examples. Each example illustrates a payment that is not a withholdable payment and, therefore, neither the chapter 4 status of the NQI nor payee specific documentation is required to be provided to the withholding agent (and no withholding applies under chapter 4 on each payment). See paragraph (e)(3)(iv)(C) of this section for the requirements of a withholding statement provided by a nonqualified intermediary that receives a withholdable payment and for an example illustrating the requirements of an NQI providing a withholding statement to a withholding agent for a withholdable payment.

Example 1. WA, a withholding agent, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to NQI, an intermediary that is a nonqualified intermediary. NQI provides a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section. NQI does not, however, provide valid documentation from the persons on whose behalf it receives the interest payment, and, therefore, the interest payment cannot be reliably associated with valid documentation provided by a payee. WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment.

Example 2. The facts are the same as in *Example 1*, except that NQI does attach valid beneficial owner withholding certificates (as defined in paragraph (e)(2)(i) of this section) from A, B, C, and D establishing their status as foreign persons. NQI does not, however, provide WA with any information allocating the payment among A, B, C, and D and, therefore, WA cannot determine the portion of the pay-

ment that relates to each beneficial owner withholding certificate. The interest payment cannot be reliably associated with valid documentation from a payee and WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment. See, however, paragraph (e)(3)(iv)(D) of this section providing for alternative procedures that allow a nonqualified intermediary to provide allocation information after a payment is made.

Example 3. The facts are the same as in *Example 2*, except that NQI provides allocation information associated with its intermediary withholding certificate indicating that 25% of the interest payment is allocable to A and 25% to B. NQI does not provide any allocation information regarding the remaining 50% of the payment. WA may treat 25% of the payment as made to A and 25% as made to B. The remaining 50% of the payment cannot be reliably associated with valid documentation from a payee, however, since NQI did not provide information allocating the payment. Thus, the remaining 50% of the payment is subject to the presumption rules of paragraph (b)(3)(v) of this section.

Example 4. WA makes a payment of U.S. source interest to NQI1, an intermediary that is not a qualified intermediary. NQI1 provides WA with a valid nonqualified intermediary withholding certificate as well valid beneficial owner withholding certificates from A and B and a valid nonqualified intermediary withholding certificate from NQI2. NQI2 has provided valid beneficial owner documentation from C sufficient to establish C's status as a foreign person. Based on information provided by NQI1, WA can allocate 20% of the interest payment to A, and 20% to B. Based on information that NQI2 provided NQI1 and that NQI1 provides to WA, WA can allocate 60% of the payment to NQI2, but can only allocate one half of that payment (30%) to C. Therefore, WA cannot reliably associate the remainder of the payment made to NQI2 (30% of the total payment) with valid documentation and must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment.

(C) *Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility*—(1) If a payment is made to a qualified intermediary that does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section and the withholding agent can reliably determine the portion of the payment that relates to a chapter 3 withhold-

ing rate pool, as defined in paragraph (c)(44) of this section, a chapter 4 withholding rate pool (including for a withholdable payment as described in paragraph (e)(5)(v)(C)(2) of this section) as defined in paragraph (c)(48) of this section, or a pool attributable to U.S. exempt recipients. In the case of a withholding rate pool attributable to a U.S. non-exempt recipient, a payment cannot be reliably associated with valid documentation unless, prior to the payment, the qualified intermediary has provided the U.S. person's Form W-9 (or, in the absence of the form, the name, address, and TIN, if available, of the U.S. person) and sufficient information for the withholding agent to report the payment on Form 1099. See, however, paragraph (e)(5)(v)(C)(3) of this section for alternative procedures for allocating payments among U.S. non-exempt recipients and paragraphs (e)(5)(iv)(C)(1) and (2) of this section for when a chapter 4 withholding rate pool of U.S. payees may be provided by a qualified intermediary instead of documentation with respect to each U.S. non-exempt recipient.

(2) The rules of this paragraph (b)(2)(vii)(C) are illustrated by the following examples:

Example 1. WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI. QI provides WA with a valid qualified intermediary withholding certificate on which it indicates that it does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406. QI does not provide any information allocating the dividend to withholding rate pools. WA cannot reliably associate the payment with valid payee documentation and therefore must apply the presumption rules applicable to a withholdable payment under § 1.1471-3(f)(5) to determine the status of the payee for purposes of chapter 4. See *Example 2* for an application of the presumption rules under § 1.1471-3(f).

Example 2. WA makes a payment of U.S. source dividends that is a withholdable payment to QI, which is an NFFE. QI has 5 customers: A, B, C, D, and E, all of whom are individuals except for C. QI has obtained valid documentation from A and B establishing their entitlement to a 15% rate of tax on U.S. source dividends under an income tax treaty. C is a U.S. person that is an exempt recipient as defined in paragraph (c)(20) of this section. D and E are U.S. non-exempt recipients who have provided Forms W-9 to QI. A, B, C, D, and E are each entitled to 20% of the dividend payment. QI provides WA with a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section

with which it associates the Forms W-9 from D and E. QI associates the following allocation information with its qualified intermediary withholding certificate: 40% of the payment is allocable to the 15% chapter 3 withholding rate pool, and 20% is allocable to each of D and E. QI does not provide any allocation information regarding the remaining 20% of the payment. WA cannot reliably associate 20% of the payment with valid documentation and, therefore, must apply the presumption rules applicable to a withholdable payment. Because QI is receiving a withholdable payment as an intermediary, under paragraph (b)(3)(iii) of this section WA must apply the presumption rule of § 1.1471-3(f)(5) to treat the portion of the payment that cannot reliably be associated with valid documentation as made to a non-participating FFI account holder of QI. As a result, WA is required to withhold at a 30% rate of tax under chapter 4. See § 1.1441-3(a)(2) permitting WA to credit the amount withheld under chapter 4 against the liability for tax due on the payment under section 1441. The 40% of the payment allocable to the 15% withholding rate pool, and the portion of the payments allocable to D and E are payments that can be reliably associated with documentation.

(D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code—(1) In the case of a payment made to a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code with respect to that payment (but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 of the Internal Code and section 3406), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to the withholding rate pool for which the qualified intermediary assumes primary withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. non-exempt recipient for whom the qualified intermediary has provided a Form W-9 (or, in absence of the form, the name, address, and TIN, if available, of the U.S. non-exempt recipient). See paragraph (e)(5)(iv) of this section (requiring a qualified intermediary assuming primary withholding responsibility under chapter 3 to assume primary withholding responsibility under chapter 4). See also paragraph (e)(5)(v)(C)(3) of this section for alterna-

tive allocation procedures for payments made to U.S. persons that are not exempt recipients and paragraphs (e)(5)(v)(C)(1) and (2) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees to a withholding agent instead of documentation with respect to each U.S. non-exempt recipient.

(2) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(vii)(D)(1) of this section. However, see the example in paragraph (e)(5)(v)(D) for rules for reporting of U.S. non-exempt recipients when a qualified intermediary that is an FFI reports a U.S. account under chapter 4.

Example 1. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an NFFE. QI provides WA with a withholding certificate that indicates that QI will assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code with respect to the payment. In addition, QI attaches a Form W-9 from A, a U.S. non-exempt recipient, as defined in paragraph (c)(21) of this section, and provides the name, address, and TIN of B, a U.S. person that is also a non-exempt recipient but who has not provided a Form W-9. QI associates a withholding statement with its qualified intermediary withholding certificate indicating that 10% of the payment is attributable to A, and 10% to B, and that QI will assume primary withholding responsibility for chapters 3 and 4 with respect to the remaining 80% of the payment. WA can reliably associate the entire payment with valid documentation. Although under the presumption rule of paragraph (b)(3)(v) of this section, an undocumented person receiving U.S. source interest is generally presumed to be a foreign person, WA has actual knowledge that B is a U.S. non-exempt recipient and therefore must report the payment on Form 1099 and backup withhold on the interest payment under section 3406.

Example 2. The facts are the same as in *Example 1*, except that no information has been provided for the 20% of the payment that is allocable to A and B. Thus, QI has accepted withholding responsibility for 80% of the payment, but has provided no information for the remaining 20%. In this case, 20% of the payment cannot be reliably associated with valid documentation, and, under paragraph (b)(3)(iii) of this section, WA must apply the presumption rule of § 1.1471-3(f)(5) (because the payment is a withholdable payment). See the *Example 2* in paragraph (b)(2)(vii)(C)(2).

(E) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3—(1)* If a payment is made to a qualified intermediary that assumes primary Form 1099 reporting and

backup withholding responsibility for the payment (but does not assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool or pools provided as part of the qualified intermediary's withholding statement and the portion of the payment for which the qualified intermediary assumes primary Form 1099 reporting and backup withholding responsibility. See paragraph (e)(5)(v)(C)(2) of this section for when a qualified intermediary may include a chapter 4 withholding rate pool on a withholding statement provided to a withholding agent with respect to a withholdable payment.

(2) The following example illustrates the rules of paragraph (b)(2)(vii)(D)(1) of this section:

Example. WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI, a qualified intermediary and participating FFI. QI has provided WA with a valid qualified intermediary withholding certificate. QI states on its withholding statement accompanying the certificate that it assumes primary Form 1099 reporting and backup withholding responsibility but does not assume primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code. QI represents that 15% of the dividend is subject to a 30% rate of withholding, 75% of the dividend is subject to a 15% rate of withholding. QI represents that it assumes primary Form 1099 reporting and backup withholding for the remaining 10% of the payment, and therefore need not provide a chapter 4 withholding rate pool with respect to this portion of the payment or documentation with respect to U.S. non-exempt recipients. The entire payment can be reliably associated with valid documentation.

(F) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.* If a payment is made to a qualified intermediary that assumes both primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code and primary Form

1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate a payment with valid documentation provided that it receives a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section. In the case of a payment made to a withholding foreign partnership or a withholding foreign trust, the withholding agent can reliably associate the payment with valid documentation to the extent it can associate the payment with a valid withholding certificate described in § 1.1441-5(c)(2)(iv) or in § 1.1441-5(e)(5)(v) (respectively). See paragraph (e)(5)(iv) of this section, providing that a qualified intermediary assuming primary withholding responsibility under chapter 3 must also assume primary withholding responsibility under chapter 4 with respect to a withholdable payment.

(3) *Presumptions regarding payee's status in the absence of documentation—(i) General rules.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (b)(2)(vii) of this section) a payment of an amount subject to withholding (as described in § 1.1441-2(a)) with valid documentation may rely on the presumptions of this paragraph (b)(3) to determine the status of the person receiving the payment as a U.S. or a foreign person and the person's other relevant characteristics (for example, as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapters 3 and 4 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and, with respect to the reporting requirements of a participating FFI or registered deemed-compliant FFI, see chapter 4 of the Code and the related regulations. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this para-

graph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent to which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of classification as individual, corporation, partnership, etc.—(A) In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate or that has received valid documentary evidence under §§ 1.1441-1(e)(1)(ii)(A)(2) and 1.6049-5(c)(1) or (4) but cannot determine a payee's classification from the documentary evidence must apply the rules of this paragraph (b)(3)(ii) to determine the payee's classification as an individual, trust, estate, corporation, or partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation if documentation is otherwise required to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049-4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W-8 described in § 1.1441-9(b)(2) be furnished to the withholding agent.

(B) *No documentation provided.* If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an indi-

vidual, a trust, or an estate, if the payee appears to be such person (for example, based on the payee's name or information in the customer file). In the absence of reliable indications that the payee is an individual, trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049-4(c)(1)(ii)(B) through (Q) if it can be so treated under § 1.6049-4(c)(1)(ii)(A)(I) or any one of the paragraphs under § 1.6049-4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049-4(c)(1)(ii)(A)(I) through (Q), then the payee shall be presumed to be a partnership. If such a partnership is presumed to be foreign, it is not the beneficial owner of the income paid to it. See paragraph (c)(6) of this section. If such a partnership is presumed to be domestic, it is a U.S. non-exempt recipient for purposes of chapter 61 of the Internal Revenue Code.

(C) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in § 1.6049-5(c)(1) or (c)(4), 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 (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under § 1.6049-4(c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049-4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be 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. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign person under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent will

have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under § 1.6049-4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence stating it is the beneficial owner of the income.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3)(iv) and (v) of this section, or in § 1.1441-5(d) or (e). A withholding agent must treat a payee that is presumed or known to be a trust but for which the withholding agent cannot determine the type of trust in accordance with the presumptions specified in § 1.1441-5(e)(6)(ii). In the case of a payment that is a withholdable payment, a withholding agent must apply the presumption rule under § 1.1471-3(f) for purposes of chapter 4.

(A) *Payments to exempt recipients—(I) In general.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of § 1.6049-4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(i) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98";

(ii) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(iii) If the name of the payee indicates that the entity is the type of entity 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");

(iv) If the payment is made with respect to an offshore obligation (as defined in paragraph (c)(37) of this section); or

(v) Only with respect to an account opened after July 1, 2014, if the withholding agent has a telephone number for the person outside of the United States.

(2) *Special rule for withholdable payments made to exempt recipients.* Notwithstanding the provisions of paragraph (b)(3)(iii)(A)(I) of this section, a payment that is also a withholdable payment made to an entity determined to be an exempt recipient under § 1.6049-4(c)(1)(ii)(A)(I), (F), (G), (H), (M), (O), (P), or (Q) in the case of interest (or under similar provisions in chapter 61 applicable to the type of income) shall be presumed made to a foreign payee in the absence of documentation (including documentary evidence) establishing the entity as a U.S. person. Additionally, a withholding agent may apply the rule provided in this paragraph (b)(3)(iii)(A)(2) instead of the rule in provided in paragraph (b)(3)(iii)(A)(I) of this section for all payments with respect to an obligation. The provisions of this paragraph (b)(3)(iii)(A)(2) will not apply, however, to a withholdable payment made with respect to a preexisting obligation to a payee that the withholding agent determined prior to July 1, 2014 to be a U.S. exempt recipient.

(B) and (C) [Reserved]. For further guidance, see § 1.1441-1(b)(3)(iii)(B) and (C).

(D) *Payments with respect to offshore obligations.* A payment is presumed made to a foreign payee if the payment is made outside the United States (as defined in § 1.6049-5(e)) with respect to an offshore obligation (as defined in paragraph (c)(37) of this section) and the withholding agent does not have actual knowledge that the payee is a U.S. person. See § 1.6049-5(d)(2) and (3) for exceptions to this rule.

(E) [Reserved]. For further guidance, see § 1.1441-1(b)(3)(iii)(E).

(iv) *Grace period.* A withholding agent may choose to apply the provisions of § 1.6049-5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by applying the term with-

holding agent instead of the term payor) to amounts described in § 1.1441–6(c)(2) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may choose to treat the payee as a foreign person and withhold under chapter 3 of the Internal Revenue Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to an account. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(4)(i)(A). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. non-exempt recipient, then backup withholding only applies to amounts credited to the account after the expiration of the grace period. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(v) introductory text and (b)(3)(v)(A).

(B) *Beneficial owner documentation or allocation information is lacking or unreliable.* Except as otherwise provided in this paragraph (b)(3)(v)(B), any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a nonqualified or a qualified intermediary) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section is presumed made to an unknown, undocumented foreign payee. As a result, a withholding agent must deduct and withhold 30 percent from any payment of an amount subject to withholding. If a withholding certificate attached to an intermediary certificate is another intermediary withholding certificate or a flow-through withholding certificate, the rules of this

paragraph (b)(3)(v)(B) (or § 1.1441–5(d)(3) or (e)(6)(iii)) apply by treating the portion of the payment allocable to the other intermediary or flow-through entity as if it were made directly to the other intermediary or flow-through entity. Any payment of an amount subject to withholding that is presumed made to an undocumented foreign person must be reported on Form 1042–S. See § 1.1461–1(c). See § 1.6049–5(d) for payments that are not subject to withholding under chapter 3. However, in the case of a payment that is a withholdable payment made to a foreign intermediary, the presumption rules under § 1.1471–3(f)(5) shall apply.

(vi) *U.S. branches and territory financial institutions not treated as a U.S. person.* The rules of paragraph (b)(3)(v)(B) of this section shall apply to payments to a U.S. branch or a territory financial institution described in paragraph (b)(2)(iv)(A) of this section that has provided a withholding certificate as described in paragraph (e)(3)(v) of this section on which it has not agreed to be treated as a U.S. person.

(vii) *Joint payees—(A) In general.* Except as provided in paragraph (b)(3)(vii)(B) of this section and this paragraph (b)(3)(vii)(A), if a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unidentified U.S. person. If, however, a withholding agent makes a payment that is a withholdable payment and any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire amount of the payment will be treated as made to an undocumented foreign person. See paragraph (b)(3)(iii) of this section for presumption rules that apply in the case of a payment that is a withholdable payment. 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. See § 31.3406(h)–2 of this chapter for rules to determine the relevant payee if more than one Form W–9 is provided. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv)

of this section shall apply only if each payee meets the conditions described in paragraph (b)(3)(iv) of this section.

(B) *Special rule for offshore obligations.* If a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unknown foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)).

(viii) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(viii).

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise—(A) General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405 or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even if it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3), shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

(B) [Reserved]. For further guidance, see § 1.1441–1(b)(3)(ix)(B).

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471-2(b) (and thus the payment is not a withholdable payment) to person X, Inc. with respect to an account W maintains for X, Inc. outside the United States. W cannot reliably associate the payment to X, Inc. with documentation. Under § 1.6049-4(c)(1)(ii)(A)(I), W may treat X, Inc. as a corporation that is an exempt recipient under chapter 61. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section as applicable to a payment to an exempt recipient that is not a withholdable payment, W must presume that X, Inc. is a foreign person (because the payment is made with respect to an offshore obligation). However, W knows that X, Inc. is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

Example 2. A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471-2(b) (and thus the payment is not a withholdable payment) to Y who does not qualify as an exempt recipient under § 1.6049-4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6049. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

Example 3. A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. with respect to an account that X, Inc. opened with W after June 30, 2014. W cannot reliably associate the payment to X, Inc. with documentation but may treat X, Inc. as an exempt recipient for purposes of this section applying the rules of § 1.6042-3(b)(1)(vii). However, because the dividend payment is a withholdable payment and W did not determine the chapter 3 status of X, Inc. before July

1, 2014, W may treat X, Inc. as a U.S. person that is an exempt recipient only if W obtains documentary evidence supporting X, Inc.'s status as a U.S. person. See paragraph (b)(3)(iii)(A)(2) of this section.

Example 4. A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441-4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441-6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income iden-

tified in this paragraph (b)(4). The exclusions and limitations specified in this paragraph (b)(4) apply for purposes of chapter 3. Additional withholding and documentation requirements may apply to withholding agents under chapter 4 with respect to payments that are withholdable payments. See, for example, § 1.1471-2(a) requiring withholding on withholdable payments made to certain FFIs and § 1.1471-2(a)(4) for payments exempted from withholding under section 1471(a).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871-7(b)(2) or 1.881-2(b)(2) are exempt from withholding under section 1441(a). See § 1.871-14 for regulations regarding portfolio interest and section 1441(c)(9) for the exemption from withholding for portfolio interest. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871-14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in § 1.871-14(e)(2) (and issued before January 1, 2016), see § 1.871-14(e)(3) and (4) and, in particular, § 1.871-14(e)(4)(i)(A) and (ii)(A) regarding when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and establishing foreign status for purposes of section 6049. See § 1.6049-5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871-14(b)(1) (and issued before March 19, 2012) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049-5(b)(7).

(ii) through (xxi) [Reserved]. For further guidance, see § 1.1441-1(b)(4)(ii) through (xxi).

(5)(i) through (viii) [Reserved]. For further guidance, see § 1.1441-1(b)(5)(i) through (viii).

(ix) Payments to a foreign person that are governed by section 6050W (dealing with payment card and third party network transactions) are exempt from information reporting under § 1.6050W-1(a)(5)(ii).

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches*—(i) *In general.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441-2(a)) shall be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 3 of the Internal Revenue Code and the regulations thereunder except as otherwise provided in this paragraph (b)(6). A nonqualified intermediary, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section (other than a U.S. branch or territory financial institution that is treated as a U.S. person) shall not be required to withhold or report if it has provided a valid nonqualified intermediary withholding certificate or a U.S. branch withholding certificate, it has provided all of the information required by paragraph (e)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461-1(c). The withholding requirement of a nonqualified intermediary under the previous sentence also excludes a case in which withholding under chapter 4 was applied by a withholding agent on the payment. See § 1.1441-3(a)(2) (coordinating withholding under chapter 3 with withholding applied under chapter 4 of the Code). A qualified intermediary's obligations to withhold and report shall be determined in accordance with its qualified intermediary withholding agreement.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(6)(i) of this section and coordinate rules for withholding that apply under chapter 4 with those that apply under chapter 3. See also paragraph (e)(3)(iv)(C) of this section for the requirements of withholding state-

ments provided by nonqualified intermediaries.

Example 1. FB, a foreign bank, acts as intermediary for five different individuals, A, B, C, D, and E, each of whom owns U.S. securities that generate U.S. source dividends (that are withholdable payments). The dividends are paid by USWA, a U.S. withholding agent. FB furnished USWA with a nonqualified intermediary withholding certificate, described in paragraph (e)(3)(iii) of this section, on which FB certifies its status as a participating FFI (such that withholding under chapter 4 does not apply), to which it attached valid withholding certificates for A, B, C, D, and E. The withholding certificates from A and B claim a 15% reduced rate of withholding under an income tax treaty. C, D, and E claim no reduced rate of withholding. FB provides a withholding statement that meets all of the requirements of paragraph (e)(3)(iv) of this section, including information allocating 20% of each dividend payment to each of A, B, C, D, and E. FB does not have actual knowledge or reason to know that USWA did not withhold the correct amounts or report the dividends on Forms 1042-S to each of A, B, C, D, and E. FB is not required to withhold or to report the dividends to A, B, C, D, and E.

Example 2. The facts are the same as in *Example 1*, except that FB did not provide any information for USWA to determine how much of the dividend payments were made to A, B, C, D, and E. Because USWA could not reliably associate the dividend payments with documentation under paragraph (b)(2)(vii) of this section with respect to a payment that is a withholdable payment, USWA applied the presumption rule of § 1.1471-3(f)(5) and withheld 30% from all dividend payments under chapter 4 and filed a Form 1042-S reporting the payment to an account holder of FB that is a non-participating FFI. FB is deemed to know that USWA did not report the payment to A, B, C, D, and E because it did not provide all of the information required on a withholding statement under paragraph (e)(3)(iv) of this section (that is, allocation information). Although FB is not required to withhold on the payment under this section because the full 30% withholding was imposed by USWA, it is required to report the payments on Forms 1042-S to A, B, C, D, and E. FB's intentional failure to do so will subject it to intentional disregard penalties under sections 6721 and 6722.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*— (i) *General rule.* A withholding agent that cannot reliably associate a payment with valid documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441-4(a)(2)(ii) or (3)(i) to treat the payment as effectively connected income;

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS;

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply; or

(D) [Reserved]. For further guidance, see § 1.1441-1(b)(7)(i)(D).

(ii) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)), establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation furnished after that date 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 af-

fidavit, documentary evidence, as described in § 1.1471-3(c)(5)(i), that supports the individual's claim of foreign status or documentary evidence described in § 1.1441-6(c)(4)(i) to support any treaty claim made on the certificate. 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 described in § 1.1471-3(c)(5)(i) that supports the entity's claim of foreign status or documentary evidence described in § 1.1441-6(c)(4)(ii) to support any treaty claim made on the certificate. 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 obtain from the payee a withholding certificate and affidavit supporting the claim of chapter 3 status as of the time of the payment. See § 1.1471-3(c)(7)(ii) for additional requirements that may apply under chapter 4 for documentation obtained after the date of payment of a withholdable payment.

(iii) [Reserved]. For further guidance, see § 1.1441-1(b)(7)(iii).

(iv) *Special rule for determining validity of withholding certificate containing inconsequential errors.* A withholding agent may treat a withholding certificate as valid when the certificate includes an error described as an inconsequential error in § 1.1471-3(c)(7)(i) for which the withholding agent obtains documentation sufficient for supporting a payee's claim of status as a foreign person or, for a payee that is an entity, its classification to the extent permitted under § 1.1471-3(c)(7)(i). For example, if the country of residence is abbreviated in an ambiguous way on a beneficial owner withholding certificate provided to establish the beneficial owner's foreign status, a withholding agent may treat the withholding certificate as valid if it has obtained documentary evidence supporting that the beneficial owner's residence is in a country other than the United States.

(v) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

(8) and (9) [Reserved]. For further guidance, see § 1.1441-1(b)(8) and (9).

(c) *Definitions.* The following definitions apply for purposes of sections 1441 through 1443, 1461, and regulations under those sections. For definitions of terms used in these regulations that are defined under sections 1471 through 1474, see subparagraphs (43) through (56) of this paragraph.

(1) [Reserved]. For further guidance, see § 1.1441-1(c)(1).

(2) *Foreign and U.S. person.* The term foreign person means any person that is not a U.S. person, including a QI branch of a U.S. financial institution (as defined in § 1.1471-1(b)(109)). Such a branch continues to be a U.S. payor for purposes of chapter 61 of the Internal Revenue Code. See § 1.6049-5(c)(4). A U.S. person is a person described in section 7701(a)(30), the U.S. 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).

(3) and (4) [Reserved]. For further guidance, see § 1.1441-1(c)(3) and (4).

(5) *Financial institution and foreign financial institution (FFI).* The term financial institution means a person described in § 1.1471-5(e). The term foreign financial institution or FFI has the meaning set forth in § 1.1471-5(d).

(6) through (9) [Reserved]. For further guidance, see § 1.1441-1(c)(6) through (9).

(10) *Chapter 3 of the Code (or chapter 3).* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code (or chapter 3) shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

(11) [Reserved]. For further guidance, see § 1.1441-1(c)(11).

(12) *Payee.* For purposes of chapter 3 of the Internal Revenue Code, the term payee of a payment is determined under paragraph (b)(2) of this section, § 1.1441-5(c)(1) (relating to partnerships), and § 1.1441-5(e)(2) and (3) (relating to trusts and estates) and includes foreign persons, U.S. exempt recipients, and U.S. non-exempt recipients. A nonqualified intermediary and a qualified intermediary (to

the extent it does not assume primary withholding responsibility) are not payees if they are acting as intermediaries and not the beneficial owner of income. In addition, a flow-through entity (other than a withholding foreign partnership, withholding foreign trust, or qualified intermediary that assumes primary withholding responsibility) is not a payee unless the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States. See § 1.6049-5(d)(1) for rules to determine the payee for purposes of chapter 61 of the Internal Revenue Code. See §§ 1.1441-1(b)(3), 1.1441-5(d), and (e)(6) and § 1.6049-5(d)(3) for presumption rules that apply if a payee's identity cannot be determined on the basis of valid documentation. For purposes of chapter 4, the term payee has the meaning set forth in § 1.1471-3(a) with respect to a withholdable payment.

(13) through (15) [Reserved]. For further guidance, see § 1.1441-1(c)(13) through (15).

(16) *Withholding certificate.* The term withholding certificate means a Form W-8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraphs (e)(3)(i) or (e)(5)(i) of this section (relating to foreign intermediaries), § 1.1441-5(c)(2)(iv), (c)(3)(iii), and (e)(5)(iii) (relating to flow-through entities), a Form 8233 described in § 1.1441-4(b)(2), a Form W-9 as described in paragraph (d) of this section, a statement described in § 1.871-14(c)(2)(v) (relating to portfolio interest), or any other certificates that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or a foreign person.

(17) *Documentary evidence; other appropriate documentation.* The terms documentary evidence or other appropriate documentation refer to documentary evidence that may be provided for payments made outside the United States with respect to offshore obligations in accordance with § 1.6049-5(c)(1) or any other evidence that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See §§ 1.1441-6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049-5(c)(1)

and (4) (relating to chapter 61 reporting). Also see § 1.1441-4(a)(3)(ii) regarding documentary evidence for notional principal contracts.

(18) through (24) [Reserved]. For further guidance, see § 1.1441-1(c)(18) through (c)(24).

(25) *Foreign complex trust*. A foreign complex trust is a foreign trust other than a foreign simple trust or foreign grantor trust.

(26) through (27) [Reserved]. For further guidance, see § 1.1441-1(c)(26) through (c)(27).

(28) *Nonwithholding foreign partnership (or NWP)*. A nonwithholding foreign partnership is a foreign partnership that is not a withholding foreign partnership, as defined in § 1.1441-5(c)(2)(i).

(29) *Withholding foreign partnership (or WP)*. A withholding foreign partnership is defined in § 1.1441-5(c)(2)(i).

(30) *Possessions of the United States or U.S. territory*. For purposes of the regulations under chapters 3 and 61 of the Internal Revenue Code, the term possessions of the United States or U.S. territory means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

(31) *Amount subject to chapter 3 withholding*. An amount subject to withholding under chapter 3 is an amount described in § 1.1441-2(a).

(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).

(33) *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.

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

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

(36) *Nonwithholding foreign trust (or NWT)*. The term nonwithholding foreign trust or NWT 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.

(37) *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 (as defined in §§ 1.6049-5(c)(1), 1.6041-1(d), or 1.6042-3(b) (depending on the type of payment)).

(38) *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. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, the residence must be determined in the manner prescribed under the applicable treaty. See § 1.1441-6(b). 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 of the entity is the place at which the person maintains its principal office.

(39) *Standing instructions to pay amounts*. The term *standing instructions to pay amounts* has the meaning set forth in § 1.1471-1(b)(126).

(40) *Territory financial institution*. The term territory financial institution has the meaning set forth in § 1.1471-1(b)(130).

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

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

(43) *Certified deemed-compliant FFI*. The term certified deemed-compliant FFI

means an FFI described in § 1.1471-5(f)(2).

(44) *Chapter 3 withholding rate pool*. The term chapter 3 withholding rate pool has the meaning described in paragraph (e)(5)(v)(C)(I) of this section.

(45) *Chapter 3 status*. The term chapter 3 status refers to the attributes of a payee relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

(46) *Chapter 4 of the Code (or chapter 4)*. The term chapter 4 of the Code (or chapter 4) means sections 1471 through 1474 and the regulations thereunder.

(47) *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.

(48) *Chapter 4 withholding rate pool*. The term chapter 4 withholding rate pool has the meaning set forth § 1.1471-1(b)(20). For when a withholding statement may include a chapter 4 withholding rate pool of U.S. payees for purposes of this section and § 1.1441-5, however, see paragraph (e)(3)(iv)(A) of this section (for a withholding statement provided by a nonqualified intermediary) or paragraph (e)(5)(v)(C)(2) of this section (for a withholding statement provided by a qualified intermediary).

(49) *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.

(50) *GIIN (or Global Intermediary Identification Number)*. 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 (as defined in § 1.1471-1(b)(114)) for purposes of identifying such entity to

withholding agents. All GIINs will appear on the IRS FFI list.

(51) *NFFE*. The term NFFE or non-financial foreign entity has the meaning set forth in § 1.1471-1(b)(80).

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

(53) *Participating FFI*. The term participating FFI has the meaning set forth in § 1.1471-1(b)(91).

(54) *Preexisting obligation*. The term preexisting obligation has the meaning set forth in § 1.1471-1(b)(104).

(55) *Registered deemed-compliant FFI*. The term registered deemed-compliant FFI has the meaning set forth in § 1.1471-5(f)(1).

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

(d) [Reserved]. For further guidance, see § 1.1441-1(d) introductory text through (d)(3).

(4) *When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee*. A withholding agent that makes a payment to an intermediary (whether a qualified intermediary or nonqualified intermediary), a flow-through entity, or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section may treat the payment as made to a U.S. payee to the extent that, prior to the payment, the withholding agent can reliably associate the payment with a Form W-9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section or to the extent the withholding agent can reliably associate the payment with a Form W-8 described in paragraph (e)(3)(v) of this section that evidences an agreement to treat a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section as a U.S. person. In addition, a withholding agent may treat the payment as made to a U.S. payee only if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and it has not been notified by the IRS that any of the

information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W-9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the withholding agent may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under section 3406(a)(1)(B) and the regulations under that section for payors who have been notified with regard to such a Form W-9. Withholding agents who have been notified in relation to other Forms W-9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter).

(e) through (e)(1)(ii)(A)(I) [Reserved]. For further guidance, see § 1.1441-1(e) introductory text through (e)(1)(ii)(A)(I)

(2) That the payment is made outside the United States (within the meaning of § 1.6049-5(e)) with respect to an offshore obligation (within the meaning of paragraph (c)(37) of this section) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441-6(c)(3) or (4), or 1.6049-5(c)(1) relating to the beneficial owner;

(3) That the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section, and the qualified intermediary has provided sufficient information for the withholding agent to allocate the payment to a chapter 3 withholding rate pool;

(4) through (7) [Reserved]. For further guidance, see § 1.1441-1(e)(1)(ii)(A)(4) through (7).

(B) [Reserved]. For further guidance, see § 1.1441-1(e)(1)(ii)(B).

(2) [Reserved]. For further guidance, see § 1.1441-1(e)(2) introductory text through (e)(2)(i).

(ii) *Requirements for validity of certificate*. A beneficial owner withholding certificate is valid for purposes of a payment of an amount subject to chapter 3 withholding only if it is provided on a Form W-8, or a Form 8233 in the case of per-

sonal services income described in § 1.1441-4(b) or certain scholarship or grant amounts described in § 1.1441-4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section or such other form as the IRS may prescribe). A Form W-8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address (as defined in § 1.1441-1(c)(55)), TIN (if required), 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 beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii) (including when a foreign TIN and an individual's date of birth are required). A beneficial owner withholding certificate must also include the chapter 4 status of a beneficial owner that is an entity receiving a withholdable payment in order to be valid. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate.

(3) [Reserved]. For further guidance, see § 1.1441-1(e)(3) introductory text and (e)(3)(i).

(ii) *Intermediary withholding certificate from a qualified intermediary*. A qualified intermediary shall provide a qualified intermediary withholding certificate for withholdable payments or reportable amounts received by the qualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A qualified intermediary withholding certificate is valid only if it is furnished on a Form W-8, 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 qualified intermediary, its validity has not expired, and it contains the following information, statement, and certifications—

(A) The name, permanent residence address, qualified intermediary employer identification number (QI-EIN), and the country under the laws of which the intermediary is created, incorporated, or governed. For a withholding certificate provided with respect to a withholdable payment or associated with a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees, the withholding certificate must also include the chapter 4 status of the qualified intermediary (which, if the qualified intermediary is an FFI, it must be a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), and its GIIN (if applicable). However, a qualified intermediary withholding certificate may include a chapter 4 status of limited FFI as defined in § 1.1471-1(b)(77) through December 31, 2015. See paragraph (e)(5)(ii) for the chapter 4 status required of a qualified intermediary. A qualified intermediary that does not act in its capacity as a qualified intermediary must not use its QI-EIN. Rather, the intermediary should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number (if any) and GIIN (if applicable) that it uses for all other purposes;

(B) [Reserved]. For further guidance, see § 1.1441-1(e)(3)(ii)(B).

(C) A certification that the qualified intermediary has provided, or will provide, a withholding statement as required by paragraph (e)(5)(v) of this section;

(D) A certification that the qualified intermediary is fulfilling its reporting obligations under chapter 4 with respect to any payees included in the U.S. payee pool when the qualified intermediary provides a withholding statement that allocates a payment to payees in such a pool; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this para-

graph (e)(3)(ii) or paragraph (e)(3)(v) of this section. See paragraph (e)(5)(v) of this section for the requirements of a withholding statement associated with the qualified intermediary withholding certificate.

(iii) *Intermediary withholding certificate from a nonqualified intermediary.* A nonqualified intermediary shall provide a nonqualified intermediary withholding certificate for reportable amounts received by the nonqualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A nonqualified intermediary withholding certificate is valid only to the extent it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the nonqualified intermediary, it contains the information, statements, and certifications described in this paragraph (e)(3)(iii) and paragraph (e)(3)(iv) of this section, its validity has not expired, and it contains the withholding certificates and other appropriate documentation for all persons to whom the certificate relates are associated with the certificate. Withholding certificates and other appropriate documentation consist of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary and flow-through withholding certificates described in paragraph (e)(3)(i) of this section, withholding foreign partnership and withholding foreign trust certificates described in § 1.1441-5(c)(2)(iv) and (e)(5)(iii), documentary evidence described in §§ 1.1441-6(c)(3) or (4) and 1.6049-5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If a nonqualified intermediary is acting on behalf of another nonqualified intermediary or a flow-through entity, then the nonqualified intermediary must associate with its own withholding certificate the other nonqualified intermediary withholding certificate or the flow-through withholding certificate and separately identify all of the withholding certificates and other appropriate documentation that are associated with the withholding certificate of

the other nonqualified intermediary or flow-through entity. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonqualified intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871-14(c)(2)(v) furnished for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c). The information and certifications required on a Form W-8 described in this paragraph (e)(3)(iii) are as follows—

(A) The name and permanent resident address of the nonqualified intermediary, chapter 4 status (for a nonqualified intermediary receiving a withholdable payment or providing a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), GIIN (if applicable), and the country under the laws of which the nonqualified intermediary is created, incorporated, or governed;

(B) [Reserved]. For further guidance, see § 1.1441-1(e)(3)(iii)(B).

(C) If the nonqualified intermediary withholding certificate is used to transmit withholding certificates or other appropriate documentation for more than one person on whose behalf the nonqualified intermediary is acting, a withholding statement associated with the Form W-8 that provides all the information required by paragraph (e)(3)(iv) of this section;

(D) A certification that the nonqualified intermediary is fulfilling its reporting obligations under chapter 4 with respect to any payees included in the U.S. payee pool when the nonqualified intermediary provides an FFI withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) that allocates a payment to payees in such a pool; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in

addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(3)(iii) or paragraph (e)(5)(iv) of this section.

(iv) *Withholding statement provided by nonqualified intermediary*—(A) *In general.* A nonqualified intermediary shall provide a withholding statement required by this paragraph (e)(3)(iv) to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts (as defined in paragraph (e)(3)(vi) of this section) or to the extent it otherwise provides the documentation of such payees to a withholding agent. A nonqualified intermediary, however, that is subject to withholding under chapter 4 due to its chapter 4 status as a nonparticipating FFI need not provide a withholding statement unless it is providing documentation with respect to an exempt beneficial owner as described in § 1.1471-3(c)(3)(iii)(B)(4). A nonqualified intermediary is not required to disclose to the withholding agent information regarding persons for whom it collects reportable amounts unless it has actual knowledge that any such person is a U.S. non-exempt recipient as defined in paragraph (c)(21) of this section. Information regarding U.S. non-exempt recipients required under this paragraph (e)(3)(iv) must be provided irrespective of any requirement under foreign law that prohibits the disclosure of the identity of an account holder of a nonqualified intermediary or financial information relating to such account holder. A nonqualified intermediary is not required to provide information on a withholding statement regarding U.S. non-exempt recipients, provided that the nonqualified intermediary is a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) that identifies on the withholding statement the portion of a payment allocable to a chapter 4 withholding rate pool of U.S. payees to the extent that the nonqualified intermediary is permitted to include such U.S. payees in a pool under § 1.6049-4(c)(4)(iii). See § 1.1471-3(d)(4) for the requirements of an entity to identify itself as a participating FFI or registered deemed-compliant FFI to a withholding agent for purposes of chapter 4. Although

a nonqualified intermediary is not required to provide documentation and other information required by this paragraph (e)(3)(iv) for persons other than U.S. non-exempt recipients not included in a chapter 4 withholding rate pool of U.S. payees, a withholding agent that does not receive documentation and such information must apply the presumption rules of paragraph (b) of this section, § 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment) or the withholding agent shall be liable for tax, interest, and penalties. A withholding agent must apply the presumption rules even if it is not required under chapter 61 of the Internal Revenue Code to obtain documentation to treat a payee as an exempt recipient and even though it has actual knowledge that the payee is a U.S. person. For example, if a nonqualified intermediary receives a payment that is not a withholdable payment and fails to provide a withholding agent with a Form W-9 for an account holder that is a U.S. exempt recipient that is not included in a chapter 4 withholding rate pool of U.S. payees to the extent permitted in this paragraph (e)(3)(iv)(A), the withholding agent must presume (even if it has actual knowledge that the account holder is a U.S. exempt recipient) that the account holder is an undocumented foreign person with respect to amounts subject to chapter 3 withholding. See paragraph (b)(3)(v) of this section for applicable presumptions. Therefore, the withholding agent must withhold 30 percent from the payment even though if a Form W-9 had been provided, no withholding or reporting on the payment attributable to a U.S. exempt recipient would apply. Further, a nonqualified intermediary that fails to provide the documentation and the information under this paragraph (e)(3)(iv) for another withholding agent to report the payments on Forms 1042-S (including under the requirements of § 1.1474-1(d)(2) for a payment of a chapter 4 reportable amount) and Forms 1099 is not relieved of its responsibility to file information returns. See paragraph (b)(6) of this section. Therefore, unless the nonqualified intermediary itself files such returns and provides copies to the payees, it shall be liable for penalties under sections 6721 (failure to file informa-

tion returns), and 6722 (failure to furnish payee statements), including the penalties under those sections for intentional failure to file information returns. In addition, failure to provide either the documentation or the information required by this paragraph (e)(3)(iv) results in a payment not being reliably associated with valid documentation. Therefore, the beneficial owners of the payment are not entitled to reduced rates of withholding and if the full amount required to be held under the presumption rules is not withheld by the withholding agent, the nonqualified intermediary must withhold the difference between the amount withheld by the withholding agent and the amount required to be withheld. Failure to withhold shall result in the nonqualified intermediary being liable for tax under section 1461, interest, and penalties, including penalties under section 6656 (failure to deposit) and section 6672 (failure to collect and pay over tax).

(B) *General requirements.* A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically as part of a system established by the withholding agent or nonqualified intermediary to provide the statement, however, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by

the nonqualified intermediary. A withholding statement may otherwise be transmitted by a nonqualified intermediary via e-mail or facsimile to a withholding agent under the requirements specified in paragraph (e)(4)(iv)(C) of this section (substituting the term withholding statement for the term Form W-8 or the term document, as applicable). A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment. A withholding agent may not treat as valid an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees described in paragraph (e)(3)(iv)(A) of this section or an allocation of a payment to a chapter 4 withholding rate pool of recalcitrant account holders described in paragraph (e)(3)(iv)(C)(2) of this section unless the withholding agent identifies the nonqualified intermediary maintaining the account (as described in § 1.1471-5(b)(5)) as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules of § 1.1471-3(d)(4).

(C) *Content of withholding statement.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(I) *In general.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(i) Except as otherwise provided in (e)(3)(iv)(A) of this section (which excludes reporting of information with respect to certain U.S. persons on the withholding statement), the withholding statement must contain the name, address, TIN (if any) and the type of documentation (documentary evidence, Form W-9, or type of Form W-8) for every person from whom documentation has been received by the nonqualified intermediary and provided to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a

foreign person. See paragraphs (c)(2), (20), and (21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an intermediary, flow-through entity, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes applicable for chapter 3 purposes used for filing Forms 1042-S, if the foreign person is a recipient as defined in § 1.1461-1(c)(1)(ii).

(ii) The withholding statement must allocate each payment, by income type, to every payee required to be reported on the withholding statement for whom documentation has been provided (including U.S. exempt recipients except as provided in paragraph (e)(3)(iv)(A) of this section). Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042-S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042-S. See § 1.6049-8 (regarding reporting of bank deposit interest to certain foreign persons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution described in paragraph (e)(2)(iv) of this section (other than a U.S. branch or territory financial institution treated as a U.S. person), the withholding statement must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest.

If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(iii) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (e.g., treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the taxpayer identification numbers of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441-6(b)(1) (regarding claims for treaty benefits for which a TIN is provided unless a foreign tax identifying number described in § 1.1441-6(b)(1) is provided). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441-6(c)(5) have been provided, if required, in the beneficial owner's Form W-8 or associated with such owner's documentary evidence.

(iv) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3, chapter 61 of the Internal Revenue Code, and section 3406.

(2) *Nonqualified intermediary withholding statement for withholdable payments.* This paragraph (e)(3)(iv)(C)(2) modifies the requirements of a withholding statement described in paragraph (e)(3)(iv)(C)(1) of this section that is provided by a nonqualified intermediary with respect to a reportable amount that is a withholdable payment. For such a payment, the requirements applicable to a withholding statement described in paragraph (e)(3)(iv)(A) through (e)(3)(iv)(C)(I) of this section shall apply, except that—

(i) The withholding statement must include the chapter 4 status and GIIN (when required for chapter 4 purposes under § 1.1471-3(d)) of each other intermediary or flow-through entity that is a foreign

person and that receives the payment excluding an intermediary or flow-through entity that is an account holder of or interest holder in a withholding foreign partnership, withholding foreign trust, or qualified intermediary;

(ii) If the nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs and recalcitrant account holders (to the extent permitted on an FFI withholding statement described in that paragraph) in lieu of providing specific payee information with respect to such persons reported on the statement (including persons subject to chapter 4 withholding) as described in paragraph (e)(3)(iv)(C)(1) of this section;

(iii) If the nonqualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs; and

(iv) For a payment allocated to a payee that is a foreign person (other than a person included in a chapter 4 withholding rate pool described in paragraphs (e)(3)(iv)(C)(2)(ii) and (iii) of this section) that is reported on a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) or (3), the withholding statement must include the chapter 4 status of the payee and, for a payee other than an individual, the recipient code for chapter 4 purposes used for filing Form 1042-S.

(3) *Example.* This example illustrates the principles of paragraph (e)(3)(iv)(C) of this section. WA makes a withholdable payment of U.S. source dividends to NQI, a nonqualified intermediary. NQI provides WA with a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section that includes NQI's certification of its status for chapter 4 purposes as a participating FFI. NQI provides a withholding statement on which NQI allocates 20% of the payment to a chapter 4 withholding rate pool of recalcitrant account holders of NQI for purposes of chapter 4 and allocates 80% of the payment equally to A and B, individuals that are

account holders of NQI. NQI also provides WA with valid beneficial owner withholding certificates from A and B establishing their status as foreign persons entitled to a 15% rate of withholding under an applicable income tax treaty. Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required with respect to NQI. See § 1.1471-2(a)(4). Based on the documentation NQI provided to WA with respect to A and B, WA can reliably associate the payment with valid documentation on the portion of the payment allocated to them and, because the payment is a withholdable payment, may rely on the allocation of the payment for NQI's recalcitrant account holders in a chapter 4 withholding rate pool in lieu of payee information with respect to such account holders. See paragraph (e)(3)(iv)(C)(2) of this section for the special rules for a withholding statement provided by a nonqualified intermediary for a withholdable payment. Also see § 1.1471-2(a) for WA's withholding requirements under chapter 4 with respect to the portion of the payment allocated to NQI's recalcitrant account holders and § 1.1441-3(a)(2) for coordinating withholding under chapter 3 for payments to which withholding is applied under chapter 4.

(D) *Alternative procedures—(1) In general.* Under the alternative procedures of this paragraph (e)(3)(iv)(D), a nonqualified intermediary may provide information allocating a payment of a reportable amount to each payee (including U.S. exempt recipients) otherwise required under paragraph (e)(3)(iv)(B)(2) of this section after a payment is made. To use the alternative procedure of this paragraph (e)(3)(iv)(D), the nonqualified intermediary must inform the withholding agent on a statement associated with its nonqualified intermediary withholding certificate that it is using the procedure under this paragraph (e)(3)(iv)(D) and the withholding agent must agree to the procedure. If the requirements of the alternative procedure are met, a withholding agent, including the nonqualified intermediary using the procedures, can treat the payment as reliably associated with documentation and, therefore, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d) do not apply even though information allocating the payment to each payee has not been received prior to the payment. See paragraph (e)(3)(iv)(D)(7) of this section, however, for a nonqualified intermediary's liability for tax and penalties if the requirements of this paragraph (e)(3)(iv)(D) are not met. These alternative procedures shall not be used for payments that are allocable to U.S. non-exempt recipients except as provided in

paragraph (e)(3)(iv)(D)(2)(ii) of this section. Therefore, a nonqualified intermediary is required to provide a withholding agent with information allocating payments of reportable amounts to U.S. non-exempt recipients prior to the payment being made by the withholding agent.

(2) *Withholding rate pools—(i) In general.* In place of the information required in paragraph (e)(3)(iv)(C)(2) of this section allocating payments to each payee, the nonqualified intermediary must provide a withholding agent with withholding rate pool information prior to the payment of a reportable amount. The withholding statement must contain all other information required by paragraph (e)(3)(iv)(C) of this section. Further, each payee listed in the withholding statement must be assigned to an identified withholding rate pool. To the extent a nonqualified intermediary is required to, or does provide, documentation, the alternative procedures do not relieve the nonqualified intermediary from the requirement to provide documentation prior to the payment being made. Therefore, withholding certificates or other appropriate documentation and all information required by paragraph (e)(3)(iv)(C) of this section (other than allocation information) must be provided to a withholding agent before any new payee receives a reportable amount. In addition, the withholding statement must be updated by assigning a new payee to a withholding rate pool prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income used to file Form 1042-S, that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method to which the nonqualified intermediary and a withholding agent agree (e.g., by establishing a separate account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). The nonqualified intermediary shall determine withholding rate pools based on valid documentation or, to the extent a payment cannot be reliably associated with valid documentation, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d).

(ii) *Withholding rate pools for withholdable payments.* This paragraph (e)(3)(iv)(D)(2)(ii) modifies the provisions of paragraph (e)(3)(iv)(D)(2)(i) of this section with respect to the withholding rate pools permitted for the alternative procedures described in paragraph (e)(3)(iv)(D)(1) of this section in the case of a reportable amount that is a withholdable payment or for a payment for which an FFI withholding statement is provided by the nonqualified intermediary. In the case of a withholdable payment, a nonqualified intermediary may include amounts allocable to a chapter 4 reporting pool (other than a U.S. payee pool) in a 30-percent rate pool together with a withholding rate pool for amounts subject to chapter 3 withholding at the 30-percent rate. For the amount of the payment allocable to a U.S. payee pool on an FFI withholding statement, a nonqualified intermediary may include such an amount in a withholding rate pool with the amount of the payment that is exempt from withholding under chapter 3 instead of providing documentation regarding U.S. non-exempt recipients included in the pool. To the extent that a nonqualified intermediary allocates an amount to any chapter 4 withholding rate pool, the nonqualified intermediary is required to notify the withholding agent of the allocation before receiving the payment and is not required to provide documentation with respect to the payees included in such pool. The nonqualified intermediary shall determine the chapter 4 withholding rate pools permitted to be used under this paragraph (e)(3)(iv)(D)(2)(ii) in accordance with the nonqualified intermediary's applicable chapter 4 status and under § 1.1471-3(c)(3)(iii)(B)(2) (for an FFI withholding statement) or (3) (for a chapter 4 withholding statement). Additionally, the nonqualified intermediary shall identify those payees to which withholding under chapter 4 applies that are not included in a chapter 4 reporting pool (including payees that could be included in a chapter 4 withholding rate pool for whom the nonqualified intermediary chooses to provide payee specific information).

(3) *Allocation information.* The nonqualified intermediary must provide the withholding agent with sufficient information to allocate the income in each with-

holding rate pool to each payee (including U.S. exempt recipients or any chapter 4 withholding rate pool identified by the withholding agent under paragraph (c)(3)(iv)(D)(2)(ii) of this section) within the pool no later than January 31 of the year following the year of payment. Any payments that are not allocated to payees for whom documentation has been provided or a chapter 4 withholding rate pool referred to in the previous sentence shall be allocated to an undocumented payee in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes). Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is not required to be allocated to a U.S. exempt recipient or a foreign payee, except as required under § 1.6049-8 (regarding reporting of deposit interest paid to certain foreign persons).

(4) *Failure to provide allocation information.* Except as provided in paragraph (e)(3)(iv)(D)(5) of this section, If a nonqualified intermediary fails to provide allocation information, if required, by January 31 for any withholding rate pool to the extent required in paragraph (e)(3)(iv)(D)(3) of this section, a withholding agent shall not apply the alternative procedures of this paragraph (e)(3)(iv)(D) to any payments of reportable amounts paid after January 31 in the taxable year following the calendar year for which allocation information was not given and any subsequent taxable year. Further, the alternative procedures shall be unavailable for any other withholding rate pool (other than a chapter 4 withholding rate pool as otherwise permitted) even though allocation information was given for that other pool. Therefore, the withholding agent must withhold on a payment of a reportable amount in accordance with the presumption rules of paragraph (b)(3) of this section, and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes), unless the nonqualified intermediary provides all

of the information, including information sufficient to allocate the payment to each specific payee or chapter 4 withholding rate pool (as permitted), required by paragraph (e)(3)(iv)(A) through (C) of this section prior to the payment. A nonqualified intermediary must allocate at least 90 percent of the income required to be allocated for each withholding rate pool as required under this paragraph (e)(3)(iv)(D)(4) or the nonqualified intermediary will be treated as having failed to provide allocation information for purposes of this paragraph (e)(3)(iv)(D). For purposes of the allocation, a nonqualified intermediary is required to identify by January 31 the portion of the payment that is allocated to each chapter 4 withholding rate pool (rather than the payees included in each such pool). See paragraph (e)(3)(iv)(D)(7) of this section for liability for tax and penalties if a nonqualified intermediary fails to provide allocation information in whole or in part.

(5) *Cure provision.* A nonqualified intermediary may cure any failure to provide allocation information by providing the required allocation information to the withholding agent no later than February 14 following the calendar year of payment. If the withholding agent receives the allocation information by that date, it may apply the adjustment procedures of § 1.1461-2 (or of § 1.1474-2 for an amount withheld under chapter 4) to any excess withholding for payments made on or after February 1 and on or before February 14. Any nonqualified intermediary that fails to cure by February 14, may request the ability to use the alternative procedures of this paragraph (e)(3)(iv)(D) by submitting a request, in writing, to the. The request must state the reason that the nonqualified intermediary did not comply with the alternative procedures of this paragraph (e)(3)(iv)(D) and steps that the nonqualified intermediary has taken, or will take, to ensure that no failures occur in the future. If the IRS determines that the alternative procedures of this paragraph (e)(3)(iv)(D) may apply, a determination to that effect will be issued by the IRS to the nonqualified intermediary.

(6) *Form 1042-S reporting in case of allocation failure.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year

of payment for a withholding rate pool, the withholding agent must file Forms 1042-S for payments made to each payee in that pool (other than U.S. exempt recipients) in the prior calendar year by prorating the payment to each payee (including U.S. exempt recipients) listed in the withholding statement for that withholding rate pool, treating as a payee for this purpose each chapter 4 withholding rate pool identified by the nonqualified intermediary under paragraph (e)(3)(iv)(D)(2)(ii) of this section. If the nonqualified intermediary fails to allocate 10 percent or less of an amount required to be allocated for a withholding rate pool, a withholding agent shall report the unallocated amount as paid to a single unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and § 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes). The portion of the payment that can be allocated to specific recipients, as defined in § 1.1461-1(c)(1)(ii), shall be reported to each recipient in accordance with the rules of § 1.1461-1(c) and § 1.1471-1(d)(2) (for a withholdable payment).

(7) and (8) [Reserved]. For further guidance, see § 1.1441-1(e)(iv)(D)(7) and (8).

(E) *Notice procedures.* The IRS may notify a withholding agent that the alternative procedures of paragraph (e)(3)(iv)(D) of this section are not applicable to a specified nonqualified intermediary, a U.S. branch described in paragraph (b)(2)(iv) of this section, or a flow-through entity. If a withholding agent receives such a notice, it must commence withholding under this section or chapter 4 (if applicable) in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes) unless the nonqualified intermediary, U.S. branch, or flow-through entity complies with the procedures in paragraphs (e)(3)(iv)(A) through (C) of this section. In addition, the IRS may notify a withholding agent, in appropriate circumstances, that it must apply the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and § 1.1471-3(f)(5) (for a with-

holdable payment for chapter 4 purposes) to payments made to a nonqualified intermediary, a U.S. branch, or a flow-through entity even if the nonqualified intermediary, U.S. branch or flow-through entity provides allocation information prior to the payment. A withholding agent that receives a notice under this paragraph (e)(3)(iv)(E) must commence withholding in accordance with the presumption rules within 30 days of the date of the notice. The IRS may withdraw its prohibition against using the alternative procedures of paragraph (e)(3)(iv)(D) of this section, or its requirement to follow the presumption rules, if the nonqualified intermediary, U.S. branch, or flow-through entity can demonstrate to the satisfaction of the IRS that it is capable of complying with the rules under chapter 3 of the Internal Revenue Code and any other conditions required by the IRS.

(v) *Withholding certificate from certain U.S. branches (including territory financial institutions).* A U.S. branch certificate is a withholding certificate provided by a U.S. branch (including a territory financial institution) described in paragraph (b)(2)(iv) of this section that is not the beneficial owner of the income. The withholding certificate is provided with respect to reportable amounts and must state that such amounts are not effectively connected with the conduct of a trade or business in the United States. The withholding certificate must either transmit the appropriate documentation for the persons for whom the branch receives the payment (*i.e.*, as an intermediary) or be provided as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information, certifications, and statements described in paragraphs (e)(3)(v)(A) through

(C) of this section and in paragraphs (e)(3)(iii) and (iv) (alternative procedures) of this section, applying the term U.S. branch instead of the term nonqualified intermediary. If the certificate is furnished pursuant to an agreement to treat the U.S. branch or territory financial institution as a U.S. person (which agreement must be for purposes of chapter 4 in addition to this section in the case of a payment that is a withholdable payment), the information and certifications required on the withholding certificate are limited to the following—

(A) The name of the territory financial institution or person of which the U.S. branch is a part, the address of the territory financial institution or U.S. branch, and, for a withholding certificate provided by a U.S. branch, a certification that the person of which the branch is a part is a participating FFI or registered deemed-compliant FFI;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States;

(C) The EIN of the territory financial institution or branch;

(D) The GIIN of the FFI of which the U.S. branch is a part, if applicable; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1441-1(e)(3)(vi).

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W-8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding Form W-9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate.* A withholding certificate (including an acceptable substitute) 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 as provided in section 6061 and the regula-

tions under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns). A person authorized to sign a withholding certificate 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 to sign documentation on such person's behalf.

(ii) Period of validity—(A) *General rule.* Except as provided otherwise in paragraphs (e)(4)(ii)(B) and (C) of this section and this paragraph (e)(4)(ii)(A), a withholding certificate described in paragraph (e)(2)(i) of this section, or a certificate described in § 1.871-14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c)), will remain valid until the [earlier of the] last day of the third calendar year following the year in which the withholding certificate is signed [or the day that a change in circumstances occurs that makes any information on the certificate incorrect]. For example, a withholding certificate signed on September 30, 2015, remains valid through December 31, 2018, unless circumstances change that make the information on the form no longer correct. Documentary evidence described in § 1.1441-6(c)(3) or (4) or § 1.6049-5(c)(1) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section. Documentary evidence described in § 1.6049-5(c)(1) provided to establish a payee's foreign status that contains an expiration date may, however, be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Additionally, a withholding certificate or documentary evidence with a period of validity that is valid on December 31, 2013 will not be

treated as invalid based solely on the period described in this paragraph (e)(4)(ii) before January 1, 2015. Notwithstanding the validity periods prescribed by this paragraph (e)(4)(ii)(A) and paragraphs (e)(4)(ii)(B) and (C) of this section, a withholding certificate and documentary evidence will cease to be valid if a change in circumstances makes the information on the documentation incorrect.

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following certificates (or parts of certificates) and documentary evidence described in paragraphs (e)(4)(ii)(B)(1) through (11) of this section shall remain valid until the a change in circumstances makes the information on the documentation incorrect under paragraph (e)(4)(ii)(D)(3). See, however, § 1.1471-3(c)(6)(ii) for when a withholding certificate or documentary evidence remains valid (or is subject to renewal) when also provided with respect to a withholdable payment made to an entity (including an intermediary) for purposes of whether a withholding agent may continue to rely on the entity's claim of chapter 4 status. Additionally, the provisions of paragraphs (e)(4)(ii)(B)(1), (2), and (12) of this section do not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014.

(1) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence supporting a claim of foreign status when both are provided together by an individual claiming foreign status if the withholding agent does not have a current U.S. residence address 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, for a payment described in § 1.6049-5(c)(1), the withholding agent has not been provided standing instructions to make a payment to an account in the United States for the obligation.

(2) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) described in § 1.1471-3(c)(6)(ii)(C)(2) and documentary evidence provided by an entity supporting the entity's claim of foreign status.

(3) A beneficial owner withholding certificate provided by an entity claiming status as a tax-exempt entity under section 501(c) that is not a foreign private foundation under section 509, provided that the withholding agent reports at least one payment annually to the entity under § 1.1461-1(c).

(4) A certificate described in paragraph (e)(3)(ii) of this section (a qualified intermediary withholding certificate) but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(5) A certificate described in paragraph (e)(3)(iii) of this section (a nonqualified intermediary certificate), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(6) A certificate described in paragraph (e)(3)(v) of this section (a U.S. branch (including a territory financial institution) withholding certificate that is not provided by the beneficial owner), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(7) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(ii)(B)(7).

(8) A withholding certificate provided by a withholding foreign trust described in § 1.1441-5(e)(5)(v).

(9) A certificate described in § 1.1441-5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(10) A certificate described in § 1.1441-5(c)(3)(iii) (a withholding certificate from a nonwithholding foreign partnership) but not including the withholding certificates, documentary evidence, statements or other information required to be associated with the certificate.

(11) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of § 1.892-2T(a)(2)) in accordance with § 1.1441-8(b), or by a person representing to be a foreign central bank of issue (within the meaning of § 1.861-2(b)(4)) or the Bank for International Settlements in accordance with § 1.1441-8(c)(1); and

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

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B) 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 (e)(4)(ii)(A) of this section.

(D) *Change in circumstances—(1) Defined.* A certificate or documentation becomes invalid from the date of a change in circumstances affecting the correctness of the certificate or documentation to the extent provided in this paragraph (e)(4)(ii)(D). For purposes of this section, a person is considered to have a change in circumstances only if such change affects the person's claim of chapter 3 status. Thus, for example, a change of address is not a change in circumstances with respect to a claim of only foreign status under this paragraph (e)(4)(ii)(D) if the change is to another address outside the United States, but is a change in circumstances if the change is to an address in the U.S.

(2) *Obligation to notify a withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentary evidence 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 or new documentary evidence. If an intermediary (including a U.S. branch or territory financial institution described in paragraph (b)(2)(iv)(A) of this section) 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 of 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 to continue to treat the person who provided the certificate or documentary evidence under its claimed chapter 3 status.

(3) *Withholding agent's obligation with respect to a change in circumstances.* 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, as permitted under paragraph (e)(4)(viii) of this section. A withholding agent is required to notify any person providing documentary evidence (in lieu of a withholding certificate) of the person's obligation to notify the withholding agent of a change in circumstances. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. A withholding agent may also require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of documentation.* A withholding agent must retain each withholding certificate and other documentation for purposes of this section for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461-1. A withholding agent may retain a withholding certificate or documentary evidence that is an original, certified copy, or a scanned document (as described in paragraph (e)(4)(iv)(C) of this section). A withholding agent may also retain a withholding certificate by other means (such as microfiche) that allows a reproduction of the document provided that the withholding agent has recorded its receipt of a form described in the preceding sentence and is able to produce a hard copy of the form. See § 1.6049-5(c)(1) for the re-

quirements for maintaining documentary evidence that also apply for purposes of determining a payee's U.S. or foreign status for purposes of chapter 3.

(iv) *Electronic transmission of information—(A) In general.* A withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W-8, an acceptable substitute Form W-8, or such other form as the Internal Revenue Service may prescribe. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section. See paragraph (e)(iv)(4)(C) of this section for other cases in which a Form W-8 (or other documentation) may be furnished electronically.

(B) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(iv)(B).

(C) *Forms and documentary evidence received by facsimile or e-mail.* A withholding agent may rely upon an otherwise valid Form W-8 (or documentary evidence) received by facsimile or a form or document scanned and received electronically, such as, for example, an image embedded in an e-mail or as a Portable Document Format (.pdf) attached to an e-mail. A withholding agent may not rely on a form or document received by such means, however, if the withholding agent knows that the form or document was transmitted to the withholding agent by a person not authorized to do so by the person required to execute the form. A withholding agent may establish other procedures to authenticate and verify a form or document sent by such means and may reject any form or document that fails to satisfy the requirements of such procedures.

(v) *Additional procedures for certificates provided electronically.* The IRS may prescribe procedures in a revenue procedure (see § 601.601(d)(2) of this chapter) or may issue other appropriate guidance (including a written directive for revenue agents) to further prescribe the conditions by which the IRS will determine that a system developed by a withholding agent to permit beneficial owners and payees to provide Forms W-8 electronically satisfies the requirements of paragraph (e)(4)(iv)(B) of this section.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W-8 or

8233 (or such other official form as the IRS may prescribe). Such a substitute for an official 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 stated 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 (including those required for purposes of chapter 4). For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claims of benefits under an income tax treaty. Similarly, a withholding agent that is not required to determine the chapter 4 status of a payee providing a form may develop a substitute form that does not contain chapter 4 statuses. A withholding agent who 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 payee or beneficial owner (including the official Form W-8 or 8233) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. 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 payee or beneficial owner and that the payee or beneficial

owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii) for the withholding certificate to be valid for purposes of this section. A TIN is required to be stated on—

(A) A withholding certificate on which a beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441-6(c)(2) or amounts for which a foreign tax identifying number has been provided, as described in § 1.1441-6(c)(2));

(B) through (E) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(vii)(B) through (E).

(F) A withholding certificate from a person representing to be a withholding foreign partnership or a withholding foreign trust;

(G) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(vii)(G).

(H) A withholding certificate from a person representing to be a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section; and

(I) A withholding certificate provided by an entity acting as a qualified securities lender, as defined for purposes of chapter 3, with respect to a substitute dividend paid in a securities lending or similar transaction.

(viii) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(viii) introductory text and (e)(4)(viii)(A).

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution 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 (e.g., 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 financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, i.e., a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(C) *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.

(ix) *Certificates to be furnished to withholding agent for each obligation unless exception applies.* Unless otherwise provided in paragraphs (e)(4)(ix)(A) through (D) of this section, a withholding agent that is a financial institution with which a customer may open an account shall obtain a withholding certificate or documentary evidence on an obligation-by-obligation basis and may not rely upon such documentation collected by another person or another branch of the withholding agent.

(A) *Exception for certain branch or account systems or system maintained by agent.* A withholding agent may rely on a withholding certificate or documentary evidence furnished by a customer as part of a single branch system, universal account system, or shared account system described in § 1.1471-3(c)(8) (substituting the term chapter 3 status for chapter 4 status each place it appears in that para-

graph). Furthermore, a withholding agent may rely on a shared documentation system maintained by an agent as described in § 1.1471-3(c)(9)(i) (also substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph).

(B) *Reliance on certification provided by introducing brokers*—(1) *In general.* A withholding agent may rely on the certification of a broker indicating the broker's determination of a payee's chapter 3 status and that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other appropriate documentation for that beneficial owner with respect to any readily tradable instrument, as defined in § 31.3406(h)-1(d) of this chapter, if the broker is a United States person (including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section) that is acting as the agent of a beneficial owner. A withholding agent may also rely on a certification described in the preceding sentence that is provided by a qualified intermediary that makes payments to beneficial owners that it receives from the withholding agent. The certification must be in writing or in electronic form and contain all of the information required of a nonqualified intermediary under paragraphs (e)(3)(iv)(B) and (C) of this section. If a broker chooses to use this paragraph (e)(4)(ix)(B), that broker will be solely responsible for applying the rules of § 1.1441-7(b) to the withholding certificates or other appropriate documentation and shall be liable for any underwithholding as a result of the broker's failure to apply such rules. See § 1.1471-3(c)(9)(iii) for a similar allowance that applies to a broker's determination of a payee's chapter 4 status for purposes of chapter 4. For purposes of this paragraph (e)(4)(ix)(B), the term *broker* means a person treated as a broker under § 1.6045-1(a).

(2) *Example.* The following example illustrates the rules of this paragraph (e)(4)(x)(B) with respect to a U.S. broker:

Example. SCO is a U.S. securities clearing organization that provides clearing services for correspondent broker, CB, a U.S. corporation. Pursuant to a fully disclosed clearing agreement, CB fully discloses the identity of each of its customers to SCO. Part of SCO's clearing duties include the crediting of income and gross proceeds of readily tradable instru-

ments (as defined in § 31.3406(h)-1(d)) to each customer's account. For each disclosed customer that is a foreign beneficial owner, CB provides SCO with information required under paragraphs (e)(3)(iv)(B) and (C) of this section that is necessary to apply the correct rate of withholding and to file Forms 1042-S. SCO may use the representations and beneficial owner information provided by CB to determine the proper amount of withholding and to file Forms 1042-S. CB is responsible for determining the validity of the withholding certificates or other appropriate documentation under § 1.1441-1(b).

(C) *Reliance on documentation and certifications provided between principals and agents*—(1) *Withholding agent as agent.* A withholding agent may rely upon documentation and certifications provided by a principal for purposes of determining a payee's chapter 3 status only if the principal is a U.S. withholding agent, a qualified intermediary (when acting as such for determining a payee's status), or a withholding foreign partnership or withholding foreign trust with respect to a partner, owner, or beneficiary in the entity. Thus an agent (such as a paying agent or transfer agent) may not rely upon a certification provided by a principal that is a participating FFI but is not also a qualified intermediary, withholding foreign partnership, or withholding foreign trust for purposes of this section, even though it may rely on the certification when provided solely for purposes of chapter 4 under § 1.1471-3(c)(9)(iv).

(2) *Withholding agent as principal.* A withholding agent may also rely on documentation collected by an agent of the withholding agent in order to fulfill its chapter 3 obligations because such agent's actions are imputed to the principal (the withholding agent). For example, a withholding agent may contract an agent to collect Forms W-8 from account holders, but the withholding agent remains liable for any tax liability resulting from a failure of the agent to comply with the requirements of chapter 3.

(D) *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 for determining the chapter 3 status of an account holder of such an account. 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 (or a qualified intermediary when the withholding agent is also a qualified intermediary) may also rely upon the predecessor's or transferor's determination of the account holder's chapter 3 status 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 entity classification and status is inaccurate or a change in circumstances occurs with respect to the account. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 3 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 status claimed. An acquirer that discovers at the end of the transition period that the chapter 3 status assigned by the predecessor or transferor to the account holder was incorrect and 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 (e)(4)(ix)(D), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group, within the meaning of § 1.1471-5(i)(2), 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 § 1.1471-3(c)(v) for a similar reliance rule that applies for purposes of chapter 4.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish a qualified intermediary withholding certificate to a withholding agent. The withholding certificate provides certifications on behalf of other per-

sons for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Internal Revenue Code, such as the provisions under chapters 4 and 61 and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment, including interest holders in a qualified intermediary that is fiscally transparent under the regulations under section 894. Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or interest holders pursuant to its agreement with the IRS, it is generally not required to attach such documentation to the intermediary withholding certificate. Notwithstanding the preceding sentence a qualified intermediary must provide a withholding agent with the Forms W-9, or disclose the names, addresses, and taxpayer identifying numbers, if known, of those U.S. non-exempt recipients for whom the qualified intermediary receives reportable amounts (within the meaning of paragraph (e)(3)(vi) of this section) to the extent required in the qualified intermediary's agreement with the IRS and except as otherwise provided in paragraph (e)(5)(v)(C)(I) of this section.

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS and such person is—

(A) A foreign financial institution that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI), or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), excluding a U.S. branch of any of the foregoing entities;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or

office of a U.S. clearing organization that is either a reporting Model 1 FFI or agrees to the reporting requirements applicable to a participating FFI with respect to its U.S. accounts;

(C) A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders to the extent permitted to act as a qualified intermediary by the IRS; or

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement—(A) In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 4, and 61 of the Internal Revenue Code, section 3406, the regulations under those provisions, and other withholding provisions of the Internal Revenue Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* The agreement shall specify the obligations of the qualified intermediary under chapters 3 and 4 and, for a qualified intermediary that is an FFI, require the qualified intermediary to satisfy the documentation, withholding, and reporting obligations required of a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI as defined in § 1.1471-1(b)(114)) with respect to each branch of the qualified intermediary other than a U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section. The agreement will specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (*e.g.*, corporation or partnership), status (*i.e.*, U.S. or foreign and chapter 4 status) of beneficial owners and payees who receive reportable amounts and reportable payments collected by the qualified intermediary for purposes of chapters 3 and 61, section 3406, and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty.

The agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109-1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. The agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries and flow-through entities and the obligations of a qualified intermediary that acts as a qualified securities lender with respect to payments of substitute dividends under chapters 3 and 4. In addition, the agreement shall specify the manner in which the IRS will verify compliance with the agreement, including the time and manner for which a qualified intermediary will be required to certify to the IRS regarding its compliance with the agreement (including its performance of a periodic review) and the types of information required to be disclosed as part of the certification. In appropriate cases, the IRS may require review procedures be performed by an approved auditor (in addition to those performed as part of the periodic review) and may conduct a review of the auditor's findings. The agree-

ment may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement may specify the procedures by which amounts withheld are to be deposited, if different from the deposit procedures under the Internal Revenue Code and applicable regulations. To determine whether to enter a qualified intermediary withholding agreement and the terms of any particular withholding agreement, the IRS will consider the type of local know-your-customer laws and practices to which the entity is subject, as well as the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign entity.

(iv) *Assignment of primary withholding responsibility.* Any person who meets the definition of a withholding agent under § 1.1441-7(a) (for payments subject to chapter 3 withholding) and § 1.1473-1(d) (for withholdable payments) (whether a U.S. person or a foreign person) is required to withhold and deposit any amount withheld under §§ 1.1461-1(a) and 1.1474-1(b) and to make the returns prescribed by §§ 1.1461-1(b) and (c), and by 1.1474-1(c), and (d). Under its qualified intermediary agreement, a qualified intermediary agreement may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of the Internal Revenue Code and/or under chapter 61 of the Internal Revenue Code and section 3406. For assuming withholding obligations as described in the previous sentence, a qualified intermediary that assumes primary withholding responsibility for payments made to an account under chapter 3 is also required to assume primary withholding responsibility under chapter 4 for payments made to the account that are withholdable payments. Additionally, a qualified intermediary may represent that it assumes chapter 61 reporting and section 3406 obligations for a payment when the qualified intermediary reports the payment (or the account to which the pay-

ment is made) as part of its applicable U.S. account reporting requirements as a participating FFI or registered deemed-compliant FFI. If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary agreement actually performs its primary withholding responsibilities. A qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent.

(v) *Withholding statement—(A) In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary agreement will require the qualified intermediary to include information in its withholding statement relating to withholdable payments for purposes of withholding under chapter 4 as described in paragraph (e)(5)(v)(C)(2) of this section. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding

agent mutually agree, including electronically. If the withholding statement is provided electronically, the statement must satisfy the requirements described in paragraph (e)(3)(iv) of this section (applicable to a withholding statement provided by a nonqualified intermediary). The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For purposes of this section, a withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for a payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(B) *Content of withholding statement.* The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must—

(1) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(2) Designate those accounts for which qualified intermediary assumes primary withholding responsibility under chapter 3 and chapter 4 of the Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406;

(3) If applicable, designate those accounts for which the qualified intermediary is acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction; and

(4) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools—(1) In general.* Except to the extent it has assumed both primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code and primary reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its

withholding statement the chapter 3 withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Internal Revenue Code and section 3406. See, however, paragraph (e)(5)(v)(C)(2) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool (as described in paragraph (c)(48) of this section) with respect to a payment that is a withholdable payment. A chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S that is subject to a single rate of withholding paid to a payee that is a foreign person and for which withholding under chapter 4 does not apply except as otherwise provided in this paragraph (e)(5)(v)(C)(1). A chapter 3 withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (e.g., by establishing a separate account for a single chapter 3 withholding rate pool, or by dividing a payment made to a single account into portions allocable to each chapter 3 withholding rate pool). A qualified intermediary may include a separate pool for account holders that are U.S. exempt recipients or may include such accounts in a chapter 3 withholding rate pool to which withholding does not apply. The withholding statement must identify each applicable chapter 4 exemption code (as provided in the instructions to Form 1042-S) applicable to a chapter 3 withholding rate pool contained on the withholding statement (subdividing a chapter 3 withholding rate pool into sub-pools as necessary based on the applicable chapter 4 exemption code). To the extent a qualified intermediary does not assume primary reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(3) of this section or the account holder is a payee that the qualified intermediary is permitted to in-

clude in a chapter 4 withholding rate pool of U.S. payees. A qualified intermediary may include a chapter 4 withholding rate pool of U.S. payees on a withholding statement by applying the rules under paragraph (e)(3)(iv)(A) of this section (by substituting "qualified intermediary" for "nonqualified intermediary") with respect to an account that it maintains (as described in § 1.1471-5(b)(5)) for the payee of the payment. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the other intermediary or flow-through entity with the qualified intermediary's direct account holder information to determine the qualified intermediary's chapter 3 withholding rate pools and each of the qualified intermediary's chapter 4 withholding rate pools to the extent provided in the agreement described in (e)(5)(iii) of this section.

(2) *Withholding rate pool requirements for a withholdable payment.* This paragraph (e)(5)(v)(C)(2) modifies the requirements of a withholding statement described in paragraph (e)(5)(v)(C)(1) provided by a qualified intermediary with respect to a withholdable payment (including a reportable amount that is a withholdable payment). For such a payment, the regulations applicable to a withholding statement described in paragraph (e)(5)(v)(C)(1) of this section shall apply, except that—

(i) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to recalcitrant account holders and nonparticipating FFIs (to the extent permitted) in lieu of reporting chapter 3 withholding rate pools with respect to such persons as de-

scribed in paragraph (e)(5)(v)(C)(1) of this section); or

(ii) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to nonparticipating FFIs.

(3) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W-9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary agreement, and a separate withholding rate pool (subject to 28-percent withholding, or other applicable statutory back-up withholding tax rate) that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W-9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(3), the qualified intermediary must provide the information required by its qualified intermediary agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary's withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Internal Revenue Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(3), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accor-

dance with the appropriate Form 1099 and the instructions accompanying the form.

(D) *Example.* The following example illustrates the application of paragraph (e)(5)(v)(C) for a qualified intermediary providing chapter 4 withholding rate pools on an FFI withholding statement provided to a withholding agent. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an FFI and a non-U.S. payor (as defined in § 1.6049-5(c)(5)), and A and B are account holders of QI (as defined under § 1.1471-5(a)) and are both U.S. non-exempt recipients (as defined paragraph (c)(21) of this section). Ten percent of the payment is attributable to both A and B. A has provided WA with a Form W-9, but B has not provided WA with a Form W-9. QI assumes primary withholding responsibility under chapters 3 and 4 with respect to the payment, 80-percent of which is allocable to foreign payees who are account holders other than A and B. As a participating FFI, QI is required to report with respect to its U.S. accounts under § 1.1471-4(d) (as incorporated into the agreement described in paragraph (e)(5)(iii) of this section). Provided that QI reports A's account as a U.S. account under the requirements referenced in the preceding sentence, QI is not required to provide WA with a Form W-9 from A and may instead include A in a chapter 4 withholding rate pool of U.S. payees, allocating 10% of the payment to this pool. See § 1.6049-4(c)(4)(iii) concerning when reporting under section 6049 for a payment of interest is not required when an FFI that is a non-U.S. payor reports an account holder receiving the payment under its chapter 4 requirements. With respect to B, the interest payment is subject to backup withholding under section 3406. Because B is a recalcitrant account holder of QI for withholdable payments and because QI assumes primary chapter 4 withholding responsibility, however, QI may include the portion of the payment allocated to B with the remaining 80% of the payment for which QI assumes primary withholding responsibility. WA can reliably associate the full amount of the payment based on the withholding statement and does so regardless of whether WA knows B is a U.S. non-exempt recipient that is receiving a portion of the payment. See § 31.3406(g)-1(e) (providing exemption to backup withholding when withholding was applied under chapter 4).

(f) [Reserved]. For further guidance, see § 1.1441-1(f)(1) and (2).

(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 6. Section 1.1441-3 is amended by revising paragraphs (a), (c)(4)(i), and (d) and adding paragraph (j) to read as follows:

§ 1.1441-3 Determination of amounts to be withheld.

(a) [Reserved]. For further guidance, see § 1.1441-3T(a).

* * * * *

(c) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1441-3T(c)(4)(i).

* * * * *

(d) [Reserved]. For further guidance, see § 1.1441-3T(d).

* * * * *

(j) [Reserved]. For further guidance, see § 1.1441-3T(j).

Par. 7. Section 1.1441-3T is added to read as follows:

§ 1.1441-3T Determination of amounts to be withheld (temporary).

(a) *General rule*—(1) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441-1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441-4(b)(6).

(2) *Coordination with chapter 4.* A withholding agent making a payment that is both a withholdable payment and an amount subject to withholding under § 1.1441-2(a) and that has withheld tax as required under chapter 4 from such payment, is not an amount required to be withheld under this section notwithstanding paragraph (a) (1) of this section. See § 1.1474-6(b)(1) for the allowance for a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and see § 1.1474-6(b)(1) for the rule allowing a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and § 1.1474-6(b)(2) for when such withholding is considered applied by a withholding agent. If the withholdable payment is not required to be withheld upon under chapter 4, then the withholding agent must apply the pro-

visions of § 1.1441-1 to determine whether withholding is required under sections 1441, 1442, or 1443.

(b) through (c)(3) [Reserved]. For further guidance, see § 1.1441-3(b) through (c)(3).

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) or other entity that is a qualified investment entity (QIE) under section 897(h)(4) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs and other entities that are QIEs, see paragraph (c)(4)(i)(C) of this section. To the extent withholding under sections 1441, 1442, or 1443 applies under this paragraph (c)(4)(i) to any portion of a distribution that is a withholdable payment, see paragraph (a)(2) for rules coordinating withholding under chapter 4.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 10-percent, unless the applicable treaty specifies an applicable lower rate for distributions from a USR-

PHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(1) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(2) Withhold under section 1445(e)(3) and § 1.1445-5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445-5(e)(3)(iv).

(C) *Coordination with REIT/QIE withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT or other entity that is a QIE that is not designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE that is treated as a capital gain under section 301(c)(3). A distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE is, however, subject to withholding under section 1445, unless the interest in the REIT or QIE is not a U.S. real property interest (e.g., an interest in a domestically controlled REIT or QIE under section 897(h)(2)). In addition, withholding is required under section 1445 on the portion of the distribution designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend to the extent that it is attributable to the sale or exchange of a U.S. real property interest. See § 1.1445-8.

(ii) [Reserved]. For further guidance, see § 1.1441-3(c)(4)(ii).

(d) *Withholding on payments that include an undetermined amount of income—* (1) *In general.* Where the with-

holding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under § 1.1441-1 based on the entire amount paid that is necessary to ensure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that could be from sources within the United States or income subject to tax. See § 1.1471-2(a)(5) for similar rules under chapter 4 that apply to payments made to payees that are entities. The amount so withheld shall not exceed 30 percent of the amount paid. With respect to a payment described in paragraph (d)(1) or (2) 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 income from sources within the United States or the taxable amount can be determined or one year from the date the amount is placed in escrow, at which time the withholding becomes due under § 1.1441-1, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441-2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441-1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441-1(b)(8) regarding adjustments in the case of overwithholding.

(e) through (i) [Reserved]. For further guidance, see § 1.1441-3(e) through (i).

(j) *Effective/applicability date.* (1) Except as otherwise provided in paragraph (g) of this section, this section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(2) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 8. Section 1.1441-4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), and (b)(3) and adding paragraphs (g)(3) and (h) to read as follows:

§ 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441-4T(a)(2)(ii).

* * * * *

(b) * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1441-4T(b)(2)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1441-4T(b)(2)(iii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1441-4T(b)(2)(v).

(3) [Reserved]. For further guidance, see § 1.1441-4T(b)(3).

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see § 1.1441-4T(g)(3).

(h) [Reserved]. For further guidance, see § 1.1441-4T(h).

Par. 9. Section 1.1441-4T is added to read as follows:

§ 1.1441-4T Exemptions from withholding for certain effectively connected income and other amounts (temporary).

(a)(1) through (a)(2)(i) [Reserved]. For further guidance, see § 1.1441-4(a) through (a)(2)(i).

(ii) *Special rules for U.S. branches of foreign persons—*(A) *U.S. branches of*

certain foreign banks or foreign insurance companies. A payment to a U.S. branch described in § 1.1441-1(b)(2)(iv)(B)(3) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate if the withholding agent obtains an EIN for the entity, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441-1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441-1(b)(2)(iv) and (b)(6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441-1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the IRS.

(3) [Reserved]. For further guidance, see § 1.1441-4(a)(3).

(b)(1) [Reserved]. For further guidance, see § 1.1441-4(b)(1).

(2) *Manner of obtaining withholding exemption under tax treaty—(i) In general.* In order to obtain the exemption from withholding by reason of a tax treaty, provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual must submit a withholding certificate (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate withholding certificate must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the withholding certificate shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted withholding certificate is forwarded to the IRS. The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not

notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date with respect to facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

(ii) [Reserved]. For further guidance, see § 1.1441-4(b)(2)(ii).

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233, “Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,” (or successor form) supplied by the nonresident alien individual. Before accepting the statement, the withholding agent must examine the statement. If the withholding agent knows or has reason to know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual’s compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual’s compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the IRS by letter, and the withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the IRS that the eligibility of the individual’s compensation for the exemption is in doubt or that such compen-

sation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph (b)(2) are illustrated by the following examples.

Example 1. C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C’s compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

Example 2. D, a nonresident alien individual, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the Internal Revenue Service that the eligibility of D’s compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

Example 3. E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E’s compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E’s income.

(iv) [Reserved]. For further guidance, see § 1.1441-4(b)(2)(iv).

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the IRS within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441-1 if an agreement is reached between the IRS and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the

agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

(b)(4) through (g)(2) [Reserved]. For further guidance, see § 1.1441-4(b)(4) through (g)(2).

(g)(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 10. Section 1.1441-5 is amended by:

1. Revising paragraph (b)(2)(iii).
2. Adding paragraph (b)(2)(vi).
3. Revising paragraphs (c)(1)(i) introductory text, (c)(1)(i)(C), and (c)(1)(iv).
4. Adding paragraph (c)(1)(v).
5. Revising paragraphs (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i), (c)(3)(ii), (c)(3)(iii)(A), (c)(3)(iv), (c)(3)(v), and (d)(2) through (4).
6. Adding paragraph (e)(3)(iii).
7. Revising paragraphs (e)(5)(i), (e)(5)(ii), (e)(5)(iii)(A), (e)(5)(iv), (e)(5)(v), (e)(6)(ii), and (f).
8. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.1441-5T(b)(2)(iii).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.1441-5T(b)(2)(vi).

(c) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1441-5T(c)(1)(i).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1441-5T(c)(1)(i)(C).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441-5T(c)(1)(iv) and (v).

(2) * * *

(i) through (iii) [Reserved]. For further guidance, see § 1.1441-5T(c)(2)(i) through (c)(2)(iii).

(iv) * * *

(A) and (B) [Reserved]. For further guidance, see § 1.1441-5T(c)(2)(iv)(A) and (B).

* * * * *

(3) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.1441-5T(c)(3)(i) and (ii)

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441-5T(c)(3)(iii)(A).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441-5T(c)(3)(iv) and (v).

(d) * * *

(2) through (4) [Reserved]. For further guidance, see § 1.1441-5T(d)(2) through (d)(4).

(e) * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.1441-5T(e)(3)(iii).

* * * * *

(5) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.1441-5T(e)(5)(i) and (ii).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1441-5T(e)(5)(iii)(A).

* * * * *

(iv) and (v) [Reserved]. For further guidance, see § 1.1441-5T(e)(5)(iv) and (v).

(6) * * *

(ii) [Reserved]. For further guidance, see § 1.1441-5T(e)(6)(ii).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1441-5T(f).

(g) * * *

(3) [Reserved]. For further guidance, see § 1.1441-5T(g)(3).

Par. 11. Section 1.1441-5T is added to read as follows:

§ 1.1441-5T Withholding on payments to partnerships, trusts, and estates (temporary).

(a) through (b)(2)(ii) [Reserved]. For further guidance, see § 1.1441-5(a) through (b)(2)(ii).

(b)(2)(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (see paragraph (b)(2)(ii) of this section) or sections 671 through 679 (see paragraph (b)(2)(iv) of this section) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code (Code) as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is, or is required to be, distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually distributed, the U.S. complex trust must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042-S under § 1.1461-1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

(iv) and (v) [Reserved]. For further guidance, see § 1.1441-5 (b)(2)(iv) and (v).

(vi) *Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.* To the extent that a U.S. partnership is required to withhold on an amount under chapter 4 with respect to a partner, beneficiary or owner, the partnership, trust, or estate must apply the rules described in § 1.1473-1(a)(5) to determine when it must withhold on the

amount under chapter 4. In a case in which withholding applies under chapter 4 to such an amount, see § 1.1441-3(a)(2) to coordinate with withholding that otherwise applies to such an amount under this paragraph (b).

(c) *Foreign partnerships*—(1) *Determination of payee.* (i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) or (iv) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

(A) and (B) [Reserved]. For further guidance, see § 1.1441-5(c)(1)(i)(A) and (B).

(C) If the withholding agent can reliably associate a partner's distributive share of the payment with a qualified intermediary withholding certificate under § 1.1441-1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441-1(e)(3)(iii), or a U.S. branch certificate under § 1.1441-1(e)(3)(v) (including one provided by a territory financial institution), then the rules of § 1.1441-1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary or U.S. branch or territory financial institution;

(c)(1)(i)(D) through (c)(1)(iii) [Reserved]. For further guidance, see § 1.1441-5 (c)(1)(i)(D) through (c)(1)(iii).

(iv) *Coordination with chapter 4 for payments made to foreign partnerships.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign partnership that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473-1(a)(5)(vi) to determine when the payment is treated as made to a partner in the partnership for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign partnership, see § 1.1441-3(a)(2) to coordinate with withholding otherwise required under this paragraph (c) with respect to the amount of the payment included in the gross in-

come of a partner. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee include in the pool, see § 1.1441-1(e)(3)(iv)(C)(2) (substituting the term *nonwithholding foreign partnership* for the term *nonqualified intermediary*).

(v) *Examples.* The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following examples. Each example assumes that all payments are not withholdable payments and thus no withholding applies under chapter 4.

Example 1. FP is a nonwithholding foreign partnership organized in Country X. FP has two partners, FC, a foreign corporation, and USP, a U.S. partnership. USWH, a U.S. withholding agent, makes a payment of U.S. source interest to FP that is not a withholdable payment. FP has provided USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a Form W-9, "Request for Taxpayer Identification Number and Certification," from USP together with the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the payment of interest with the withholding certificates from FC and USP. Under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC and USP.

Example 2. The facts are the same as in *Example 1*, except that FP1, a nonwithholding foreign partnership, is a partner in FP rather than USP. FP1 has two partners, A and B, both foreign persons. FP provides USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a nonwithholding foreign partnership certificate from FP1. In addition, foreign beneficial owner withholding certificates from A and B are associated with the nonwithholding foreign partnership withholding certificate from FP1. FP also provides the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the interest payment with the withholding certificates provided by FC, A, and B. Therefore, under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC, A, and B.

Example 3. USWH makes a payment of U.S. source dividends to WFP, a withholding foreign partnership, that is not a withholdable payment. WFP has two partners, FC1 and FC2, both foreign corporations. USWH can reliably associate the payment with a valid withholding foreign partnership withholding certificate from WFP. Therefore, under paragraph (c)(1)(ii)(A) of this section, WFP is the payee of the interest.

Example 4. USWH makes a payment of U.S. source royalties that is not a withholdable payment to FP, a foreign partnership. USWH can reliably associate the royalties with a valid withholding certificate from FP on which FP certifies that the in-

come is effectively connected with the conduct of a trade or business in the United States. Therefore, under paragraph (c)(1)(ii)(B) of this section, FP is the payee of the royalties.

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section, with respect to distributions and guaranteed payments it makes to its partners. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it will generally not be required to attach such documentation to its withholding foreign partnership withholding certificate to the extent it is permitted to act as a withholding foreign partnership with respect to the payment under its agreement. A foreign partnership may act as a qualified intermediary under § 1.1441-1(e)(5) with respect to payments it makes to persons other than its partners. In addition, the IRS may permit a foreign partnership to act as a qualified intermediary under § 1.1441-1(e)(5)(ii)(D) with respect to its partners in appropriate circumstances.

(ii) *Withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents (and payors as defined in § 1.6049-4(a) under chapters 3, 4, and 61 of the

Code, section 3406, the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. For a partnership that receives withholdable payments on behalf of its partners and that is an FFI, the agreement will require the partnership to assume the requirements of a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1). The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to the withholding foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a withholding foreign partnership to claim refunds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will verify the partnership’s compliance with its agreement, including the requirements for a periodic review of the partnership’s compliance with the agreement and the procedures for the partnership to certify to its compliance with the agreement. A withholding foreign partnership must file a return on Form 1042, “Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,” and information returns on Form 1042–S, “Foreign Person’s U.S. Source Income Subject to Withholding.” The withholding foreign partnership agreement may also require a withholding foreign partnership to file a partnership return under section 6031(a) and partner statements under 6031(b), including for each U.S. partner to the extent required in the agreement. Additionally, a partnership that is an FFI will be required to file Form 8966, “FATCA Report,” to the extent provided in the agreement.

(iii) *Withholding responsibility.* A withholding foreign partnership must as-

sume primary withholding responsibility under both chapters 3 and 4 of the Code. It is not required to provide information to the withholding agent regarding each partner’s distributive share of the payment (including a withholdable payment). The withholding foreign partnership will be responsible for reporting the payments under § 1.1461–1(c), § 1.1474–1(d), and chapter 61 of the Code and filing Form 1042 (to the extent required in the agreement). A withholding agent making a payment to a withholding foreign partnership is not required to withhold any amount under chapters 3 and 4 of the Code on the payment unless it has actual knowledge or reason to know that the foreign partnership is not acting as a withholding foreign partnership with respect to the payment or has not withheld to the extent required. The withholding foreign partnership shall withhold the payments under the same procedures and at the same time as prescribed for withholding by a U.S. partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner’s status, the provisions of paragraph (d)(4) of this section shall apply.

(iv) [Reserved]. For further guidance, see § 1.1441–5(c)(2)(iv).

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number of the partnership, the country under the laws of which the partnership is created or governed, and, for a withholding certificate furnished for a partnership receiving a withholdable payment, the chapter 4 status of the partnership (and GIIN of the partnership, if applicable);

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section, and, for a partnership that is an FFI receiving a withholdable payment, a certification that the partnership is acting as a participating FFI, a registered deemed-compliant FFI, or a nonreporting IGA FFI (as defined in § 1.1471–1(b)(83)); and

(C) [Reserved]. For further guidance, see § 1.1441–5(c)(2)(iv)(C).

(3) *Nonwithholding foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent may treat a person as a nonwithholding

foreign partnership if it receives from that person a nonwithholding foreign partnership withholding certificate as described in paragraph (c)(3)(iii) of this section. A withholding agent that does not receive a nonwithholding foreign partnership withholding certificate, or does not receive a valid withholding certificate, from an entity it knows, or has reason to know, is a foreign partnership, must apply the presumption rules of § 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section. In addition, to the extent a withholding agent cannot, prior to a payment, reliably associate the payment with valid documentation from a payee that is associated with the nonwithholding foreign partnership withholding certificate or has insufficient information to report the payment on Form 1042–S or Form 1099, to the extent reporting is required, the withholding agent must apply the presumption rules. See § 1.1441–1(b)(2)(vii)(A) and (b)(2)(vii)(B) for rules regarding reliable association. See, however, § 1.1441–1(e)(3)(iv)(C)(2) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool (substituting the term nonwithholding foreign partnership for the term nonqualified intermediary). See also § 1.1441–1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees. See paragraph (c)(3)(iv) of this section and § 1.1441–1(e)(3)(iv) for alternative procedures permitting allocation information to be received after a payment is made.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a nonwithholding foreign partnership. To the extent that a withholding agent treats a payment to a nonwithholding foreign partnership as a payment to the nonwithholding foreign partnership’s partners (whether direct or indirect) in accordance with paragraph (c)(1)(i) of this section, it may rely on a claim for reduced withholding by the partner if, prior to the payment, the withholding agent can reliably associate the pay-

ment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from the partner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i), documentary evidence described in § 1.1441-6(c)(3) or (4) or § 1.6049-5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441-1(c)(6)), a Form W-9 described in § 1.1441-1(d) (for a partner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441-3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a payment). Unless a nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of a partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single nonwithholding foreign partnership withholding certificate to which the partners' certificates or other appropriate documentation are associated. Where the nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States under paragraph (c)(3)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

(iii) [Reserved]. For further guidance, see § 1.1441-5(c)(3)(iii).

(A) The name, permanent residence address (as described in § 1.1441-

1(e)(2)(ii)), the employer identification number of the partnership, if any, the country under the laws of which the partnership is created or governed, and the chapter 4 status of the partnership (for a nonwithholding foreign partnership receiving a withholdable payment or providing a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the partnership (if applicable);

(B) through (E) [Reserved]. For further guidance, see § 1.1441-5(c)(3)(iii)(B) through (c)(3)(iii)(E).

(iv) *Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.* The provisions of § 1.1441-1(e)(3)(iv) (regarding a withholding statement) shall apply to a nonwithholding foreign partnership by substituting the term nonwithholding foreign partnership for the term nonqualified intermediary, including when a nonwithholding foreign partnership may provide to a withholding agent a withholding statement that includes a chapter 4 withholding rate pool in lieu of information with respect to each partner that is a payee of a payment.

(v) *Withholding and reporting by a foreign partnership.* A nonwithholding foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding (as defined in § 1.1441-2(a)) shall be required to withhold and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (c)(3)(v). A nonwithholding foreign partnership shall not be required to withhold and report if it has provided a valid nonwithholding foreign partnership withholding certificate, it has provided all of the information required by paragraph (c)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461-1(c). A nonwithholding foreign partnership is also not required to withhold and report under this paragraph (c)(3) to the extent that withholding under chapter 4 was applied to a payment that is includible in the gross income of a partner in the

partnership. See also § 1.1441-3(a)(2) for coordination rules when withholding under chapter 4 has been applied to a withholdable payment. A withholding foreign partnership's obligations to withhold and report shall be determined in accordance with its withholding foreign partnership agreement.

(d)(1) [Reserved]. For further guidance, see § 1.1441-5(d)(1).

(2) *Determination of partnership status as U.S. or foreign in the absence of documentation.* In the absence of a valid representation of U.S. partnership status in accordance with paragraph (b)(1) of this section or of foreign partnership status in accordance with paragraph (c)(2)(i) or (c)(3)(i) of this section, the withholding agent shall determine the classification of the payee under the presumptions set forth in § 1.1441-1(b)(3)(ii). If the withholding agent treats the payee as a partnership under § 1.1441-1(b)(3)(ii), the withholding agent shall apply the presumptions set forth in § 1.1441-1(b)(3)(iii) to determine whether to treat the partnership as a U.S. person or foreign person. For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441-1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If a nonwithholding foreign partnership has provided a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section that would be valid except that the withholding agent cannot reliably associate all or a portion of the payment with valid documentation from a partner of the partnership, then the withholding agent may apply the presumption rule of this paragraph (d)(3) with respect to all or a portion of the payment for which documentation has not been received. See § 1.1441-1(b)(2)(vii)(A) and (B) for rules regarding reliable association. The presumption rule of this paragraph (d)(3) also applies to a person that is presumed to be a foreign partnership under the rule of paragraph (d)(2) of this section. Any portion of a payment that the withholding agent cannot treat as reliably associated with valid documentation from a partner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at

a rate of 30 percent. Any payment that is presumed to be made to an undocumented foreign payee must be reported on Form 1042-S. See § 1.1461-1(c). For a payment described in this paragraph (d)(3) that is a withholdable payment, see § 1.1471-3(f)(5) for the presumption rule for determining the payee's chapter 4 status to determine whether withholding under chapter 4 applies to the payment.

(4) *Determination by a withholding foreign partnership of the status of its partners.* Except as otherwise provided in the agreement described in paragraph (c)(2) of this section, a withholding foreign partnership shall determine whether the partners or some other persons are the payees of the partners' distributive shares of any payment made by a withholding foreign partnership by applying the rules of § 1.1441-1(b)(2), paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership), and paragraph (e)(3) of this section (in the case of a partner that is a foreign estate or a foreign trust). Further, the provisions of paragraph (d)(3) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on a payment, it cannot reliably associate the amount with documentation for any one or more of its partners.

(e)(1) through (e)(3)(ii) [Reserved]. For further guidance, see § 1.1441-5(e)(1) through (e)(3)(ii).

(iii) *Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign simple trust or foreign grantor trust that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473-1(a)(5)(vi) to determine when the payment is treated as made to a beneficiary or owner of the trust for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign simple trust or foreign grantor trust, see § 1.1441-3(a)(2) to coordinate withholding otherwise required under this paragraph (e) with respect to the amount of the payment included in the gross income of the payee of the payment. For when a

withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee include in the pool, see § 1.1441-1(e)(3)(iv)(C)(2) (substituting the term nonwithholding foreign trust for the term nonqualified intermediary).

(4) [Reserved]. For further guidance, see § 1.1441-5(e)(4).

(5) *Foreign simple trust and foreign grantor trust—(i) Reliance on claim of foreign simple trust or foreign grantor trust status.* A withholding agent may treat a person as a foreign simple trust or foreign grantor trust if it receives from that person a foreign simple trust or foreign grantor trust withholding certificate as described in paragraph (e)(5)(iii) of this section. A withholding agent must apply the presumption rules of §§ 1.1441-1(b)(3) and 1.6049-5(d) and paragraphs (d) and (e)(6) of this section to the extent it cannot, prior to the payment, reliably associate a payment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid foreign simple trust or foreign grantor trust withholding certificate, it cannot reliably determine how much of the payment relates to valid documentation provided by a payee (e.g., a person that is not itself a nonqualified intermediary, flow-through entity, or U.S. branch) associated with the foreign simple trust or foreign grantor trust withholding certificate, or it does not have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required. See § 1.1441-1(b)(2)(vii)(A) and (b)(2)(vii)(B). See, however, § 1.1441-1(e)(3)(iv)(C)(2) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in a pool (substituting the term nonwithholding foreign trust for the term nonqualified intermediary). See also § 1.1441-1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees.

(ii) *Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.* This paragraph (e)(5)(ii) describes the manner in which a withholding agent may rely on a claim of reduced

withholding when making a payment to a foreign simple trust or foreign grantor trust. To the extent that a withholding agent treats a payment to a foreign simple trust or foreign grantor trust as a payment to payees other than the trust in accordance with paragraph (e)(3)(i) of this section, it may rely on a claim for reduced withholding by a beneficiary or owner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from a payee or beneficial owner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in § 1.1441-6(c)(3) or (c)(4) or in § 1.6049-5(c)(1) (for a beneficiary or owner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441-1(c)(6)), a Form W-9 described in § 1.1441-1(d) (for a beneficiary or owner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441-3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a withholdable payment). Unless a foreign simple trust or foreign grantor trust withholding certificate is provided for income treated as income effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each payee's portion of the payment. When making a claim for several payees, the trust may present a single foreign simple trust or foreign grantor trust withholding certificate with which the payees' certificates or other appropriate documentation are associated. Where the foreign simple trust or foreign grantor trust withholding certificate is provided for income that is treated as effectively

connected with the conduct of a trade or business in the United States under paragraph (e)(5)(iii)(D) of this section, the claim may be presented without having to identify any beneficiary's or grantor's distributive share of the payment.

(iii) [Reserved]. For further guidance, see § 1.1441-5(e)(5)(iii).

(A) The name, permanent residence address (as described in § 1.1441-1(e)(2)(ii)), the employer identification number, if required, of the trust, the country under the laws of which the trust is created, the chapter 4 status of the trust (for a nonwithholding foreign trust receiving a withholdable payment or providing a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the trust (if applicable);

(B) through (E) [Reserved]. For further guidance, see § 1.1441-5 (e)(5)(iii)(B) through (e)(5)(iii)(E).

(iv) *Withholding statement provided by a foreign simple trust or foreign grantor trust.* The provisions of § 1.1441-1(e)(3)(iv) (regarding a withholding statement) shall apply to a foreign simple trust or foreign grantor trust by substituting the term foreign simple trust or foreign grantor trust for the term nonqualified intermediary, including when a withholding statement provided by a foreign simple trust or foreign grantor trust may include a chapter 4 withholding rate pool in lieu of information with respect to each owner or beneficiary that is a payee of a payment.

(v) *Withholding foreign trusts.* The IRS may enter an agreement with a foreign trust to treat the trust or estate as a withholding foreign trust. Such an agreement shall generally follow the same principles as an agreement with a withholding foreign partnership under paragraph (c)(2)(ii) of this section. A withholding agent may treat a payment to a withholding foreign trust in the same manner the withholding agent would treat a payment (including a withholdable payment) to a withholding foreign partnership. The IRS may also enter an agreement to treat a trust as a qualified intermediary in appropriate circumstances. See § 1.1441-1(e)(5)(ii)(D). For a withholding foreign trust that is an FFI and that receives withholdable payments on behalf of its owners or benefi-

ciaries, the agreement will require the withholding foreign trust to assume the requirements of either a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1).

(6)(i) [Reserved]. For further guidance, see § 1.1441-5(e)(6)(i).

(ii) *Determination of status as U.S. or foreign trust or estate in the absence of documentation.* In the absence of valid documentation that establishes the U.S. status of a trust or estate under paragraph (b)(1) of this section and of documentation that establishes the foreign status of a trust or estate under paragraph (e)(4) or (e)(5)(iii) of this section, the withholding agent shall determine the classification of the payee based upon the presumptions set forth in § 1.1441-1(b)(3)(ii). If, based upon those presumptions, the withholding agent classifies the payee as a trust or estate, the withholding agent shall apply the presumptions set forth in § 1.1441-1(b)(3)(iii) to determine whether the trust or estate is a U.S. person or foreign person. An undocumented payee presumed to be a foreign trust shall be presumed to be a foreign complex trust. If a withholding agent has documentary evidence that establishes that an entity is a foreign trust, but the withholding agent cannot determine whether the foreign trust is a complex trust, a simple trust, or foreign grantor trust, the withholding agent shall presume that the trust is a foreign complex trust. Notwithstanding the preceding sentence, in the case of a foreign trust with a settlor that is a U.S. person and for which a withholding agent has both a U.S. address and TIN, the withholding agent shall presume that the trust is a grantor trust when it cannot determine the status of the trust as a simple trust, complex trust, or grantor trust. See § 1.1471-3(f)(4) and (5) to determine the status of the payee for purposes of chapter 4.

(iii) [Reserved]. For further guidance, see § 1.1441-5(e)(6)(iii).

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441-

1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in § 1.1441-1(b)(3) or in paragraph (d) or (e) of this section. For a payment that is a withholdable payment, see § 1.1471-3(f) for the presumption rule for determining the payee's chapter 4 status.

(g)(1) and (2) [Reserved]. For further guidance, see § 1.1441-5(g)(1) and (2).

(g)(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 12. Section 1.1441-6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iv), (c)(1) and adding paragraph (i)(3) to read as follows:

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

(a) [Reserved]. For further guidance, see § 1.1441-6T(a).

(b)(1) [Reserved]. For further guidance, see § 1.1441-6T(b)(1).

(2)(i) [Reserved]. For further guidance, see § 1.1441-6T(b)(2)(i).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1441-6T(b)(2)(iv).

* * * * *

(c)(1) [Reserved]. For further guidance, see § 1.1441-6T(c)(1).

* * * * *

(i) * * *

(3) [Reserved]. For further guidance, see § 1.1441-6T(i)(3).

Par. 13. Section 1.1441-6T is added to read as follows:

§ 1.1441-6T Claim of reduced withholding under an income tax treaty (temporary).

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect

between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See, however, § 1.1471-2(a) and § 1.1472-1(b) for when withholding at source on a withholdable payment may not be reduced to account for a treaty benefit and the beneficial owner of the payment may need to file a claim for refund to obtain a refund for the overwithheld amount of tax. See also § 1.1441-4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. See section 894 and the regulations under section 894 to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441-1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore obligation, documentary evidence described in paragraphs (c)(3), (c)(4), and (c)(5) of this section. See § 1.6049-5(e) for the definition of payments made outside the United States

and § 1.6049-5(c)(1) for the definition of an offshore obligation. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) and (g) of this section, or the beneficial owner provides its foreign tax identifying number issued by its country of residence and such country has with the United States an income tax treaty or information exchange agreement in effect) and the representations that the beneficial owner derives the income under section 894 and the regulations under section 894, if required, and meets the limitation on benefits provisions of the treaty, if any. The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are incorrect (applying the standards of knowledge in § 1.1441-7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441-1(e)(3)(iv) and 1.1441-5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441-1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441-1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441-1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Payment to fiscally transparent entity*—(i) *In general.* If the person claiming a reduced rate of withholding under an income tax treaty is an interest holder of

an entity that is considered to be fiscally transparent (as defined in the regulations under section 894) by the interest holder's jurisdiction with respect to an item of income, then, with respect to such income derived by that person through the entity, the entity shall be treated as a flow-through entity and may provide a flow-through withholding certificate with which the withholding certificate or other documentary evidence of the interest holder that supports the claim for treaty benefits is associated. In the case of a payment that is a withholdable payment, see, however, § 1.1471-3(c) for determining the payee of the payment and §§ 1.1471-2(a) and 1472-1(b) for when withholding at source may apply to the payment based on the status of the payee notwithstanding a claim for treaty benefits made under this paragraph (b)(2) by an interest holder in the payee. In such a case, the interest holder may file a claim for refund of the overwithheld amount of tax. For purposes of this paragraph (b)(2)(i), interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities with respect to that income by the interest holder's jurisdiction. See § 1.1441-1(c)(23) and (e)(3)(i) for the definition of flow-through entity and flow-through withholding certificate. The entity may provide a beneficial owner withholding certificate, or beneficial owner documentation, with respect to any remaining portion of the income to the extent the entity is receiving income and is not treated as fiscally transparent by its own jurisdiction. Further, the entity may claim a reduced rate of withholding with respect to the portion of a payment for which it is not treated as fiscally transparent if it meets all the requirements to make such a claim and, in the case of treaty benefits, it provides the documentation required by paragraph (b)(1) of this section. If dual claims, as described in paragraph (b)(2)(iii) of this section, are made, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (e.g., portfolio interest) and income for

which a reduction of withholding is claimed under an income tax treaty.

(ii) and (iii) [Reserved]. For further guidance, see § 1.1441–6(b)(2)(ii) and (iii).

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. Each of the following examples describes a payment of U.S. source royalties, which are not withholdable payments under chapter 4. See § 1.1473–1(a)(4)(iii) (describing nonfinancial payments that are not treated as withholdable payments). Thus, withholding under chapter 4 shall not apply with respect to the U.S. source royalties in any of the following examples:

Example 1. (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States. The treaty contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). E furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that E is a resident of country Y (within the meaning of the U.S.-Y tax treaty), is the beneficial owner of the income, derives the income under section 894 and the regulations under section 894, and is not precluded from claiming benefits by the treaty's limitation on benefits provision.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the representations made by E to apply a reduced rate of withholding.

Example 2. (i) *Facts.* The facts are the same as under *Example 1*, except that one of E's interest holders, H, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty applicable to E is 5%. H is not fiscally transparent under country Z's tax law with respect to such income. H furnishes a beneficial owner withholding certificate to E that represents that H derives, within the meaning of section 894 and the regulations under section 894, its share of the royalty income paid to E as a resident of country Z, is the beneficial owner of the royalty income, and is not precluded from claiming treaty benefits by virtue of the limitation on benefits provision in the U.S.-Z treaty. E furnishes to W a flow-through withholding certificate described in § 1.1441–1(e)(3)(i) to which it attaches H's beneficial owner withholding certificate and a withholding statement for the portion of the payment that H claims as its distributive share of the royalty income. E also furnishes to W a beneficial owner withholding certificate for itself for the portion of the payment that H does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the documentation furnished by E to treat the royalty payment to a single foreign entity (E) as derived by different residents of tax treaty countries as a result of the claims

presented under different treaties. W may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that H claims to derive as a resident of country Z and a reduced rate of 5% under the U.S.-Y treaty for the balance. However, under paragraph (b)(2)(iii) of this section, W may, at its option, treat E as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

Example 3. (i) *Facts.* E is a business organization formed under the laws of country X. Country X has an income tax treaty with the United States. E has two interest holders, H1, organized in country Y, and H2, organized in country Z. E receives from W, a U.S. withholding agent, a payment of U.S. source royalties and interest, with respect to an obligation issued before July 1, 2014, that is eligible for the portfolio interest exception under sections 871(h) and 881(c), provided W receives the appropriate beneficial owner statement required under section 871(h)(5). E is classified as a corporation under U.S. tax law principles. Country X, E's country of organization, treats E as an entity that is not fiscally transparent with respect to items of income under the regulations under section 894. Under the U.S.-X income tax treaty, royalties are subject to a 5% rate of withholding. Country Y, H1's country of organization, treats E as fiscally transparent with respect to items of income under section 894 and H1 as not fiscally transparent with respect to items of income. Under the country Y-U.S. income tax treaty, royalties are exempt from U.S. tax. Country Z, H2's country of organization, treats E as not fiscally transparent under section 894 with respect to items of income. E provides W with a flow-through beneficial owner withholding certificate with which it associates a beneficial owner withholding certificate from H1. H1's withholding certificate states that H1 is a resident of country Y, derives the royalty income under section 894, meets the applicable limitations on benefits provisions of the U.S.-Y treaty, and is the beneficial owner of the income. The withholding statement attached to E's flow-through withholding certificate allocates one-half of the royalty payment to H1. E also provides W with a beneficial owner withholding certificate for the interest income and the remaining one-half of the royalty income. The withholding certificate states that E is a resident of country X, derives the royalty income under section 894, meets the limitation on benefits provisions of the U.S.-X treaty, and is the beneficial owner of the income.

(ii) *Analysis.* Absent actual knowledge or reason to know that the claims are incorrect, W may treat one-half of the royalty derived by E as subject to a 5% withholding rate and one-half of the royalty as derived by H1 and subject to no withholding. Further, it may treat all of the interest as being paid to E and as qualifying for the portfolio interest exception. W can, at its option, treat the entire royalty as paid to E and subject it to withholding at a 5% rate of withholding. In that case, H1 would be entitled to claim a refund with respect to its one-half of the royalty.

(3) and (4) [Reserved]. For further guidance, see § 1.1441–6(b)(3) and (4).

(c) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income—(1) General rule.* In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number. In the case of a payment of income not described in paragraph (c)(2) of this section, a withholding agent may rely on a withholding certificate that includes the beneficial owner's foreign taxpayer identifying number described in paragraph (b)(1) of this section instead of the beneficial owner's taxpayer identifying number. In the case of payments of income described in paragraph (c)(2) of this section made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy (microfiche, electronic scan, or similar means of electronic storage) of such documents. With respect to documentary evidence, the withholding agent must also note in its records the date on which the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(2) through (i)(2) [Reserved]. For further guidance, see § 1.1441-6(c)(2) through (i)(2)

(i)(3) *Effective/applicability dates.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000 (except for payments to which paragraph (g) of this section applies, in which case substitute December 31, 2001 for December 31, 2000), and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 14. Section 1.1441-7 is amended by revising paragraphs (b), (c), and (f)(2)(ii) and adding paragraph (h) to read as follows:

§ 1.1441-7 General provisions relating to withholding agents.

* * * * *

(b) [Reserved]. For further guidance, see § 1.1441-7T(b).

(c) [Reserved]. For further guidance, see § 1.1441-7T(c).

* * * * *

(f) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1441-7T(f)(2)(ii).

* * * * *

(h) [Reserved]. For further guidance, see § 1.1441-7T(h).

Par. 15. Section 1.1441-7T is added to read as follows:

§ 1.1441-7T General provisions relating to withholding agents (temporary).

(a) [Reserved]. For further guidance, see § 1.1441-7(a).

(b) *Standards of knowledge—(1) In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is unreliable or incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it

fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or associated with, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are incorrect or unreliable and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441-1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5 (d) and (e), or 1.1441-9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441-1(b)(3)(ix) and (7). In the case of a withholding agent making a withholdable payment to a payee that the withholding agent is required to treat as a foreign entity, see § 1.1471-3(e) for standards of knowledge and § 1.1471-2 and 1.1472-1(b) for withholding that may apply under chapter 4.

(2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of 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 chapter 3 claims made. For an obligation that is a preexisting obligation, a withholding agent will have reason to know that a chapter 3 claim made by the holder of the obligation (account holder) is unreliable or incorrect if

any information contained in its account opening files or other files pertaining to the obligation (account information), including documentation collected for purposes of AML due diligence (as defined under § 1.1471-1(b)(4)), conflicts with the account holder's claim. A withholding agent will not, however, be considered to have reason to know that a person's chapter 3 claim is unreliable or incorrect based on documentation collected for AML due diligence until the date that is 30 days after the obligation is executed (or the account is opened for an obligation that is an account with a financial institution).

(3) *Financial institutions—limits on reason to know—(i) In general.* For purposes of this paragraph (b)(3) and paragraphs (b)(4) through (10) of this section, the terms withholding certificate, documentary evidence, and documentation are defined in § 1.1441-1(c)(16), (17) and (18). Except as otherwise provided in paragraphs (b)(4) through (9) of this section, a withholding agent that is an FFI under § 1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities that maintains an account for a beneficial owner (a direct account holder) has reason to know that documentation provided by the direct account holder is unreliable or incorrect only if one or more of the circumstances described in paragraphs (b)(4) through (9) of this section exist. If a direct account holder has provided documentation that is unreliable or incorrect under the rules of paragraph (b)(4) through (9) of this section, the withholding agent may require new documentation. Alternatively, the withholding agent may rely on the documentation originally provided if the rules of paragraphs (b)(4) through (9) of this section permit such reliance based on additional statements and documentation obtained by the withholding agent from the beneficial owner. Paragraph (b)(10) of this section provides rules regarding reason to know for withholding agents that receive beneficial owner documentation from persons (indirect account holders) that have an account relationship with, or an ownership interest in, a direct account holder of the withholding agent. Paragraph (b)(11) of this section provides limitations on a withholding agent's reason to

know for multiple obligations held by the same person. Paragraph (b)(12) of this section defines a reasonable explanation provided by an individual with respect to the individual's claim of foreign status. For rules regarding reliance on Form W-9, see § 31.3406(g)-3(e)(2) of this chapter. For payments that are withholdable payments, see § 1.1471-3(e)(3) and (4) for additional rules regarding a withholding agent's reason to know with respect to a payee's claim of chapter 4 status and § 1.1471-3(f) for presumption rules that apply when the claim of chapter 4 status is unreliable or incorrect.

(ii) *Limits on reason to know for pre-existing obligations.* With respect to a pre-existing obligation, a withholding agent that has documented the foreign status of the direct account holder for purposes of chapter 3 or chapter 61 before July 1, 2014 may continue to rely on such documentation. If, however, the withholding agent reviews documentation for an individual account holder claiming foreign status that contains a U.S. place of birth (as described in paragraph (b)(5)(ii) of this section) or if the withholding agent is notified of a change in circumstances under the criteria of paragraphs (b)(5) and (8) of this section (as effective on July 1, 2014), the obligation will be treated as having experienced a change in circumstances under § 1.1441-1(e)(4)(ii)(D) as of the date that the withholding agent reviews the documentation or receives the notification, and the withholding agent will then have reason to know that the documentation is unreliable or incorrect. See § 1.1441-1(b)(3)(iv) for the grace period following a changes in circumstances.

(4) *Rules applicable to withholding certificates—(i) In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder 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 direct account holder, the withholding certificate contains any information that is inconsistent with the direct account holder's claim, the withholding agent has account information that is inconsistent with the direct account holder's claim, or the withholding

certificate lacks information necessary to establish entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a treaty country a withholding certificate shall be considered unreliable or inconsistent with an account holder's claims only if it is not reliable under the rules of paragraphs (b)(5) and (6) of this section. 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.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

Example 1. F, a foreign person that has a direct account relationship with USB, a bank that is a U.S. person, provides USB with a beneficial owner withholding certificate for the purpose of claiming a reduced rate of withholding on U.S. source dividends (which is a withholdable payment). F resides in a treaty country that has a limitation on benefits provision in its income tax treaty with the United States. The withholding certificate includes a certification of F's status for chapter 4 purposes to except the payment from withholding under chapter 4, but does not contain a statement regarding limitations on benefits or deriving the income under section 894 as required by § 1.1441-6(b)(1). USB cannot rely on the withholding certificate to grant a reduced rate of withholding for chapter 3 purposes because it is incomplete with respect to the claim made by F.

Example 2. F, a foreign person and entity that has a direct account relationship with USB, a broker that is a U.S. person, provides USB with a withholding certificate for the purpose of claiming the portfolio interest exception under section 881(c) with respect to interest paid on an obligation issued before July 1, 2014. The payment of interest is not a withholdable payment under § 1.1471-2(b) (referring to payments made with respect to grandfathered obligations), and, therefore, withholding does not apply to the payment under chapter 4. See § 1.1441-3(c)(4)(i) for rules coordinating withholding under chapters 3 and 4. F indicates on its withholding certificate, however, that it is a partnership. USB may not treat F as a beneficial owner of the interest for purposes of the portfolio interest exception because F has indicated on its withholding certificate that it is a foreign partnership, and such entity classification is inconsistent with its claim as a beneficial owner.

(5) *Withholding certificate—establishment of foreign status.* A withholding agent has reason to know that a beneficial owner withholding certificate (as defined in § 1.1441-1(e)(2)) provided by a direct account holder is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person as set

forth in paragraphs (b)(5)(i) through (iii) of this section.

(i) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding certificate is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its account information, the withholding certificate has a current permanent residence address (as defined in § 1.1441-1(e)(2)(ii)) 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 direct account holder 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 account holder in the United States and has no telephone number for the account holder outside of the United States. When any of the foregoing indicia are present (U.S. indicia), a withholding agent may nevertheless rely on the beneficial owner withholding certificate to establish the account holder's foreign status if it may do so under the provisions of paragraph (b)(5)(i)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an individual and—

(1) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable explanation, in writing, supporting the claim of foreign status (as defined in paragraph (b)(12) of this section);

(2) For a payment made outside the U.S. with respect to an offshore obligation (as described in § 1.6049-5(c)(1)), the withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in

§ 1.1471-3(c)(5)(i)), that does not contain a U.S. address;

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), 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 a payment 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; or

(4) For a case in which the withholding agent classified the account holder as a U.S. person in its account information, the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States.

(B) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an entity that the withholding agent does not know, or does not have reason to know, is a flow-through entity and—

(1) The withholding agent has in its possession or obtains documentation establishing foreign status (as described in § 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

(2) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 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 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.

(ii) *U.S. place of birth.* A withholding agent has reason to know that a withholding certificate claiming foreign status pro-

vided by a direct account holder that is 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 in its possession or obtains documentary evidence described in § 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.

(iii) *Standing instructions with respect to offshore obligations.* A beneficial owner withholding certificate is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) of a direct account holder that has provided standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or documentary evidence establishing foreign status described in § 1.1471-3(c)(5)(i).

(6) *Withholding certificate—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that a withholding certificate (other than Form W-9) provided by a direct account holder is unreliable or incorrect for purposes of establishing that the account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraphs (b)(6)(i) through (iii) of this section.

(i) *Permanent residence address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the beneficial owner withholding certificate is not in the country whose treaty is invoked, or the direct account holder notifies the withholding agent of a new permanent residence address that is not in the treaty country. A withholding agent may, however, treat a

direct account holder as entitled to a reduced rate of withholding under an income tax treaty if the account holder provides a reasonable explanation for the permanent residence address outside the treaty country (e.g., the address is the address of a branch of the beneficial owner located outside the treaty country in which the entity is a resident) or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) that establishes residency in a treaty country.

(ii) *Mailing address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the withholding certificate is in the applicable treaty country but the withholding certificate contains a mailing address outside the treaty country or the withholding agent has a current mailing address as part of its account information for the direct account holder that is outside the treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude a withholding agent from treating the account holder as a resident of a treaty country if such address is in the treaty country. If a withholding agent has a mailing address (whether or not contained on the withholding certificate) outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if—

(A) The withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(B) The withholding agent has in its possession, or obtains, documentation that establishes that the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);

(C) The withholding agent knows that the address outside the applicable treaty country (other than a P.O. box, or in-care-of address) is a branch of the account

holder that is an entity that is a resident of the applicable treaty country; or

(D) The withholding agent obtains a written statement from the direct account holder that reasonably establishes entitlement to treaty benefits.

(iii) *Standing instructions.* A beneficial owner withholding certificate is unreliable or incorrect to establish entitlement to a reduced rate of withholding under an income tax treaty if the direct account holder has standing instructions to pay amounts directing the withholding agent to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation, in writing, or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) establishing the account holder's residence in the applicable treaty country.

(7) *Documentary evidence.* A withholding agent shall not treat documentary evidence provided by a direct account holder 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 a direct account holder that is a natural person 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 shall not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules of §§ 1.1441-1(b)(3), 1.1441-5(d) and (e)(6), and 1.6049-5(d) if the documentary evidence contains information that is inconsistent with the direct account holder's claim of a reduced rate of withholding, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the documentary evidence lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if a direct account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the direct account holder's status as a foreign person and a resident of a treaty country, but the account holder fails to provide the treaty statements required by

§ 1.1441-6(c)(5), the documentary evidence does not establish the direct account holder's entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a country with which the United States has an income tax treaty, documentary evidence shall be considered unreliable or incorrect only if it is not reliable under the rules of paragraph (b)(8) and (9) of this section.

(8) *Documentary evidence—establishment of foreign status.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing the direct account holder's status as a foreign person if the documentary evidence is described in paragraphs (b)(8)(i), (ii), (iii), or (iv) of this section.

(i) *Documentary evidence received prior to January 1, 2001.* A withholding agent shall not treat documentary evidence provided by a direct account holder before January 1, 2001, as valid for purposes of establishing the account holder's status as a foreign person if it has actual knowledge that the account holder is a U.S. person or if it has a mailing or residence address for the account holder in the United States. If a withholding agent has an address for the direct account holder in the United States, the withholding agent may nevertheless treat the account holder as a foreign person if it can so treat the account holder under the rules of paragraph (b)(8)(ii) of this section. See, however, paragraph (b)(3)(ii) of this section regarding changes in circumstances with respect to preexisting obligations.

(ii) *Documentary evidence received after December 31, 2000.* A withholding agent shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the direct account holder's foreign status if the withholding agent does not have a permanent residence address for the account holder. Documentary evidence is also unreliable or incorrect to establish a direct account holder's status as a foreign person if the withholding agent has classified the account holder as a U.S. person in its account information, if the withholding agent has a current mailing or permanent residence address (whether or not on the documentation) for

the direct account holder in the United States, the direct account holder notifies the withholding agent of a new residence or mailing address in the United States, or if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. Notwithstanding the foregoing, a withholding agent may rely on documentary evidence as establishing the direct account holder's foreign status if it may do so under the provisions of paragraph (b)(8)(ii)(A) or (B) of this section.

(A) *Treatment of individual's foreign status.* A withholding agent may treat a direct account holder that is an individual as a foreign person even if it has any of the U.S. indicia described in paragraph (b)(8)(ii) of this section for the account holder if—

(1) The withholding agent has in its possession or obtains additional documentary evidence supporting the claim of foreign status (described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation in writing supporting the account holder's foreign status;

(2) The withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 and the Form W-8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), 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 a payment 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.

(B) *Presumption of entity's foreign status.* A withholding agent may treat a direct

account holder that is an entity (other than a flow-through entity) as a foreign person even if it has any of the U.S. indicia described in paragraph (b)(8)(ii) of this section for the account holder in the United States if—

(1) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471-3(c)(5)(i)) that substantiates that the entity is actually organized or created under the laws of a foreign country;

(2) The withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 and the Form W-8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 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 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.

(iii) *U.S. place of birth.* A withholding agent has reason to know that documentary evidence provided by a direct account holder to support an individual's foreign status is unreliable or incorrect if the withholding agent has, either on the documentary evidence or as part of its account information, an unambiguous 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 in its possession or obtains 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. Alternatively, a withholding agent may treat the individual as a foreign person if the withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 from the individual that establishes the account holder's foreign status, 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 individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(iv) *Standing instructions with respect to offshore obligations.* Documentary evidence is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) of a direct account holder that has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or a valid beneficial owner withholding certificate claiming foreign status.

(9) *Documentary evidence—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing that a direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraph (b)(9)(i) or (ii) of this section.

(i) *Permanent residence address and mailing address.* Documentary evidence is unreliable or incorrect if the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the withholding agent has no permanent residence address for the account holder. If a withholding agent has a current mailing or current permanent residence address for the direct account holder outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if the withholding agent—

(A) Has in its possession or obtains additional documentary evidence described in § 1.1471-3(c)(5)(i) supporting the direct account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. box, an in-care-of address, or the address of a financial institution);

(B) Has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) that establishes the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(C) Obtains a valid beneficial owner withholding certificate on Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(ii) *Standing instructions.* Documentary evidence is unreliable or incorrect if the direct account holder has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained outside the treaty country unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country, or a valid beneficial owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

(10) *Indirect account holders.* A withholding agent that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) has reason to know that the documentation is unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (b)(10)(i) through (iii).

(i) The withholding agent must review the withholding statement described in § 1.1441-1(e)(3)(iv) and may not rely on information in the statement to the extent the information does not support the

claims made for any payee. For this purpose, a withholding agent may not treat a payee as a foreign person if an address in the United States is provided for such payee and may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for that person is outside the applicable treaty country. Notwithstanding a U.S. address or an address outside a treaty country, the withholding agent may treat a payee as a foreign person or a foreign person as a resident of a treaty country if the withholding statement is accompanied by a valid withholding certificate and documentary evidence (as described in § 1.1471-3(c)(5)(i)) or a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or the foreign person's residency in a treaty country.

(ii) The withholding agent must review each withholding certificate in accordance with the requirements of paragraphs (b)(5) and (6) of this section and verify that the information on the withholding certificate is consistent with the information on the withholding statement required under § 1.1441-1(e)(3)(iv). If there is a discrepancy between the withholding certificate and the withholding statement, the withholding agent may choose to rely on the withholding certificate, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement or apply the presumption rules of §§ 1.1441-1(b), 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f) (for a withholdable payment for chapter 4 purposes) to the payment allocable to the payee who provided the withholding certificate. If the withholding agent chooses to rely upon the withholding certificate, 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 withholding certificate is unreliable or inaccurate.

(iii) The withholding agent must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to deter-

mine that there is no obvious indication that the payee is a U.S. non-exempt recipient or that the documentary evidence does not establish the identity of the person who provided the documentation (e.g., the documentary evidence does not appear to be an identification document).

(11) *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 claim of foreign status for the person is inaccurate based on account information for another obligation held by the person only to the extent that—

(i) 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 account information and payment information for the obligations; or

(ii) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to § 1.1441-1(e)(4)(ix) or for purposes of treating one or more accounts as preexisting obligations.

(12) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting an individual's claim of foreign status for purposes of paragraphs (b)(5) and (8) of this section 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 the requirements of one of paragraphs (b)(12)(i) through (iv) of this section.

(i) The individual certifies that he or she—

(A) Is a student at a U.S. educational institution and holds the appropriate visa;

(B) 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;

(C) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(D) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (b)(12)(i)(A) through (C) of this section;

(ii) 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 (e.g., a written statement indicating the number of days present in the United States during the three-year period that includes the current year);

(iii) 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

(iv) 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.

(13) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (b) of this section to establish an account holder's status as a foreign person or a beneficial owner entitled to a reduced rate of withholding in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Agent—(1) In general.* A withholding agent may authorize an agent to fulfill its obligations under chapter 3 if the requirements of paragraph (c)(2) of this section are satisfied. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting.

(2) *Authorized agent.* An agent is an authorized agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent that clearly provides which obligations under chapter 3 that the agent is authorized to fulfill;

(ii) 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;

(iii) 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 chapters 3, 4, and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent (or for 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 Internal Revenue Code.

(3) *Liability of withholding agent acting through an agent.* An authorized agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. See the instructions to Form 1042-S for the manner for filing the form when an authorized agent acts on behalf of a withholding agent. Except as otherwise provided in the QI, WP, and WT agreements, an authorized agent does not benefit from the special procedures or exceptions that may apply to a qualified intermediary, WP, or WT. A withholding agent acting through an authorized agent is liable for any failure of the agent, such as failure to withhold an amount or make 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. The withholding agent's liability shall exist irrespective of the fact that the authorized agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

(d) through (f)(2)(i) [Reserved]. For further guidance, see § 1.1441-7(d) through (f)(2)(i).

(f)(2)(ii) *Examples.* The following examples illustrate the operation of paragraph (d)(2) of this section. Each example assumes that withholding under chapter 4 does not apply.

Example 1. (i) DS is a U.S. subsidiary of FP, a corporation organized in Country N, a country that does not have an income tax treaty with the United States. FS is a special purpose subsidiary of FP that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. FS is capitalized with \$10,000,000 in debt from BK, a Country N bank, and \$1,000,000 in capital from FS.

(ii) On May 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On July 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for \$10,000,000. DS continues to service the installment notes for FS and C is not notified of the sale of its obligation and continues to make payments to DS. But for the withholding tax on payments of interest by DS to BK, DS would have borrowed directly from BK, pledging the installment notes as collateral.

(iii) The C installment note is a financing transaction, whether held by DS or by FS, and the FS note held by BK also is a financing transaction. After FS purchases the installment note, and during the time the installment note is held by FS, the transactions constitute a financing arrangement, within the meaning of § 1.881-3(a)(2)(i). BK is the financing entity, FS is the intermediate entity, and C is the financed entity. Because the participation of FS in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, FS is a conduit entity.

(iv) Because C does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), C is not required to withhold tax under section 1441. However, DS, who knows that FS's participation in the financing arrangement is pursuant to a tax avoidance plan and is a withholding agent for purposes of section 1441, is not relieved of its withholding responsibilities.

Example 2. Assume the same facts as in *Example 1* except that C receives a new payment booklet on which DS is described as "agent". Although C may deduce that its installment note has been sold, without more C has no reason to know of the existence of a financing arrangement. Accordingly, C is not liable for failure to withhold, although DS still is not relieved of its withholding responsibilities.

Example 3. (i) DC is a U.S. corporation that is in the process of negotiating a loan of \$10,000,000 from BK1, a bank located in Country N, a country that does not have an income tax treaty with the United States. Before the loan agreement is signed, DC's tax lawyers point out that interest on the loan would not be subject to withholding tax if the loan were made by BK2, a subsidiary of BK1 that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. BK1 makes a loan to BK2 to enable BK2 to make the loan to DC. Without the loan from BK1 to BK2, BK2 would not have been able to make the loan to DC.

(ii) The loan from BK1 to BK2 and the loan from BK2 to DC are both financing transactions and together constitute a financing arrangement within the

meaning of § 1.881-3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there is a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC is a party to the tax avoidance plan (and accordingly knows of its existence), DC must withhold tax under section 1441. If DC does not withhold tax on its payment of interest, BK2, a party to the plan and a withholding agent for purposes of section 1441, must withhold tax as required by section 1441.

Example 4. (i) DC is a U.S. corporation that has a long-standing banking relationship with BK2, a U.S. subsidiary of BK1, a bank incorporated in Country N, a country that does not have an income tax treaty with the United States. DC has borrowed amounts of as much as \$75,000,000 from BK2 in the past. On January 1, 1995, DC asks to borrow \$50,000,000 from BK2. BK2 does not have the funds available to make a loan of that size. BK2 considers asking BK1 to enter into a loan with DC but rejects this possibility because of the additional withholding tax that would be incurred. Accordingly, BK2 borrows the necessary amount from BK1 with the intention of on-lending to DC. BK1 does not make the loan directly to DC because of the withholding tax that would apply to payments of interest from DC to BK1. DC does not negotiate with BK1 and has no reason to know that BK1 was the source of the loan.

(ii) The loan from BK2 to DC and the loan from BK1 to BK2 are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881-3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. The participation of BK2 in the financing arrangement reduces the tax imposed by section 881. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), DC is not required to withhold tax under section 1441. However, BK2, who is also a withholding agent under section 1441 and who knows that the financing arrangement is a conduit financing arrangement, is not relieved of its withholding responsibilities.

(3) and (g) [Reserved]. For further guidance, see § 1.1441-7(f)(3) and (g).

(h) *Effective date/Applicability.* Except as otherwise provided in paragraph (f)(3) of this section, this section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 16. Section 1.1461-1 is amended by revising paragraphs (b)(1), (c)(1)(i),

(c)(1)(ii), (c)(2)(ii)(E), (c)(2)(ii)(H), (c)(2)(ii)(I), (c)(3)(i), (c)(3)(iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv), (c)(4)(v), (c)(5), and (i) to read as follows:

§ 1.1461-1 Payments and returns of tax withheld.

* * * * *

(b)(1) [Reserved]. For further guidance, see § 1.1461-1T(b)(1).

* * * * *

(c)(1)(i) and (ii) [Reserved]. For further guidance, see § 1.1461-1T(c)(1)(i) and (ii).

* * * * *

(2) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.1461-1T(c)(2)(ii)(E).

* * * * *

(c)(2)(ii)(H) and (I) [Reserved]. For further guidance, see § 1.1461-1T(c)(2)(ii)(H) and (I).

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1461-1T(c)(3)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1461-1T(c)(3)(iii).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1461-1T(c)(4)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1461-1T(c)(4)(ii)(A).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1461-1T(c)(4)(iv).

(v) [Reserved]. For further guidance, see § 1.1461-1T(c)(4)(v).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1461-1T(c)(5).

* * * * *

(i) [Reserved]. For further guidance, see § 1.1461-1T(i).

Par. 17. Section 1.1461-1T is added to read as follows:

§ 1.1461-1T Payments and returns of tax withheld (temporary).

(a) [Reserved]. For further guidance, see § 1.1461-1(a).

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042-S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011-1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042-S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. See § 1.1474-1(c) for the requirement to show the aggregate chapter 4 reportable amounts and tax withheld on Form 1042. A single Form 1042 may be filed by a withholding agent to report amounts under chapters 3 and 4, including tax withheld. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments 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 statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461-2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) [Reserved]. For further guidance, see § 1.1461-1(b)(2).

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to a payment) must make an information return on Form 1042-S (or such other form as the IRS may prescribe) to report the amounts subject to reporting, as defined in paragraph (c)(2) of this section, that were paid during the preceding

calendar year. Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446-4(a) (applicable to publicly traded partnerships required to pay tax under section 1446 on distributions) must file a Form 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding,” for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446-4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7. A Form 1042-S shall be prepared for each recipient of an amount subject to reporting and for each single type of income payment. The Form 1042-S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042-S shall be filed with the IRS on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042-S and to the transmittal form. Withholding certificates, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. Another 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 (c) or the instructions to the form) on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042-S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042-S relates.

(ii) *Recipient*—(A) *Defined.* For purposes of this section, the term *recipient* means—

(I) A beneficial owner as defined in § 1.1441-1(c)(6), including a foreign estate or a foreign complex trust, as defined in § 1.1441-1(c)(25);

(2) A qualified intermediary as defined in § 1.1441-1(e)(5)(ii);

(3) A withholding foreign partnership as defined in § 1.1441-5(c)(2) or a withholding foreign trust under § 1.1441-5(e)(5)(v);

(4) A territory financial institution treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A);

(5) A U.S. branch that is treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A);

(6) A nonwithholding foreign partnership or a foreign simple trust as defined in § 1.1441-1(c)(24), but only to the extent the income is (or is treated as) effectively connected with the conduct of a trade or business in the United States by such entity;

(7) A payee, as defined in § 1.1441-1(b)(2) that is presumed to be a foreign person under the presumption rules of § 1.1441-1(b)(3); 1.1441-5(d) or (e)(6), or 1.6049-5(d);

(8) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446-4 on distributions of effectively connected income. This paragraph (c)(1)(ii)(A)(8) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7.

(9) A foreign intermediary, nonwithholding foreign partnership or nonwithholding foreign trust that is a participating FFI or registered deemed-compliant FFI with respect to a chapter 4 reporting pool of U.S. payees;

(10) A participating FFI or a registered deemed-compliant FFI that is a recipient of a withholdable payment described in § 1.1474-1(d)(1)(ii)(A)(I)(iii); and

(11) Any other person as required on Form 1042-S or the instructions to the form.

(B) *Persons that are not recipients.* A recipient does not include—

(I) A nonqualified intermediary, except with respect to a payment (or portion of a payment) for which a nonqualified intermediary that is an FFI is a recipient reporting as described in § 1.1474-1(d)(1)(ii)(A)(I)(iii);

(2) A payee included in a chapter 3 or chapter 4 withholding rate pool;

(3) A flow-through entity, as defined in § 1.1441-1(c)(23) (to the extent it is receiving amounts subject to reporting other than income effectively connected with the conduct of a trade or business in the United States), that is not a recipient described in paragraphs (c)(1)(ii)(9) or (c)(1)(ii)(10) of this section; and

(4) A U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) that is not treated as a U.S. person under that section and is not a recipient described in paragraphs (c)(1)(ii)(9) or (c)(1)(ii)(10) of this section.

(C) *Coordination with chapter 4 reporting.* See § 1.1474-1(d)(1)(ii)(A) for persons that are defined as recipients of a withholdable payment of U.S. source FDAP income for purposes of chapter 4 in addition to the persons that are recipients under this paragraph (c)(1)(ii).

(c)(2) introductory text through (c)(2)(ii)(D)[Reserved]. For further guidance, see § 1.1461-1(c)(2) introductory text through (c)(2)(ii)(D).

(A) through (D) [Reserved]. For further guidance, see § 1.1461-1(c)(2)(ii)(A).

(E) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050W and the regulations under those sections;

(F) and (G) [Reserved]. For further guidance, see § 1.1461-1(c)(2)(ii)(F) and (G).

(H) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations issued before January 1, 2016, that are described in § 1.871-14(e)(2) to the extent the documentation requirements described in § 1.871-14(e)(3) and (e)(4) are required to be satisfied (taking into account the provisions of § 1.871-14(e)(4)(ii), if applicable);

(I) Interest on a foreign-targeted bearer obligation (see § 1.1441-1(b)(4)(i) and 1.1441-2(a)) issued before March 19, 2012;

(J) and (K) [Reserved]. For further guidance, see § 1.1461-1(c)(2)(ii)(J) and (K).

(3) [Reserved]. For further guidance, see § 1.1461-1(c)(3).

(i) The name, address, taxpayer identifying number of the withholding agent, and the withholding agent's status for chapter 3 purposes (based on the status codes applicable for chapter 3 purposes provided on the form);

(ii) [Reserved]. For further guidance, see § 1.1461-1(c)(3)(ii).

(iii) For a payment not subject to withholding under chapter 4, the rate of withholding applied or the basis for exempting the payment from withholding under chapter 3, and the exemption applicable to the payment for chapter 4 purposes (based on the exemption codes provided on the form);

(iv) through (ix) [Reserved]. For further guidance, see § 1.1461-1(c)(3)(iv) through (ix).

(4) *Method of reporting—(i) Payments by U.S. withholding agents to recipients.* A withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary as defined in § 1.1441-1(e)(5)(ii) that makes payments of amounts subject to reporting on Form 1042-S must file a separate Form 1042-S for each recipient who receives such amount. For purposes of this paragraph (c)(4), a U.S. person includes a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) that is treated as a U.S. person. Except as may otherwise be required on Form 1042-S or the instructions to the form, only payments for which the income code, exemption code, withholding rate and recipient code are the same may be reported on a single Form 1042-S. See paragraph (c)(4)(ii) of this section for reporting of payments made to a person that is not a recipient. See § 1.1474-1(d)(4) for additional requirements that may apply for reporting on Form 1042-S with respect to a withholdable payment that is a chapter 4 reportable amount.

(A) *Payments to beneficial owners.* If a U.S. withholding agent makes a payment directly to a beneficial owner it must complete Form 1042-S treating the beneficial owner as the recipient. Under the grace period rule of § 1.1441-1(b)(3)(iv), a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent awaits

a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file a Form 1042-S to report all payments on Form 1042-S during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends. In the case of joint owners, a withholding agent may provide a single Form 1042-S made out to the owner whose status the U.S. withholding agent relied upon to determine the applicable rate of withholding. If, however, any one of the owners requests its own Form 1042-S, the withholding agent must furnish a Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners and the tax withheld thereon.

(B) *Payments to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.* A U.S. withholding agent that makes payments to a qualified intermediary (whether or not the qualified intermediary assumes primary withholding responsibility for purposes of chapter 3 and chapter 4 of the Code), a withholding foreign partnership, or a withholding foreign trust shall complete Forms 1042-S treating the qualified intermediary, withholding foreign partnership, or withholding foreign trust as the recipient. The U.S. withholding agent must complete a separate Form 1042-S for each chapter 3 and chapter 4 withholding rate pool with respect to each qualified intermediary. A qualified intermediary that does not assume primary withholding responsibility on all payments it receives provides information regarding the proportions of income subject to a particular withholding rate (that is, a chapter 3 withholding rate pool) to the withholding agent on a withholding statement associated with a qualified intermediary withholding certificate. In such a case, the U.S. withholding agent must complete a separate Form 1042-S for each chapter 3 and chapter 4 withholding rate pool with respect to the qualified intermediary. To the extent a qualified intermediary is required

to report a payment under chapter 61, it may provide a U.S. withholding agent with information regarding withholding rate pools for U.S. non-exempt recipients (as defined under § 1.1441-1(c)(21)). Amounts paid with respect to such withholding rate pools must be reported on a Form 1099 completed for each U.S. non-exempt recipient to the extent such U.S. non-exempt recipient is subject to Form 1099 reporting and is not reported on Form 1042-S. See, however, § 1.1441-1(e)(5)(v)(C) for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees (in lieu of reporting such payees on a withholding statement) and for the withholding rate pools (including chapter 4 withholding rate pools) otherwise reportable on a withholding statement provided by a qualified intermediary.

(C) *Amounts paid to U.S. branches treated as U.S. persons.* A U.S. withholding agent making a payment to a U.S. branch of a foreign person (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) shall complete Form 1042-S as follows—

(1) If the branch has provided the U.S. withholding agent with a withholding certificate that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent files Forms 1042-S treating the U.S. branch or territory financial institution as the recipient;

(2) If the branch has provided the U.S. withholding agent with a withholding certificate that transmits information regarding beneficial owners, qualified intermediaries, withholding foreign partnerships, or other recipients, the U.S. withholding agent must complete a separate Form 1042-S for each recipient whose documentation is associated with the U.S. branch's or territory financial institution's withholding certificate; or

(3) If the U.S. withholding agent cannot reliably associate a payment with a valid withholding certificate from the U.S. branch, it shall treat the U.S. branch as the recipient and report the income as effectively connected with the conduct of a trade or business in the United States except as otherwise provided in § 1.1441-1(b)(2)(iv)(B)(4).

(D) *Dual Claims.* A U.S. withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. See § 1.1441-6(b)(2)(iii). If the claims are consistent and the withholding agent accepts the multiple claims, the withholding agent must file a separate Form 1042-S for those payments for which the entity is treated as the beneficial owner and Forms 1042-S for each of the interest holders in the entity for which the interest holder is treated as the recipient. For those payments for which the interest holder in an entity is treated as the recipient, the U.S. withholding agent shall prepare the Form 1042-S in the same manner as a payment made to a nonqualified intermediary or flow-through entity as set forth in paragraph (c)(4)(ii) of this section. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, the withholding agent must file a separate Form 1042-S for the person or persons it has chosen to treat as the recipients.

(ii) *Payments made by U.S. withholding agents to persons that are not recipients—(A) Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* If a U.S. withholding agent makes a payment to a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person), it must complete a separate Form 1042-S for each recipient to the extent the withholding agent can reliably associate a payment with valid documentation (within the meaning of § 1.1441-1(b)(2)(vii)) from the recipient which is associated with the withholding certificate provided by the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution. See § 1.1474-1(d)(4)(i) for when a withholding agent may report a chapter 4 reportable amount made to such an entity in a chapter 4 withholding rate pool. See also § 1.1441-1(e)(3)(iv)(A) for when a withholding statement provided

by a nonqualified intermediary may include a chapter 4 withholding rate pool of U.S. payees. If a payment is reported by the withholding agent in a chapter 4 withholding rate pool, the withholding agent must report on Form 1042-S the nonqualified intermediary or flow-through entity as a recipient associated with the applicable chapter 4 withholding rate pool. If a payment is made through tiers of nonqualified intermediaries or flow-through entities, the withholding agent must nevertheless complete Form 1042-S for the recipient to the extent it can reliably associate the payment with documentation from the recipient. A withholding agent that is completing a Form 1042-S for a recipient that receives a payment through a nonqualified intermediary, a flow-through entity, or a U.S. branch or territory financial institution must include on the Form 1042-S the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution from which the recipient directly receives the payment. If a U.S. withholding agent cannot reliably associate the payment, or any portion of the payment, with valid documentation from a recipient either because no such documentation has been provided or because the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution has failed to provide sufficient allocation information so that the withholding agent can associate the payment, or any portion thereof, with valid documentation, then the withholding agent must report the payments as made to an unknown recipient in accordance with the appropriate presumption rules for that payment. Thus, if the payment is not a withholdable payment and under the presumption rules the payment is presumed to be made to a foreign person, the withholding agent must generally withhold 30 percent of the payment and report the payment on Form 1042-S made out to an unknown recipient and shall also include the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution that received the payment on behalf of the unknown recipient. If, however, the recipient is presumed to be a U.S. non-exempt recipient (as defined in § 1.1441-1(c)(21)), the withholding agent must withhold on the payment as required

under section 3406 and report the payment as required under chapter 61 of the Internal Revenue Code. See § 1.1474-1(d)(4) for reporting requirements that apply to payments of chapter 4 reportable amounts paid to nonqualified intermediaries and flow-through entities. If, however, the payment is a withholdable payment, the withholding agent must report the payment as made to a chapter 4 withholding rate pool of nonparticipating FFIs in accordance with the presumption rule under § 1.1471-3(f)(5).

(B) [Reserved]. For further guidance, see § 1.1461-1(c)(4)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1461-1(c)(4)(iii).

(iv) *Reporting by a nonqualified intermediary, flow-through entity, and certain U.S. branches.* A nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441-1(e)(2)(iv) (other than a U.S. branch or territory financial institution, that is treated as a U.S. person) is a withholding agent and must file Forms 1042-S for amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042-S will not be required, however, if another withholding agent has reported the same amount for which the nonqualified intermediary, flow-through entity, or U.S. branch would be required to file a return and the entire amount that should be withheld from such payment has been withheld (including withholding and reporting in accordance with the applicable presumption rule for the payment). A nonqualified intermediary, flow-through entity, or U.S. branch must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent together with the information required for that withholding agent to reliably associate the payment with the recipient documentation or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A nonqualified intermediary or flow-through entity that is required to report a payment on Form 1042-S must follow the same rules as apply to a U.S. withholding agent under paragraph (c)(4)(i) and (c)(4)(ii) of this section.

(v) *Pro rata reporting for allocation failures.* If a nonqualified intermediary,

flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution treated as a U.S. person) uses the alternative procedures of § 1.1441-1(e)(3)(iv)(D) and fails to provide information sufficient to allocate the amount subject to reporting paid to a withholding rate pool to the payees identified for that pool, then the withholding agent shall report the payment in accordance with the rule provided in § 1.1441-1(e)(3)(iv)(D)(6).

(vi) [Reserved]. For further guidance, see § 1.1461-1(c)(4)(vi).

(5) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042-S information returns for a taxable year must file Form 1042-S returns on magnetic media. See, however, § 301.1474-1(a) of this chapter for the requirements for a withholding agent that is a financial institution to file Forms 1042-S on magnetic media. See, also, § 301.6011-2 of this chapter for requirements applicable to a withholding agent that files Forms 1042-S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

(d) through (h) [Reserved]. For further guidance, see § 1.1461-1(d) through (h).

(i) *Effective/applicability date.* Unless otherwise provided in this section, this section shall apply to amounts reported under this section beginning for calendar year 2014. (For returns required for payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 18. Section 1.1461-2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

§ 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1461-2T(a)(2)(i).

* * * * *

(4) [Reserved]. For further guidance, see § 1.1461-2T(a)(4).

* * * * *

(d) Effective/applicability date—(1) Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.1461–2T(d)(2).

Par. 19. Section 1.1461–2T is added to read as follows:

§ 1.1461–2T Adjustments for overwithholding or underwithholding of tax (temporary).

(a)(1) [Reserved]. For further guidance, see § 1.1461–2(a)(1).

(2) Reimbursement of tax— (i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax 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. 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 to the beneficial owner or payee occurs before the earlier of the due date (not including extensions) for filing Form 1042–S for the calendar year of overwithholding or the date the Form 1042–S is actually filed with the IRS;

(B) 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; 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) and (3) [Reserved]. For further guidance, see § 1.1461–2(a)(2)(ii) and (3).

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of \$100 to N, at which time C withholds \$30 and remits the balance of \$70 to N. On February 10, 2002, prior to the time that C files its Form 1042 and Form 1042–S with respect to the payment, N furnishes a valid Form W–8 described in § 1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15% under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only \$15 and not \$30 and requests reimbursement of \$15. Although C has already deposited the \$30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C repays N in the amount of \$15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of \$30, an adjusted total tax withheld of \$15, and \$30 previously paid for such year. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of \$15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by \$15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 2002. The Form 1042–S required to be filed by C with respect to the dividend of \$100 paid to N in 2001 is required to show tax withheld under chapter 3 of \$30 and tax repaid to N of \$15.

Example 2. The facts are the same as in *Example 1*. In addition, during 2002, C makes payments to N upon which it is required to withhold \$200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302–2(a)(1)(iii), C deposits the amount of \$185 on July 15, 2002 (\$200 less the \$15 for which credit is claimed on the Form 1042 for 2001). On March 15, 2003, C Corporation files its return on Form 1042 for calendar year 2002, which shows total tax withheld of \$200, \$185 previously deposited by C, and \$15 allowable credit.

Example 3. The facts are the same as in *Example 1*. Under § 1.6302–2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of \$100 between February 8 and February 15, 2002, and deposits \$75 [(\$100×90%) less \$15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing \$10 [(\$100–\$15) less \$75] within 3 banking days after March 15, 2002.

(b) through (d)(1) [Reserved]. For further guidance, see § 1.1461–2(b) through (d)(1).

(2) The provisions of this section apply to payments made after June 30, 2014.

(e) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 20. In § 1.6041–1, paragraphs (d)(5)(i) and (ii) and (j) are revised to read as follows:

§ 1.6041–1 Return of information as to payments of \$600 or more.

* * * * *

(d) * * *

(5) * * *

(i) and (ii) [Reserved]. For further guidance, see § 1.6041–1T(d)(5)(i) and (ii).

* * * * *

(j) *Effective/applicability date.* (1) The provisions of paragraphs (b), (c), (e), and (f) of this section apply to payments made after December 31, 2002. The provisions of paragraphs (a)(1)(iv) and (a)(1)(v) apply to payments made after December 31, 2010.

(2) [Reserved]. For further guidance, see § 1.6041–1T(j)(2).

Par. 21. Section 1.6041–1T is added to read as follows:

§ 1.6041–1T Return of information as to payments of \$600 or more (temporary).

(a) through (d)(5) [Reserved]. For further guidance, see § 1.6041–1(a) through (d)(5).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a non-U.S. payor or a non-U.S. middleman and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)).

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a payor that has no actual knowledge that the payee is a U.S. person and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)), and the payor is—

(d)(5)(ii)(A) through (j)(1) [Reserved]. For further guidance, see § 1.6041–1(d)(5)(ii)(A) through (j)(1).

(2) The provisions of paragraphs (d)(5)(i) and (ii) of this section apply to payments made after June 30, 2014.

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 22. Section 1.6041–4 is amended by revising paragraphs (a)(1) through (3), adding paragraph (a)(7), and revising paragraphs (b) and (d) to read as follows:

§ 1.6041-4 Foreign-related items and other exceptions.

(a) * * *

(1) through (3) [Reserved]. For further guidance, see § 1.6041-4T(a)(1) through (3).

* * * * *

(7) [Reserved]. For further guidance, see § 1.6041-4T(a)(7).

(b) [Reserved]. For further guidance, see § 1.6041-4T(b).

* * * * *

(d) *Effective/applicability date.* (1) The provisions of this section apply to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.6041-4T(d)(2).

Par. 23. Section 1.6041-4T is added to read as follows:

§ 1.6041-4T Foreign-related items and other exceptions (temporary).

(a) [Reserved]. For further guidance, see § 1.6041-4(a).

(1) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). Returns of information are also not required for a payment that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441-1(b) if it obtains from the intermediary or flow-through entity a withholding statement described in § 1.6049-5(b)(14) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) or specific payees to which withholding applies under chapter 4. Payments excepted from reporting under this paragraph (a)(1) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461-1(b) and (c) and, for purposes of chapter 4 of the Code, under § 1.1474-1(d)(2). The provisions in § 1.6049-5(c) regarding documentation of foreign

status shall apply for purposes of this paragraph (a)(1). The provisions in § 1.6049-5(c)(5) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (a)(1). See § 1.1441-1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441-1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049-5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049-4(f)(16).

(3) If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6041-3(q) to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (a)(7) of this section for when reporting under section 6041 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception de-

scribed in this paragraph (a)(3) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441-1(e)(5)(iii).

(4) through (6) [Reserved]. For further guidance, see § 1.6041-4(a)(4) through (6).

(7) Returns of information are not required for payments with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term *a payment subject to reporting under section 6041* for the term *an interest payment*).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However, in the case of a withholdable payment (as defined in § 1.6049-4(f)(15)) made to joint payees, if any joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471-1(b)(82)). See § 1.1471-3(f)(7).

(c) through (d)(1) [Reserved]. For further guidance, see § 1.6041-4(c) through (d)(1).

(2) The provisions of paragraphs (a)(1) through (3), (a)(7), and (b) of this section apply to payments made after June 30, 2014.

(e) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 24. Section 1.6042-2 is amended by revising paragraph (a)(1)(i) and adding paragraph (f) to read as follows:

§ 1.6042-2 Returns of information as to dividends paid.

(a) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.6042-2T(a)(1)(i).

* * * * *

(f) [Reserved]. For further guidance, see § 1.6042-2T(f).

Par. 25. Section 1.6042-2T is added to read as follows:

§ 1.6042-2T Returns of information as to dividends paid (temporary).

(a) [Reserved]. For further guidance, see § 1.6042-2(a).

(1) [Reserved]. For further guidance, see § 1.6042-2(a)(1).

(i) Every person who makes a payment of dividends (as defined in § 1.6042-3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than \$10 or if the payment is made to a person who is an exempt recipient described in § 1.6049-4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W-9), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)-3 of this chapter. Further, a return of information is not required under this section for—

(A) Payments with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term *dividend* for the term *interest*); or

(B) Payments made by a paying agent on behalf of a corporation described in section 1297(a) with respect to a shareholder of the corporation if—

(1) The paying agent obtains from the corporation a written certification signed by an officer of the corporation, that states

that the corporation is described in section 1297(a) for each calendar year during which the paying agent relies on the provisions of paragraph (a)(1)(i)(B) of this section, and the paying agent has no reason to know the written certification is unreliable or incorrect;

(2) The paying agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI (as defined in § 1.6049-4(f)(10) or (14), respectively), or reporting Model 1 FFI (as defined in § 1.6049-4(f)(13)), in accordance with the requirements of § 1.1471-3(d)(4) (substituting the terms *paying agent* and *corporation* for the terms *withholding agent* and *payee*);

(3) The paying agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) with respect to its U.S. accounts and provided the paying agent does not know that the corporation is not reporting the payment as required. A paying agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(4) The paying agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payments.

(ii) through (e) [Reserved]. For further guidance, see § 1.6042-2(a)(1)(ii) through (e).

(f) *Effective/applicability date*. The provisions of paragraphs (a)(1)(i) of this section apply to payments made after June 30, 2014.

(g) *Expiration date*. The applicability of this section expires on February 28, 2017.

Par. 26. In § 1.6042-3 paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(vi), (b)(3), and (b)(5) are revised to read as follows:

§ 1.6042-3 Dividends subject to reporting.

* * * * *

(b) * * *

(1) * * *

(iii) and (iv) [Reserved]. For further guidance, see § 1.6042-3T(b)(1)(iii) and (iv).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.6042-3T(b)(1)(vi).

* * * * *

(3) [Reserved]. For further guidance, see § 1.6042-3T(b)(3).

* * * * *

(5) *Effective/applicability date*—(i) The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) [Reserved]. For further guidance, see § 1.6042-3T(b)(5)(ii).

* * * * *

Par. 27. Section 1.6042-3T is added to read as follows:

§ 1.6042-3T Dividends subject to reporting (temporary).

(a) through (b)(1)(ii) [Reserved]. For further guidance, see § 1.6042-3(a) through (b)(1)(ii).

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). Returns of information are also not required for payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary in accordance with § 1.1441-1(b) if it obtains from the intermediary entity a withholding statement (described in § 1.6049-5(b)(14)) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) or to specific payees to which withholding under chapter 4 applies. Payments excepted from reporting under this paragraph (b)(1)(iii) may be reportable, for purposes of chapter 3 of the Internal

Revenue Code (Code), under § 1.1461–1(b) and (c) or, for chapter 4 purposes, under § 1.1474–1(d)(2). The provisions in § 1.6049–5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (b)(1)(iii). The provisions in § 1.6049–5(c) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (b)(1)(iii). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code.

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) that are paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

(v) [Reserved]. For further guidance, see § 1.6042–3(b)(1)(v).

(vi) If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), or § 1.1441–1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049–4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is a dividend. See, however, § 1.6042–2(a)(1)(i)(A) for when reporting under section 6042 is coordinated with reporting under chapter 4 of the Code

or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception of this paragraph (b)(1)(vi) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441–1(e)(5)(iii).

(vii) through (b)(2) [Reserved]. For further guidance, see § 1.6042–3(b)(1)(vii) through (b)(2).

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)) made to joint payees, if any such joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). See § 1.1471–3(f)(7). For purposes of applying this paragraph (b)(3), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) through (5)(i) [Reserved]. For further guidance, see § 1.6042–3(b)(4) through (b)(5)(i).

(ii) The provisions of paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(vi), and (b)(3) of this section apply to payments made after June 30, 2014.

(c) [Reserved]. For further guidance, see § 1.6042–3(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 28. Section 1.6045–1 is amended by:

1. Revising paragraph (c)(3)(ii) and adding paragraphs (c)(3)(xiv) and (xv).

2. Revising paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) and (5).

The revisions and additions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.6045–1T(c)(3)(ii) through (c)(3)(ii)(B).

* * * * *

(xiv) through (xv) [Reserved]. For further guidance, see § 1.6045–1T(c)(3)(xiv) through (xv).

* * * * *

(g) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.6045–1T(g)(1)(i).

* * * * *

(3) * * *

(iv) [Reserved]. For further guidance, see § 1.6045–1T(g)(3)(iv).

(4) [Reserved]. For further guidance, see § 1.6045–1T(g)(4).

(5) *Effective/applicability date.* (i) The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) [Reserved]. For further guidance, see § 1.6045–1T(g)(5)(ii).

* * * * *

Par. 29. Section 1.6045–1T is amended by revising paragraphs (a) through (k) and adding paragraphs (p) and (q) to read as follows:

§ 1.6045–1T Returns of information of brokers and barter exchanges (temporary).

(a) through (c)(3)(i) [Reserved]. For further guidance, see § 1.6045–1(a) through (c)(3)(i)(C)(2)(iv).

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter); or

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term *a sale subject to reporting under section 6045* for the term *an interest payment*).

(iii) through (xiii) [Reserved]. For further guidance, see § 1.6045-1(c)(3)(iii) through (xiii).

(xiv) *Certain redemptions*. No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by an officer of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of paragraph (c)(3)(xiv) of this section, and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI (as defined in § 1.6049-4(f)(10) or (f)(14), respectively), or reporting Model 1 FFI (as defined in § 1.6049-4(f)(13)), in accordance with the requirements of § 1.1471-3(d)(4) (substituting the terms *stock transfer agent* and *corporation* for the terms *withholding agent* and *payee*);

(C) The stock transfer agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(xv) *Effective/applicability date*. Paragraphs (c)(3)(ii) and (xiv) of this section apply to sales effected on or after July 1, 2014. (For sales effected before July 1, 2014, see paragraph (c)(3)(ii) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(c)(4) through (g)(1) [Reserved]. For further guidance, see § 1.6045-1(c)(4) through (g)(1).

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii), as made to a foreign payee in accordance with § 1.6049-5(d)(1), or presumed to be made to a foreign payee under § 1.6049-5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049-5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The provisions in § 1.6049-5(c) regarding the definitions of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman shall also apply for purposes of this paragraph (g)(1)(i). The provisions of § 1.1441-1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of § 1.6049-5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate

described in § 1.1441-1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under § 1.6049-5(c)(1) or (4).

(ii) through (3)(iii) [Reserved]. For further guidance, see § 1.6045-1(g)(1)(ii) through (g)(3)(iii).

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches*. A foreign intermediary, as defined in § 1.1441-1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049-5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049-5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman, which payment the payor or middleman can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii) or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception of

this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in § 1.1441-1(e)(5)(iii).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049-5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049-5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2*. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049-5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the

United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049-5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441-1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042-S under § 1.1461-1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker,

under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. See § 1.6049-5(c)(5). Under the presumptions described in § 1.6049-5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of § 1.1441-1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under § 1.1441-1(b)(3)(iii)(D) does not apply. See paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in § 1.1471-1(b)(47)) that is exempt from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under § 1.1441-1(b)(3)(iii)(D) does not apply. See § 1.6049-5(d)(2)(i).

Example 8. The facts are the same as in *Example 7*, except that X is a foreign corporation that is not a U.S. payor under § 1.6049-5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049-5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under § 1.6049-5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) introductory text and (5)(i) [Reserved]. For further guidance, see § 1.6045-1(g)(5) introductory text and (g)(5)(i).

(ii) The provisions of paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) of this section apply to payments made on or after July 1, 2014.

(h) through (k) [Reserved]. For further guidance, see § 1.6045-1(h) through (k).

* * * * *

(p) [Reserved]. For further guidance, see § 1.6045-1(p).

(q) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 30. Section 1.6049-4 is amended by:

1. Revising paragraph (b)(1).

2. Adding paragraph (c)(4).
3. Revising paragraphs (f)(3) and (f)(4)(ii).
4. Adding paragraphs (f)(5) through (16) and (h).

The revisions and additions read as follows:

§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.6049-4T(b)(1).

* * * * *

(c) * * *

(4) [Reserved]. For further guidance, see § 1.6049-4T(c)(4).

* * * * *

(f) * * *

(3) [Reserved]. For further guidance, see § 1.6049-4T(f)(3).

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.6049-4T(f)(4)(ii).

(5) through (16) [Reserved]. For further guidance, see § 1.6049-4T(f)(5) through (16)(iv).

* * * * *

(h) [Reserved]. For further guidance, see § 1.6049-4T(h).

Par. 31. Section 1.6049-4T is added to read as follows:

§ 1.6049-4T Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982 (temporary).

(a) [Reserved]. For further guidance, see § 1.6049-4(a).

(b) *Information to be reported*—(1) *Interest payments*. Except as provided in paragraphs (b)(3) and (5) of this section, in the case of interest other than original issue discount treated as interest under § 1.6049-5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An infor-

mation return is generally not required if the amount of interest paid to a person aggregates less than \$10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (that is, exempt recipient) has failed to furnish a Form W-9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)-3 (Employment Tax Regulations). For reporting interest paid to certain nonresident alien individuals, see § 1.6049-8.

(2) through (c)(3) [Reserved]. For further guidance, see § 1.6049-4(b)(2) through (c)(3).

(4) *Coordination of reporting with chapter 4 reporting or an applicable IGA*—(i) *U.S. accounts reported by FFIs that are non-U.S. payors*. An information return shall not be required with respect to an interest payment made by a participating FFI (including a reporting Model 2 FFI), or registered deemed-compliant FFI (including a reporting Model 1 FFI), that is a non-U.S. payor (as defined in § 1.6049-5(c)(5)) to an account holder of an account maintained by the FFI, when the payment is not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406, and the conditions of paragraphs (c)(4)(i)(A) through (C) are met. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(i) to a chapter 4 withholding rate pool of U.S. payees.

(A) The FFI is a participating FFI (including a reporting Model 2 FFI) reporting the account holder of the U.S. account (as defined in § 1.1471-1(b)(133)) pursuant to either § 1.1471-4(d)(3) or (5) for the year in which the payment is made (including reporting of the account holder's TIN).

(B) The FFI is a registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting the account holder of the U.S. account pursuant to the conditions of its applicable deemed-compliant status under § 1.1471-5(f)(1) for the year in which the payment is made (including reporting of the account holder's TIN).

(C) The FFI is a reporting Model 1 FFI reporting the account holder of the reportable U.S. account pursuant to an applicable Model 1 IGA for the year in which the payment is made (including reporting of the account holder's TIN).

(ii) *Other accounts reported by FFIs under chapter 4*. An information return shall not be required under this section with respect to a payment that is not subject to withholding under chapter 3 (as defined in § 1.1441-2(a)) or backup withholding under § 31.3406(g)-1(e) and that is made to a recalcitrant account holder of a participating FFI (or non-consenting U.S. account of a reporting Model 2 FFI), provided that the FFI reports such account holder in accordance with the classes of account holders described in § 1.1471-4(d)(6) for the year in which the payment is made. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(ii) to a chapter 4 withholding rate pool of U.S. payees. In the case of a payment made by an FFI that is a reporting Model 1 FFI, an information return shall not be required with respect to a payment that is not subject to withholding under chapter 3 or backup withholding under § 31.3406(g)-1(e) and that is made to an account holder of the FFI if the account—

(A) Has U.S. indicia for which appropriate documentation sufficient to treat the account as held by other than a specified U.S. person has not been provided pursuant to the due diligence requirements described in an applicable Model 1 IGA and,

(B) Is therefore treated as a U.S. reportable account that the FFI is required to report pursuant to the applicable Model 1 IGA.

(iii) *Coordination of reporting exceptions with reporting of chapter 4 withholding rate pools*. For purposes of paragraphs (c)(4)(i) and (ii) of this section, a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) receiving a payment from another payor may provide a withholding statement to the payor allocating the payment to a chapter 4 withholding rate of pool of U.S. payees only if the payment is excepted from reporting under paragraph (c)(4)(i) of this section or if the payment is

both excepted from reporting under paragraph (c)(4)(ii) of this section and not subject to withholding under chapter 4. See § 1.6049-5(b)(14) (providing an exception from reporting under section 6049 to a payor that has been furnished a withholding statement from an participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and that allocates the payment to a chapter 4 withholding rate pool). Thus, for example, a U.S. payor that is a participating FFI may not allocate a payment to a chapter 4 withholding rate pool of U.S. payees on a withholding statement described in § 1.6049-5(b)(14) when the payment is made to a U.S. account maintained by the FFI, regardless of whether the FFI reports the account in accordance with § 1.1471-4(d)(3) because the U.S. payor is not excepted from reporting under this section pursuant to paragraph (c)(4)(i) of this section.

(iv) *Example.* The application of the provisions of paragraphs (c)(4)(ii) and (iii) of this section may be illustrated by the following example:

Example. USP is a payor that makes an interest payment that is not a withholdable payment (as defined in paragraph (f)(15) of this section) to RM2, a U.S. payor and reporting Model 2 FFI. The payment is paid and received outside of the United States and is not an amount subject to withholding under chapter 3. RM2 receives the payment as an intermediary on behalf of its account holder, A. RM2 has account information with respect to A which includes U.S. indicia as described in § 1.1441-7(b)(5) or (8). Additionally, A does not provide consent for RM2 to report A's account. Under the presumption rules described in § 1.6049-5(d)(2)(i), RM2 is required to treat A as a U.S. non-exempt recipient. Despite this presumption rule, and because backup withholding does not apply under § 31.3406(g)-1(e), no information return shall be required with respect to the payment under paragraph (c)(4)(ii) of this section if A is reported by RM2 consistent with § 1.1471-4(d)(6) as a non-consenting account holder. Additionally, RM2 may include A in the chapter 4 withholding rate pool of U.S. payees on the withholding statement provided to USP consistent with the requirements of paragraph (c)(4)(iii) of this section.

(d) through (f)(2) [Reserved]. For further guidance, see § 1.6049-4(d) through (f)(2).

(3) *Obligation.* The term *obligation* includes bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated. For the definition of the term *offshore obligation*, see paragraph (f)(9) of this section.

(4) and (4)(i) [Reserved]. For further guidance, see § 1.6049-4(f)(4) introductory text and (f)(4)(i).

(ii) *Example.* The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

Example. In January, 1984, Broker B, a U.S. payor, purchases on behalf of its customer, Individual A, an obligation issued by partnership RR in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049-5(f).

(5) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* has the meaning set forth in § 1.1471-1(b)(20). However, for determining the U.S. payees included in a chapter 4 withholding rate pool for purposes of section 6049, see paragraph (c)(4)(iii).

(6) *Foreign financial institution (or FFI).* The term *foreign financial institution or FFI* means an entity described in § 1.1471-1(b)(47),

(7) *Intergovernmental agreement (or IGA).* The term *intergovernmental agreement or IGA* has the meaning set forth in § 1.1471-1(b)(67) (i.e., either a *Model 1 IGA* described in § 1.1471-1(b)(78) or a *Model 2 IGA* described in § 1.1471-1(b)(79)).

(8) *Non-consenting U.S. accounts.* The term *non-consenting U.S. accounts* has the meaning set forth in an applicable Model 2 IGA.

(9) *Offshore obligation.* The term *offshore obligation* means an offshore obligation defined in § 1.6049-5(c)(1). For the definition of the term *obligation*, see paragraph (f)(3) of this section.

(10) *Participating FFI.* The term *participating FFI* means an FFI that is described in § 1.1471-1(b)(91).

(11) *Recalcitrant account holder.* The term *recalcitrant account holder* has the same meaning set forth in § 1.1471-1(b)(110).

(12) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI that is described in § 1.1471-1(b)(111).

(13) *Reporting Model 1 FFI.* The term *reporting Model 1 FFI* means an FFI that is described in § 1.1471-1(b)(114).

(14) *Reporting Model 2 FFI.* The term *reporting Model 2 FFI* means a participat-

ing FFI that is described in § 1.1471-1(b)(91).

(15) *Withholdable payment.* The term *withholdable payment* means a payment described in § 1.1471-1(b)(145).

(16) *Paid and received outside the United States—(i) In general.* Except as otherwise provided in paragraphs (f)(16)(ii) and (iii) of this section, the term *paid and received outside the United States* means an amount that is paid by a payor or middleman outside the United States as described in § 1.6049-5(e).

(ii) *Transfers to the United States.* Without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (f)(16)(ii)(A) or (B) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address (including an amount paid with respect to a bond or a discount obligation described in § 1.6049-5(e)(4)) is not considered to be paid and received outside the United States.

(A) An amount is described in this paragraph (f)(16)(ii)(A) if it is paid by an issuer or the paying agent of the issuer with respect to an obligation that is—

(1) Issued by a U.S. payor, as defined in § 1.6049-5(c)(5);

(2) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(3) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(B) An amount is described in this paragraph (f)(16)(ii)(B) if it is paid by a U.S. middleman (as defined in § 1.6049-5(c)(5)) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(iii) *Deposits or accounts with banks and other financial institutions.* In the case of an amount paid by a bank or other financial institution with respect to a deposit or an account that is considered paid at a branch or office outside the United States as described in § 1.6049-5(e)(2), the amount is not considered paid and received outside the United States if the institution has knowledge that the customer has transmitted instructions to an agent, branch, or office of the institution

from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(iv) *Examples.* The application of the provisions of paragraph (f)(16) of this section may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(c)(5). A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations. FB, a foreign branch of DC, a domestic corporation, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon to FB at its office outside the United States with instructions to transfer funds to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the interest on the FC bonds is paid and received outside the United States under paragraph (f)(16)(ii) of this section and § 1.6049-5(e)(3) because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(d)(1); because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 2. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(d)(1). B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871-14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (f)(16)(ii)(A)(2) of this section. The interest on the FC bonds paid to B by FC is not paid and received outside the United States under paragraph (f)(16) of this section.

Example 3. The facts are the same as in *Example 2* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the interest on the FC bonds paid by DC is not paid and received outside the United States under paragraph (f)(16)(i) of this section.

(g) [Reserved]. For further guidance, see § 1.6049-4(g)..

(h) *Effective/applicability dates.* The provisions of paragraphs (c)(4), (f)(5) through (f)(16) of this section apply to payments made after June 30, 2014.

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 32. Section 1.6049-5 is amended by:

1. Revising paragraphs (b)(6) through (b)(8), (b)(10)(i) through (b)(11)(ii)(A), and (b)(12).

2. Redesignating paragraphs (b)(14) and (15) as (b)(15) and (16), adding new paragraph (b)(14), and revising newly redesignated paragraph (b)(15).

3. Revising (c)(1) through (c)(4), (c)(5)(i)(F), (c)(6), (d)(1) and (2), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), (e), and (g).

The revisions and additions read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982 (temporary).

* * * * *

(b) * * *

(6) through (8) [Reserved]. For further guidance, see § 1.6049-5T(b)(6) through (8).

* * * * *

(10)(i) through (11)(ii)(A) [Reserved]. For further guidance, see § 1.6049-5T(b)(10)(i) through (b)(11)(ii)(A).

* * * * *

(12) [Reserved]. For further guidance, see § 1.6049-5T(b)(12).

* * * * *

(14) and (15) [Reserved]. For further guidance, see § 1.6049-5T(b)(14) and (15).

* * * * *

(c) * * *

(1) through (4) [Reserved]. For further guidance, see § 1.6049-5T(c)(1) through (4).

(5) * * *

(i) * * *

(F) [Reserved]. For further guidance, see § 1.6049-5T(c)(5)(i)(F).

* * * * *

(6) [Reserved]. For further guidance, see § 1.6049-5T(c)(6).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.6049-5T(d)(1)..

(2) * * *

(i) through (iii) [Reserved]. For further guidance, see § 1.6049-5T(d)(2)(i).

(3) * * *

(i) through (iii)(A) [Reserved]. For further guidance, see § 1.6049-5T(d)(3)(i) through (d)(3)(iii)(A).

* * * * *

(4) [Reserved]. For further guidance, see § 1.6049-5T(d)(4).

(e) * * *

(1) through (5) [Reserved]. For further guidance, see § 1.6049-5T(e)

(g) *Effective/applicability date*—(1) The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see § 1.6049-5T(g)(2).

Par. 33. Section 1.6049-5T is redesignated as section 1.6049(d)-5T.

Par. 34. Section 1.6049-5T is added to read as follows:

§ 1.6049-5T Interest and original issue discount subject to reporting after December 31, 1982 (temporary).

(a) through (b)(5) [Reserved]. For further guidance, see § 1.6049-5(a) through (b)(5).

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section) and paid and received outside the United States. See § 1.6049-4(f)(16) for circumstances in which a payment is considered to be paid and received outside the United States.

(7) Portfolio interest, as defined in § 1.871-14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111-147, or section 881(c)(2)(A), as in effect prior to the amendment by section 502 of the HIRE Act, that were issued prior to March 19, 2012, or with respect to a foreign-

targeted registered obligation described in § 1.871-14(e)(2) that was issued prior to January 1, 2016, and for which the documentation requirements described in § 1.871-14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871-14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2) or 881(c)(2) that is not described in paragraph (b)(7) of this section.

(9) [Reserved]. For further guidance, see § 1.6049-5(b)(9).

(10)(i) Amounts paid and received outside the United States under § 1.6049-4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that are paid by a custodian or nominee or other agent of the payee, of amounts that that it receives for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163-5(c)(2)(i)(D)(3)) and is issued in accordance with the procedures of § 1.163-5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United

States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049-4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (f)(2)(B)(ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid and received outside the United States as defined in § 1.6049-4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, and issued in accordance with the procedures of § 1.163-5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B), as in ef-

fect prior to the amendment by section 502 of the HIRE Act, if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163-5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163-5(c)(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(B)(i) and (ii), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(B) of this section.

(B) and (C) [Reserved]. For further guidance, see § 1.6049-5(b)(11)(ii)(B) and (C).

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section. However, such payments may be reportable under § 1.1461-1(b) and (c) or under § 1.1474-1(d)(2) (for a chapter 4 reportable amount (as described in § 1.1471-1(b)(18))). The provisions of § 1.1441-1 shall apply by substituting the term *payor* for the term *withholding agent*

and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441-1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441-1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid on or after January 1, 2013, to a nonresident alien individual to the extent provided in § 1.6049-8.

(13) [Reserved]. For further guidance, see § 1.6049-5(b)(13).

(14) Payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441-1(b) if it obtains from the foreign intermediary or flow-through entity a withholding statement under § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), § 1.1441-1(e)(3)(iv) (describing a withholding statement provided by a non-qualified intermediary), § 1.1441-1(e)(5)(v) (describing a withholding statement provided by a qualified intermediary), or under § 1.1441-5 (describing a withholding statement provided by a foreign partnership, foreign simple trust, or foreign grantor trust), that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool or specific payees to which withholding applies under chapter 4. The provisions of each of the foregoing sections shall apply by substituting the term *payor* for the term *withholding agent*. A payor or middleman may rely on a withholding statement provided by a foreign intermediary or flow-through entity that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049-4(c)(4)(iii)) or recalcitrant account holders (as described in § 1.1471-4(d)(6)) if it identifies the foreign intermediary or flow-through entity that maintains the accounts (as described in § 1.1471-5(b)(5)) included in the chapter 4 withholding rate pool as a participat-

ing FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules in § 1.1471-3(d)(4) for identifying the payee of a payment (by substituting the term *payor* with the term *withholding agent*). A payor or middleman may also rely on a withholding statement provided by a foreign intermediary that identifies a chapter 4 withholding rate pool of U.S. payees or recalcitrant account holders if it identifies the intermediary as a qualified intermediary (as defined in § 1.1441-1(c)(15) by applying the rules described in § 1.1441-1(b)(2)(vii)). See also § 1.6049-4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement furnished to a payor or middleman.

(15) If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049-4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is interest or original issue discount. See, however, § 1.6049-4(c)(4) for when reporting under section 6049 is coordinated with reporting under chapter 4 or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception for payments described in this paragraph (b)(15) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code for the payment under the agreement described in § 1.1441-1(e)(5)(iii).

(16) [Reserved]. For further guidance, see § 1.6049-5(b)(16).

(c) *Applicable rules*—(1) *Documentary evidence for offshore obligations and certain other obligations*—(i) A payor may rely on documentary evidence described in § 1.1471-3(c)(5)(i) instead of a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in § 1.6045-1(c)(2), to the extent provided in § 1.6045-1(g)(1)(i). For purposes of this section, the term *offshore obligation* means—

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in § 1.6049-4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471-5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in § 1.864-4(c)(5)(iii) (substituting the term *obligation* for the term *stock or security*).

(ii) A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor's obligation to report under § 1.6049-4 and this section and noting in its records the date on which the docu-

ment was received and reviewed. Documentary evidence furnished for a payment of an amount subject to withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under § 1.1474-1(d)(2) must contain all of the information that is necessary to complete a Form 1042-S for that payment. See §§ 1.1471-3(c) and 1.1471-4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in § 1.6049-4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in § 1.1441-1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441-1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441-1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441-1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(2) *Other applicable rules.* The provisions of § 1.1441-1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under § 1.1441-1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441-1(b)(2)(vii) for provisions dealing with reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know

that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441-7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W-9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)-3(e) of this chapter (see the information and certification described in § 31.3406(h)-3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W-9). The provisions of § 1.1441-7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441-7(b)(2) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in § 1.1471-1(b)(150)) to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in § 1.1441-1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia de-

scribed in § 1.1471-3(c)(6)(ii)(C)(i). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) *Statement in lieu of documentary evidence with respect to accounts.* If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (c)(4)(i)(A) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also § 1.1471-4(c) or an applicable IGA for additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i)(A) must appear near the signature line and must state, "By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days." Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or § 1.1471-3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph § 1.1471-1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under § 1.1471-3(d) (by substituting the term *payor* for the term *withholding agent*) without any other documentary evidence.

(ii) *Third-party identification.* A payor that is a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI may establish a payee's status based on information provided by a third party credit agency under this paragraph (c)(4) if the conditions described in § 1.1471-4(c)(4)(ii) are satisfied (without regard to whether the payor is a participating FFI).

(iii) *Documentation under IGA.* A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or a certification establishing a payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or § 1.1441-1(e)(2).

(iv) *Maintenance of documentation and written statement.* A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in § 1.1471-1(b)(4)). A payor retains a record of documentary evidence reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in § 1.1441-7(b)(8). Any statement described in paragraph (c)(4)(i)(A) of this section, must be retained in accordance with § 1.1471-3(c)(6)(iii).

(5) through (c)(5)(i)(E) [Reserved]. For further guidance, see § 1.6049-5(c)(5) introductory text through (c)(5)(i)(E).

(F) A U.S. branch or territory financial institution described in § 1.1441-1(b)(2)(iv) that is treated as a U.S. person.

(ii) [Reserved]. For further guidance, see § 1.6049-5(c)(5)(ii).

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public

offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest under paragraph (b)(6) of this section for purposes of information reporting under section 6049 because it is not paid and received outside the United States within the meaning of § 1.6049-4(f)(16).

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W-8 in accordance with the provisions of § 1.1441-1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441-1(e)(1)(ii).

Example 4. The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. The payment by NC to D is paid and received outside of the United States under § 1.6049-4(f)(16) and therefore is not considered to be a payment of interest for purposes of section 6049 pursuant to paragraph (b)(6) of this section. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of §§ 1.1441-1(b)(2), 1.1441-5(c)(1) and (e)(2) and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee (other than a payee included in a chapter 4 withholding rate pool described in paragraph (b)(14) of this section) for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of an amount that is not subject to withholding under chapter 3 of the Code and that is not a withholdable payment (as defined in § 1.6049-4(f)(15)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding

under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441-1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments are as follows:

(i) The provisions of § 1.1441-1(b)(2)(ii), dealing with payments to a U.S. agent or intermediary of a foreign person, shall not apply. Thus, a payment to a U.S. agent or intermediary of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches or territory financial institution described in § 1.1441-1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch or territory financial institution is otherwise treated as a U.S. person for payments of amounts subject to withholding under chapter 3 and withholdable payments, and irrespective of the fact that the branch or territory financial institution is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—

(i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter 61 to which this paragraph (d)(2) applies), the provisions of § 1.1441-1(b)(3)(i) through (ix) and § 1.1441-5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441-1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Code or are withholdable payments. The provisions of § 1.1441-1(b)(3)(iii)(D) and (vii)(B) (referencing presumption rules for payments with respect to offshore obligations) shall not apply to a payment of an amount not subject to withholding under chapter 3, unless it is an amount that is a withholdable payment made to a payee that is an entity. Thus, in

the case of a withholdable payment made to an entity, the presumption rules of § 1.1441-1(b)(3)(iii)(D) and (vii)(B) shall apply regardless of whether the payment is an amount subject to withholding under chapter 3. Additionally, in the case of an amount paid outside the United States with respect to an offshore obligation described in § 1.1441-1(b)(3)(iii)(D) or (vii)(B) of an amount not subject to withholding under chapter 3 and that is treated as made to a payee that is an individual, the presumption rules of § 1.1441-1(b)(3)(iii) shall not apply, and the payee shall be presumed a U.S. person only when the payee has any of the indicia of U.S. status that are described in § 1.1441-7(b)(5) or (8). In a case in which a withholding agent makes a withholdable payment that cannot reliably be associated with documentation, see § 1.1471-3(f)(4) and (5) for determining the status of the payee for chapter 4 purposes when the payment is treated as made to a foreign entity (by applying the term *payor* instead of the term *withholding agent*). The rules of § 1.1441-1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term *withholding agent*. For this purpose, the information, documentary evidence, statement, or other documentation described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441-6(c)(2) (or credits an account with broker proceeds from securities described in § 1.1441-6(c)(2)), that are reportable under sections 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person (and apply the grace period described in § 1.1441-

1(b)(3)(iv)) if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441-1(e)(2), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441-1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W-8 or documentary evidence of foreign status, the payor may apply the provisions of the grace period described in § 1.1441-1(b)(3)(iv), beginning on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441-1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account for purposes of this paragraph (d)(2)(ii) if the account holder already holds an account at the branch location at which the new account is opened, or if the account is treated as a consolidated obligation as defined in § 1.1471-1(b)(23) for purpose of chapter 4 to the extent the account does not receive any amounts subject to withholding under chapter 3. A new account shall also be treated as an existing account for purposes of this paragraph (d)(2)(ii) if an account is held at another branch location if the institution maintains an account information system described in § 1.1441-1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that valid documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 28 percent (or other statutory tax rate that is applicable to backup withholding) of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account, or paid with respect to an account, during

the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)-3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)-3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441-1(e)(4)(iv). See § 1.1092(d)-1 for a definition of the term *actively traded* for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. In the case of an amount that is a withholdable payment made to a joint account, however, see § 1.1471-3(f)(7) for when the payment is treated as made to a foreign payee that is a nonpar-

ticipating FFI (as defined in § 1.1471-1(b)(82)). For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Code or withholdable payments.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§ 1.1441-1(b)(3)(ii)(C) and (b)(3)(v)(A) and 1.1441-5(c) or (e) and that are subject to withholding under § 1.1441-2(a), the provisions of §§ 1.1441-1(b)(2)(v) and 1.1441-5(c)(1), (e)(2), and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with § 1.1441-1(b)(2)(vii), the presumption rules of § 1.1441-1(b)(3)(v) and 1.1441-5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies). In the case of an amount that is a withholdable payment, see § 1.1471-3(c)(3) for rules to identify the payee and see § 1.1471-3(f)(5) for the presumption rule that shall apply to amounts treated as made to a foreign intermediary or flow-through entity (by applying the term *payor* instead of the term *withholding agent*). For example, where a withholdable payment is made to an intermediary under § 1.1471-3 that is treated as a nonparticipating FFI under § 1.1471-3(f)(5), the nonparticipating FFI shall be treated as the payee under § 1.1471-3(c)(3) and for purposes of this paragraph (d)(3)(i), therefore, no information return shall be required under this section.

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Code and that are not withholdable payments.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments that the payor may treat as paid to a foreign intermediary or flow-through en-

tity shall be treated as made to an exempt recipient described in § 1.6049-4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount*—(A) *General rule.* A payment of U.S. source interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441-1(b)(3)(ii)(C), (b)(3)(v)(A), § 1.1441-5(d) or (e) (by substituting the term *payor* for the term *withholding agent*), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049-4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441-1(e)(3)(iv)(C)(2). However, a payor may rely on a withholding statement provided by an intermediary described in § 1.1441-1(e)(3)(iv) (or similar withholding statement for a flow-through entity) that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049-4(c)(4)(iii)) only if it identifies the foreign intermediary or flow-through entity as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under § 1.1471-3(d)(4) (by substituting the term *payor* with the term *withholding agent*). See also § 1.6049-4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement.

(B) [Reserved]. For further guidance, see § 1.6049-5(d)(3)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.6049-5(d)(3)(iv).

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the examples in this paragraph (d)(4). Unless otherwise specified in an example, the following facts apply: all FFIs, such as a nonqualified intermediary that is an FFI, are treated as participating FFIs; all payees have been identified with chapter 4 statuses that do not require withholding under chapter 4; and none of the payments are withholdable payments.

Example 1. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States that is a withholdable payment to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a Form W-9, or withholding certificate from X as defined in § 1.1441-1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049-4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The presumption of U.S. status applies even though the payment is a withholdable payment (see paragraph (d)(2) of this section and § 1.1471-3(f)(2) cross referencing the presumption rules of § 1.1441-1(b)(3)). The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W-9. No withholding or reporting applies to the payment under chapter 3 or 4 of the Code.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441-2(a) or a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441-

1(b)(2) and 1.1441-5(c) and (e) to determine the payee. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of § 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under § 1.6049-5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W-9, the foreign source interest is subject to backup withholding under section 3406.

Example 3. (i) Facts. USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in § 1.1441-1(c)(16) nor does it have documentary evidence as described in § 1.1441-1(e)(1)(ii)(A)(2) and § 1.6049-5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441-1(b)(2) and § 1.1441-5(c) and (e) to determine the payee. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of § 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and § 1.1441-5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under § 1.1441-5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30% of the interest payment under § 1.1441-1(b)(1) and report the payment

on Form 1042-S in accordance with § 1.1461-1(c).

Example 4. (i) Facts. The facts are the same as in *Example 3*, except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3*. F is a withholding agent under § 1.1441-7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

Example 5. (i) Facts. USP is a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI. USP makes a payment outside the United States of interest from sources outside the United States with respect to an offshore obligation held by X. USP does not have a withholding certificate from X as defined in § 1.1441-1(c)(16) nor does it have documentary evidence as described in § 1.1471-3(c)(5)(i) and 1.6049-5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in § 1.6049-4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in § 1.1441-2(a) and is not a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the rules of § 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, § 1.1441-1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of § 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) also states that the presumptions of foreign status for payments made with respect to offshore obligations contained in §§ 1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2) do not apply to amounts that are not subject to withholding and that are not withholdable payments described in paragraph (d)(2)(i). Therefore, under §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits "98." Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under § 31.3406(g)-1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

Example 6. (i) Facts. The facts are the same as in *Example 5*, except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5*. However, F is a non-U.S. payor paying foreign source interest outside the United States, and

there is no indication that the amount is received in the United States under § 1.6049-4(f)(16). Thus, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

Example 7. (i) Facts. USP, a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI, makes a payment of U.S. source interest that is a withholdable payment to NQI, a nonqualified intermediary as defined in § 1.1441-1(c)(14), that is a certified deemed-compliant FFI under § 1.1471-5(f)(2). The interest is paid inside the United States to an account of a bank or other financial institution maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441-1(e)(3)(iii) that includes its chapter 4 status, but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under § 1.1441-2(a). USP may treat the payment as made to a foreign intermediary under § 1.1441-1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI and may except NQI from withholding under chapter 4 of the Code given NQI's status for chapter 4 purposes as a deemed-compliant FFI. Under paragraph (d)(3)(i) of this section, USP must then apply § 1.1471-3(c)(3) to treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of § 1.1441-1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See § 1.1441-1(b)(2)(vii). As the payment is a withholdable payment, the interest is treated as paid to a nonparticipating FFI under § 1.1471-3(f)(4). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section. See § 1.1471-2(a) for the withholding requirement with respect to the payment and § 1.1474-1(d)(2) for the requirement to report the payment on Form 1042-S.

Example 8. (i) Facts. The facts are the same as in *Example 7*, except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section and is not a withholdable payment.

(ii) *Analysis.* Under § 1.1441-1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under § 1.1441-1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under § 1.1441-1(b) at a rate of 30% and is subject to reporting on Form 1042-S under § 1.1461-1(c).

Example 9. (i) Facts. The facts are the same as in *Example 8*, except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 8*.

Example 10. (i) Facts. USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest (other than deposit interest) to NQI, a foreign corporation and a

nonqualified intermediary as defined in § 1.1441-1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441-1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Code and is not a withholdable payment. See §§ 1.1441-2(a) and 1.1473-1(a). Under paragraph (d)(3)(ii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments described in paragraph (d)(2)(i) of this section that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in § 1.6049-4(c) absent actual knowledge that the payee is a U.S. person who is not an exempt recipient. Therefore, the foreign source interest is not subject to reporting on Form 1099.

Example 11. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is a bank. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in § 1.1441-1(c)(14). The redemption proceeds are not paid outside of the United States as they are paid with respect to an account NQI has with a branch of a bank in the United States. See § 1.6049-5(c)(2). NQI provides a nonqualified intermediary withholding certificate as described in § 1.1441-1(e)(3)(iii) that includes a certification of its status as a registered deemed-compliant FFI but does not attach any payee documentation or a withholding statement described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding with respect to offshore obligations contained in § 31.3406(g)-1(e) of this chapter does not apply, and the payment is subject to backup withholding.

Example 12. (i) *Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984 that mature 30 years from their issuance dates. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). Additionally, the interest is not a withholdable payment under § 1.1471-2(b) as the interest is a payment with respect to a grandfathered obligation for purposes of chapter 4 of the Code. NQI, a U.S. payor, is a nonqualified foreign intermediary, as defined in § 1.1441-1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in § 1.1441-1(e)(3)(iii) to which it has attached a valid Form W-9 for A, and two valid beneficial owner Forms W-8, one for B and one for C. A is not an exempt recipient under § 1.6049-4(c). NQI furnishes a withholding statement, described in § 1.1441-1(e)(3)(iv), in which it allocates 20% of the U.S. source interest to A, but does not allocate the remaining 80% of the interest between B and C. B's withholding certificate indicates that B is a foreign

pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* As the interest is not a withholdable payment under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441-1(b)(2)(v) to determine the payees of the interest even though NQI has not certified its status for purposes of chapter 4 of the Code. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20% of the payment with valid documentation provided by A, P must treat 20% of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80% of the payment with valid documentation under § 1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441-1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042-S under § 1.1461-1(c).

Example 13. (i) *Facts.* The facts are the same as in *Example 12*, except that P can reliably associate 30% of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441-1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30% of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70% of the payment with valid documentation under § 1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441-1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042-S under § 1.1461-1(c).

Example 14. (i) *Facts.* The facts are the same as in *Example 12*, except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii), P may treat the foreign source interest as paid to an exempt recipient as defined in § 1.6049-4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

Example 15. (i) *Facts.* The facts are the same as in *Example 12*, except that NQI is a non-U.S. payor.

(ii) *Analysis.* The analysis is the same as under *Example 12* with respect to B and C. However, because NQI is a non-U.S. payor, it may under § 1.6049-4(c)(4)(iii) allocate the portion of the payment to A to a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to P in lieu of furnishing the Form W-9 to P when NQI reports the payments in accordance with § 1.6049-4(c)(4)(i). In such a case, provided that P obtains a certification form confirming NQI's status as a participating FFI, P is excepted from reporting the payment under paragraph (b)(14) of this section because P can reliably associate the payment with the documentation provided by NQI.

(e) *Determination of whether amounts are considered paid outside the United States—(1) In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2) through (5) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864-4(c)(5)(i).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding

paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation issued before January 1, 2016, as described in § 1.871-14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against

a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864-4(c)(5)(i). The terms of C's deposit provide that it will be payable with accrued interest. Under paragraph (e)(2) of this section, FB is considered to pay the interest on C's deposit outside the United States.

Example 3. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864-4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 4. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (e)(2) of this section.

Example 5. DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f), as in effect prior to the amendment by section 502 of the HIRE Act of 2010, and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871-14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

(f) through (g)(1) [Reserved]. For further guidance, see § 1.6049-5(f) through (g)(1).

(2) The provisions of paragraphs (b)(6) through (8), (b)(10)(i) through

(b)(11)(ii)(A), (b)(12), (b)(14) (b)(15), (c)(1) through (c)(4), (c)(5)(i)(F), (c)(6), (d)(1) through (d)(1)(ii), (d)(2)(i) through (iii), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), and (e)(1) through (5) of this section apply to payments made after June 30, 2014.

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 35. The authority citation for part 31 continues to read in part as follows:

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

Par. 36. In § 31.3406(g)-1, paragraph (e) is revised to read as follows:

§ 31.3406(g)-1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) [Reserved]. For further guidance, see § 31.3406(g)-1T(e).

* * * * *

Par. 37. Section 31.3406(g)-1T is added to read as follows:

§ 31.3406(g)-1T Exception for payments to certain payees and certain other payments (temporary).

(a) through (d) [Reserved]. For further guidance, see § 31.3406(g)-1(a) through (d).

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after June 30, 2014, a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States (as defined in § 1.6049-4(f)(16)) with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) or on gross proceeds from a sale effected outside the United States (as defined in § 1.6045-1(g)(3)(iii)), unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for reportable a payment of an amount already withheld upon by a participating FFI (as defined in

§ 1.1471-1(b)(91)) or another payor in accordance with the withholding provisions under chapters 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) of recalcitrant account holders (as described in § 1.6049-4(f)(11)), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471-4(b) or § 1.1471-2(a). For rules applicable to notional principal contracts, see § 1.6041-1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see this paragraph (e) as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(f) [Reserved]. For further guidance, see § 31.3406(g)-1(f) introductory text through (f)(5).

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

Par. 38. In § 31.3406(h)-2, paragraph (a)(3)(i) is revised to read as follows:

§ 31.3406(h)-2 Special rules.

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 31.3406(h)-2T(a)(3)(i).

* * * * *

Par. 39. Section 31.3406(h)-2T is added to read as follows:

§ 31.3406(h)-2T Special rules (temporary).

(a) through (a)(2) [Reserved]. For further guidance, see § 31.3406(h)-2(a) introductory text through (a)(2).

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W-8 or documentary evidence described in § 1.1441-1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions); any one of the joint owners who has not established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5; or, in the case of a withholdable payment (as defined in § 1.6049-4(f)(15)), any joint payee does not appear to be an individual as described in § 1.1471-3(f)(7). See § 1.6049-5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

(a)(3)(ii) through (h) [Reserved]. For further guidance, see § 31.3406(h)-2(a)(3)(ii) through (h).

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 40. The authority citation for part 301 continues to read in part as follows:

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

Par. 41. In § 301.6402-3, paragraphs (e) and (f) are revised to read as follows:

§ 301.6402-3 Special rules applicable to income tax.

* * * * *

(e) [Reserved]. For further guidance, see § 301.6402-3T(e).

(f) *Effective/applicability date.* (1) References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446-3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

(2) [Reserved]. For further guidance, see § 301.6402-3T(f)(ii).

Par. 42. Section 301.6402-3T is added to read as follows:

§ 301.6402-3T Special rules applicable to income tax (temporary).

(a) through (d) [Reserved]. For further guidance, see § 301.6402-3(a) through (d).

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapters 3 or 4 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapters 3 or 4 of the Code, a copy of the Form 1042-S, “Foreign Person’s U.S. Source Income subject to Withholding,” Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax,” or other statement (required under § 1.1446-3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461-1(c)(1)(i), § 1.1474-1(d)(1)(i), or § 1.1446-3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 8805 or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. No claim for refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to reimbursement or set-off procedures (described in § 1.1461-2(a)(2),(3) or § 1.1474-2(a)(3), (4) of this chapter). In addition, no claim for refund or credit may be made by a taxpayer for any amount that has been repaid to a qualified intermediary (as described in § 1.1441-1(e)(5)(ii)) or a participating FFI (as described in § 1.1471-1(b)(91)) pursuant to a collective refund filed by such entity on behalf of the taxpayer. See § 1.1441-1(e)(5)(iii) (describing a qualified intermediary agreement) and § 1.1471-4(h) (describing a collective refund). Upon request, a taxpayer must also submit such documentation as the IRS, may require establishing that the taxpayer is the beneficial owner of the income for which a claim for refund or credit is being made and verifying the grounds and facts set forth in taxpayer’s claim as required by § 301.6402-2(b)(1). See § 1.1474-5 for additional requirements that may apply in the case of a refund of tax withheld under chapter 4.

(f) and (f)(1) [Reserved]. For further guidance, see § 301.6402-3(f) introductory text and (f)(1).

(2) References in paragraph (e) of this section to amounts withheld under chapter 4 of the Code and claims made with respect to amounts withheld under chapter 4

of the Code shall apply to withholdable payments made after June 30, 2014.

(g) *Expiration date.* The applicability of this section expires on February 28, 2017.

John Dalrymple

*Deputy Commissioner for
Services and Enforcement.*

Approved February 14, 2014.

Mark J. Mazur

*Assistant Secretary of the Treasury
(Tax Policy).*

(Filed by the Office of the Federal Register on February 28, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 6, 2014, 79 F.R. 12880)

Section 6055.—Reporting of health insurance coverage

T.D. 9660

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 301, and 602

Information Reporting of Minimum Essential Coverage

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance to providers of minimum essential health coverage that are subject to the information reporting requirements of section 6055 of the Internal Revenue Code (Code), enacted by the Patient Protection and Affordable Care Act. Health insurance issuers, certain employers, and others that provide minimum essential coverage to individuals must report to the IRS information about the type and period of coverage and furnish the information in statements to covered individuals. These final regulations affect health insurance issuers and carriers, employers, governments, and

other persons that provide minimum essential coverage to individuals.

DATES: Effective Date: These regulations are effective on March 10, 2014.

Applicability Dates: For dates of applicability, see §§ 1.6055-1(j) and 1.6055-2(b).

FOR FURTHER INFORMATION CONTACT: Andrew Braden, (202) 317-7006 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2252.

The collection of information in these final regulations is in §§ 1.6055-1 and 1.6055-2. The collection of information will be used to determine whether an individual has minimum essential coverage under section 1501(b) of the Patient Protection and Affordable Care Act (26 U.S.C. 5000A(f)). The collection of information is required to comply with the provisions of sections 5000A and 6055 of the Code. The likely respondents are health insurance issuers and carriers, self-insured employers or other sponsors of self-insured group health plans, and governments that provide minimum essential coverage.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden for the collection of information contained in these final regulations will be reflected in the burden on Form 1095-B or another form that the IRS designates, which will request the information in the final regulations.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 6055 and 6081 and the Procedure and Administration Regulations (26 CFR part 301) under sections 6011, 6721, and 6722, relating to the requirement for providers of minimum essential coverage (as defined in section 5000A(f)) to report to the IRS certain information about individuals covered by minimum essential coverage and to provide a statement to the individuals. Section 6055 was enacted by section 1502 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), which together with the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), is referred to as the Affordable Care Act.

On September 9, 2013, a notice of proposed rulemaking (REG-132455-11) was published in the **Federal Register** (78 FR 54986). Written comments responding to the proposed regulations were received. A public hearing was held on November 19, 2013. The comments are available for public inspection at www.regulations.gov or on request. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. These final regulations also include certain nonsubstantive revisions to increase consistency with final regulations issued under section 6056 (**TD 9661**) contemporaneously with these regulations.

Explanation of Provisions and Summary of Comments

1. Coverage Subject to Reporting

a. Minimum essential coverage

The proposed regulations provided that every person that provides minimum essential coverage to an individual during a calendar year must file an information return and a transmittal on forms prescribed by the IRS. Minimum essential coverage is defined in section 5000A(f) and regulations issued under that section.

Commenters suggested that section 6055 reporting should not be required for an individual who may be exempt from

the individual shared responsibility payment under section 5000A.

Providers of minimum essential coverage, including employers providing coverage under a self-insured group health plan, may not have the information necessary to determine an individual's exempt status under section 5000A. To ensure complete and accurate reporting, the final regulations provide for section 6055 reporting for all covered individuals.

b. Supplemental coverage arrangements

The proposed regulations provided that reporting is not required for arrangements that provide benefits in addition or as a supplement to a health plan or arrangement that constitutes minimum essential coverage. The preamble to the proposed regulations identified health reimbursement arrangements as supplemental coverage to which this rule may apply. In addition, reporting is not required for coverage that is not minimum essential coverage. The preamble to the proposed regulations noted that no reporting is required for health savings accounts, which are not minimum essential coverage.

A commenter asked whether on-site medical clinics are supplemental benefits for which no reporting is required under this rule. Another commenter asked whether reporting is required for an individual who is covered by Medicare Part B but not Medicare Part A.

Under section 9832(c)(1)(G), coverage at on-site medical clinics are excepted benefits. Section 5000A(f)(3) provides that excepted benefits are not minimum essential coverage. Under section 5000A(f)(1)(A)(i), Medicare Part A but not Medicare Part B is minimum essential coverage. Accordingly, section 6055 reporting is not required for coverage at on-site medical clinics or for Medicare Part B.

Commenters asked whether the supplemental coverage rule applies to wellness programs or to self-insured employer-provided retiree coverage that supplements Medicare benefits. Wellness programs that are an element of other minimum essential coverage (such as wellness programs offering reduced premiums or cost-sharing under a group health plan) do not require separate sec-

tion 6055 reporting. The final regulations clarify that minimum essential coverage that supplements a primary plan of the same plan sponsor or that supplements government-sponsored coverage (such as Medicare) are supplemental coverage not subject to reporting.

2. Persons Required to Report

a. Self-insured group health plans

i. Controlled Groups

The proposed regulations provided that the plan sponsor is responsible for reporting under section 6055 for a self-insured group health plan and identified the sponsor and reporting entity for various types of self-insured arrangements. In general, the plan sponsor is the entity that establishes or maintains the plan. The proposed regulations provided that the employer is the plan sponsor for self-insured group health plans established or maintained by a single employer and that each participating employer is the plan sponsor for a plan established or maintained by more than one employer other than a multiple employer welfare arrangement. The proposed regulations also provided that, for purposes of identifying the employer, the section 414 employer aggregation rules do not apply. Thus, under the proposed regulations, a self-insured group health plan or arrangement covering employees of employers in a controlled group was treated as sponsored by more than one employer and each employer was required to report for its employees.

Commenters requested that the final regulations allow, but not require, one entity in a controlled group to report under section 6055 for all members of the group. A commenter noted that only one entity within the group may maintain the plan. Other commenters noted that in some controlled groups each entity may keep its own records but other groups may not track the entity to which an employee belongs.

Most employers that sponsor self-insured group health plans are applicable large employer members required to report under both section 6056 and section 6055. As discussed later in this preamble, the final regulations provide that applica-

ble large employer members that are plan sponsors of self-insured group health plans will file a single information return that combines reporting under sections 6055 and 6056. These entities apply the rules under section 6056 for identifying the reporting entities in a controlled group. As stated in the preamble to the proposed regulations, one member of a controlled group may assist the other members by filing returns and furnishing statements on behalf of all members, thus providing administrative flexibility. However, each employer is treated as a plan sponsor separately liable for timely and correct reporting. Employers in controlled groups that are not applicable large employer members (determined after applying the aggregation rules under § 54.4980H-1(a)(16)), and reporting entities (such as issuers) that are not reporting as employers, may report under section 6055 as separate entities, or one entity may report for the group.

ii. Statutory Employees

A commenter asked that the final regulations clarify that a company may report self-insured group health plan coverage provided to statutory employees, that is, individuals who are not common law employees but are treated as employees under the Code for some purposes. The commenter noted that the employer shared responsibility payment under section 4980H and related information reporting under section 6056 apply to common law and not statutory employees.

Under section 6055, the provider of minimum essential coverage must report for covered individuals. In many cases, the provider is not the employer of the covered individuals. The proposed and final regulations provide that the plan sponsor of a self-insured group health plan reports under section 6055. Accordingly, the plan sponsor reports under section 6055 for individuals covered by the plan, whether or not the individuals are employees.

b. Small Business Health Options Program (SHOP)

In order to reduce the compliance burden on health insurance issuers, the pro-

posed regulations provided that issuers are not required to report under section 6055 on qualified health plans enrolled in through Affordable Insurance Exchanges (Exchanges), also called Marketplaces. Commenters requested that Exchanges also be responsible for section 6055 reporting for coverage obtained through the SHOP.

The final regulations do not require health insurance issuers to report under section 6055 for coverage under individual market qualified health plans purchased through an Exchange because Exchanges must report on this coverage under section 36B(f)(3). Exchanges are not required, however, to report on coverage obtained through the SHOP, therefore issuer reporting of SHOP coverage under section 6055 is necessary.

c. Government employers

Pursuant to section 6055(d), the proposed regulations provided that, in general, a government employer that maintains a self-insured group health plan or arrangement may enter into a written agreement with another governmental unit, or an agency or instrumentality of a governmental unit, designating the other governmental unit, agency, or instrumentality as the person responsible for section 6055 reporting. The proposed regulations reserved the definition of *agency or instrumentality*.

Under the proposed regulations, a government employer included an Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)). A commenter asked whether a wholly-owned tribal entity formed under tribal and federal law is an agency or instrumentality of a governmental unit. The commenter suggested that it is administratively burdensome for an Indian tribal government (ITG) to determine whether a particular entity qualifies as an agency or instrumentality of an ITG under existing authorities, such as Revenue Ruling 57-128 (1957-1 CB 311), see § 601.601(d), relating to employment taxes.

The final regulations continue to reserve on the definition of *agency or instrumentality* for purposes of section 6055. Until future guidance is issued that

defines that term for purposes of section 6055, in determining whether an entity is an agency or instrumentality of a governmental unit, the entity may make that determination based on a reasonable and good faith interpretation of existing rules relating to agency or instrumentality determinations for other federal tax purposes.

d. Government-sponsored programs

The proposed regulations provided that, in general, a health insurance issuer must report under section 6055 for all insured coverage. However, under the proposed regulations the responsible government department or agency and not the issuer was the reporting entity for coverage under a government-sponsored program provided through a health insurance issuer (such as some Medicaid, Children's Health Insurance Program (CHIP), and Medicare programs). A commenter requested that the final regulations specify that this rule applies to the Medicare Advantage program. The final regulations clarify that issuers do not report coverage under the Medicare Advantage program.

3. Information Required to Be Reported

a. Information not required to be reported

Section 6055 calls for the reporting of several data elements that are not required by taxpayers for preparing their tax returns or by the IRS for tax administration. As part of the effort to minimize the cost and simplify the administrative implementation of reporting under section 6055, the proposed regulations did not require reporting these unnecessary items. For example, the proposed regulations did not require reporting the amount of advance payments of the premium tax credit and cost-sharing reductions or the amount of the premium for employer coverage paid by an employer. Several commenters expressed support for these simplifications, and the final regulations retain them.

b. Taxpayer identification numbers (TINs)

i. Requirement to Request TINs

The proposed regulations implemented the statutory requirement that the section 6055 information return include the name and TIN for the primary insured or other related person (such as a parent or spouse) who submits the application for coverage, which the proposed regulations called the responsible individual, and for each covered individual. However, the proposed regulations permitted reporting entities to report a date of birth if a TIN is not available for an individual.

Some commenters advised that they do not currently obtain TINs for individuals enrolled in coverage, particularly for dependents, and asserted that the requirement to obtain TINs is burdensome and unnecessary. Commenters suggested that individuals will be reluctant to provide TINs and that no enforcement mechanism such as backup withholding is available. Some commenters expressed concerns about the risk of misuse of TINs and violations of privacy. Commenters requested, in general, that the final regulations allow reporting entities to report only a date of birth in lieu of a TIN for all individuals, or alternatively to provide a TIN only for an employee or other responsible individual and dates of birth for other covered individuals. Other commenters suggested that TIN reporting should be limited to the reporting under section 111 of the Medicaid, Medicare, and SCHIP Extension Act of 2007 (PL 110-173, 121 Stat. 2492), which requires TIN reporting only for individuals age 45 to 64 with coverage based on employment status.

After consideration of the comments, the final regulations retain the rule in the proposed regulations directing reporting entities to provide TINs for all covered individuals and to provide a date of birth only if a TIN is not available after the reporting entity makes reasonable efforts to obtain it. The purpose of information reporting under section 6055 is for individuals to establish, and the IRS to confirm, that the individuals have minimum essential coverage and are not subject to the section 5000A individual shared re-

sponsibility payment. The information on Form 1040 identifying dependents that can be matched with section 6055 reporting is name and TIN. Because many individuals have the same name, the name and TIN combination enables the IRS to identify that a particular individual has minimum essential coverage.

Individuals have a strong incentive to provide a TIN to the reporting entity if one is available to establish that they have coverage qualifying under section 5000A. Without a TIN to enable the IRS to match coverage reported on the Form 1040 with coverage reported on a section 6055 return, individuals will receive correspondence from the IRS asking them to verify coverage. Accordingly, the final regulations allow section 6055 reporting of dates of birth in lieu of TINs only if the reporting entity is informed that an individual has no TIN or the reporting entity is unable to obtain a TIN after making reasonable efforts, as discussed in more detail later in this preamble. Nothing in these final regulations authorizes a reporting entity to terminate coverage if a TIN is not provided. Reporting a date of birth in one year does not eliminate the need to make reasonable efforts to obtain a TIN.

A commenter suggested that requiring TIN reporting for responsible individuals not enrolled in the coverage reported is unnecessary and inconsistent with the statute, which requires reporting a TIN for the “primary insured” and each other covered individual. Under section 6055(b)(1)(B)(iv), the Secretary may direct the reporting of other information. Reporting of TINs for responsible individuals not enrolled in the coverage is helpful for tax administration because it facilitates matching the coverage of individuals reported under section 6055 with individuals for whom the responsible individual claims a personal exemption deduction. However, in response to the comment, the final regulations provide that reporting TINs for responsible individuals not enrolled in the coverage is optional.

Commenters requested that the final regulations include rules on confidentiality and restricting the use of private information by issuers and employers. A commenter suggested that the final regulations include rules similar to 45 CFR 155.260 and 45 CFR 155.715, which restrict the

use of confidential information by Exchanges. The cited regulations under 45 CFR are issued under the authority of the Department of Health and Human Services (HHS) to oversee and regulate the operation of Exchanges. Because the IRS and Treasury Department lack similar regulatory authority over section 6055 reporting entities, the final regulations do not include rules on confidentiality. However, existing privacy rules, such as those issued by HHS, apply and protect consumers’ information.

To help protect against theft of social security numbers and other TINs, IRS rules permit reporting entities required to furnish certain statements to partially mask the TIN of statement recipients and others reported on an information statement by using a truncated TIN. It is expected that section 6055 reporting entities will be able to truncate the TINs of the responsible individual and covered individuals under these rules. The final regulations clarify that reporting entities are permitted to use truncated TINs on section 6055 statements.

ii. Reasonable Efforts to Obtain TINs

Under section 6724(d), as amended by the Affordable Care Act, a reporting entity that fails to comply with the filing and statement furnishing requirements of section 6055 may be subject to penalties for failure to file a correct information return (section 6721) or failure to furnish a correct payee statement (section 6722). These penalties may be waived if the failure was due to reasonable cause and not willful neglect (section 6724(a)). The preamble to the proposed regulations noted that the section 6721 and 6722 penalties may apply to a section 6055 reporting entity but the penalties may be waived under section 6724 and the related regulations for certain failures due to reasonable cause. The preamble explained that penalties are waived if a reporting entity demonstrates that it acted in a responsible manner and that the failure is due to significant mitigating factors or events beyond the reporting entity’s control. See § 301.6724–1(a)(1).

Some commenters were uncertain about what solicitations are required to satisfy the requirement to act in a respon-

sible manner. In general, under § 301.6724(e) (regarding missing TINs), a person will be treated as acting in a responsible manner if the person properly solicits the TIN but does not receive it. Under these rules, the reporting entity makes an initial solicitation at the time the relationship with the payee is established. However, the reporting entity is not required to make this initial solicitation if it already has the payee’s TIN and uses that TIN for all relationships with the payee. If the reporting entity does not receive the TIN, the first annual solicitation is generally required by December 31 of the year in which the relationship with the payee begins (January 31 of the following year if the relationship begins in December). Generally, if the TIN is still not provided, a second solicitation is required by December 31 of the following year. If a TIN is still not provided, the reporting entity has acted in a responsible manner and need not continue to solicit a TIN.

For example, a reporting entity that makes an unsuccessful initial solicitation for a TIN in December 2015 must make the first annual solicitation by January 31, 2016. The second annual solicitation must be made by December 31, 2016, to have acted in a responsible manner. Assuming that request is also unsuccessful, the reporting entity would not be penalized if its section 6055 reporting submitted in early 2017 reported a date of birth in place of a TIN for the individual in question.

Commenters pointed out that the rules for solicitation in the existing regulations may not adequately address the circumstances surrounding the relationship between a reporting entity and a responsible individual and the covered individuals. Commenters requested that the final regulations provide rules on soliciting TINs specific to section 6055 reporting. For instance, a commenter suggested that a reporting entity should be allowed to certify that it has made reasonable efforts to obtain TINs and that the certification should be reviewed only upon examination, so that reporting entities do not have to respond to IRS notices requesting missing TINs. Commenters also suggested that the final regulations require reporting entities to request information only once or at most twice. Other commenters asked whether certain procedures that are not

addressed in the current section 6724 regulations would satisfy the solicitation requirement, including: (1) Is a reporting entity required to restart the solicitation process if a new individual is added to a policy; (2) does soliciting information from the responsible individual serve as soliciting information from each covered individual on the section 6055 statement; (3) must reporting entities solicit information on a Form W-9, Request for Taxpayer Identification Number and Certification, or may a request for information, for example, an application for insurance coverage serve as the first solicitation; (4) may a reporting entity obtain information from other documents in its possession; and (5) may reporting entities solicit information by email or phone call.

In enacting the Affordable Care Act, Congress added section 6055 reporting to the list of reporting provisions to which the section 6721, 6722, and 6724 penalty provisions apply, indicating that Congress intended that section 6055 reporting should be subject to the same rules in this regard as other information reporting. Regulations and other authorities under those sections already provide detailed rules for compliance, including the rules described above for waiving any penalties for reasonable cause that address some of the commenters questions. For instance, consistent with the rules in § 301.6724-1(e)(1)(i), the reporting entity may make an initial solicitation orally (by phone or in person), in writing (including using an application), or by electronic means such as e-mail. The rules for the manner of making an annual solicitation should apply in the case of section 6055 as well. See, for example, § 301.6724-1(e)(2).

Under § 301.6724-1(e)(1)(i), an initial solicitation is not required if the reporting entity already has the payee's TIN and uses that TIN for all relationships of the payee with the reporting entity. In the case of section 6055 reporting, a reporting entity would likewise not be required to make an initial solicitation if the reporting entity has the TIN or other documents in its possession that it uses for other aspects of its relationship with the covered individual and/or responsible individual. For example, if the reporting entity is also the responsible individual's employer, the reporting entity does not have to make an

initial solicitation for the employee's TIN for purposes of section 6055 reporting and may use the TIN that is used for employment purposes.

The solicitation rules under section 6724 also address situations in which the reporting entity does not have TIN information for account holders. Accounts commonly are maintained jointly. In these situations, the solicitation rules do not require solicitation of the accountholder merely because another person is added to the account. Similarly, although the addition of a new individual to a policy would trigger an obligation to obtain a TIN for the newly added individual, it would not trigger an obligation to solicit a TIN from existing covered individuals (or the responsible person).

Treasury and the IRS recognize that the existing solicitation rules under section 6724 may not address certain circumstances that may arise with respect to reporting under section 6055. Although the final regulations do not revise the regulations under section 6724 to specifically address these circumstances, Treasury and the IRS will continue to study the issue and may provide additional clarification if appropriate through guidance or forms and instructions.

c. Employer identification numbers (EINs)

The proposed regulations required reporting entities to report the name, address, and EIN of the plan sponsor. A health insurance issuer also must report the EIN of an employer maintaining a plan and whether coverage was enrolled in through the SHOP.

The proposed regulations provided that, for a multiemployer group health plan, the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. A commenter asked that the final regulations clarify that the plan sponsor of a multiemployer plan is not required to report the EIN of the participating employers. The proposed and final regulations do not require sponsors of multiemployer plans to report the EINs of the participating employers. The regulations require only health insurance issuers to

report the EIN of the employer sponsoring an insured group health plan.

d. Coverage dates

The proposed regulations provided that section 6055 information returns must provide the months for which an individual is enrolled in and entitled for at least one day to receive benefits under the coverage. Several commenters supported the requirement to report only the months of coverage, while others requested that reporting entities be allowed to report coverage dates instead of months. Section 6055 reporting of coverage on a monthly basis simplifies compliance for individual taxpayers because section 5000A requires that they demonstrate coverage under minimum essential coverage for each month of a taxable year. Accordingly, the final regulations retain the rule in the proposed regulations.

4. Time and Manner of Filing

a. Electronic filing

The proposed regulations provided that any person who is required to file under section 6055 must file electronically if the person is required to file at least 250 returns of any type. The proposed regulations aggregated all returns, including information returns (for example, Forms W-2 and 1099), income tax returns, employment tax returns, and excise tax returns, filed for the calendar year to determine if the 250-return threshold is met. A commenter requested that the final regulations require electronic reporting only if a reporting entity files at least 250 Forms W-2.

A "no aggregation" method of determining whether the 250-return threshold is met is consistent with the application of the rule to other information returns, such as Forms 1099 and W-2, that apply the 250-return threshold separately to each type of return required to be filed. See § 301.6011-2(c)(1). The final regulations adopt this rule. As a result, Forms 1095-B and 1095-C will be required to be electronically filed only if the reporting entity is required to file at least 250 of the specific form. Like transmittals of other information returns, the transmittal (Form

1094–B or 1094–C) is not treated as a separate return but must be electronically filed in the form and manner required by the IRS when the Form 1095 is electronically filed. The final regulations amend § 301.6011–2 to add Forms in the 1094 and 1095 series. Proposed § 301.6011–8 will be removed in a separate document.

b. *Corrected returns*

The proposed regulations provided that the section 6721 and section 6722 penalties for failing to timely report correct information apply to reporting entities under section 6055. Penalties under section 6721 and section 6722 are reduced if a reporting entity files a corrected return within 30 days after the required filing date. Penalties also are reduced, but by a lesser amount, if a reporting entity makes a correction by August 1 following the reporting date. Penalties may be waived under section 6724 if the failure to timely and accurately report is due to reasonable cause and not willful neglect.

A commenter stated that reporting entities should not be required to submit corrected returns if the information included on the return is accurate at the time it is filed. The commenter recommended alternatively that the requirement to file corrected returns should apply for no more than 31 days after the end of the calendar year. Other commenters suggested a cut-off of the corrected return requirement of 30 days past the return filing due date.

Taxpayers require correct information to properly complete and file their income tax returns. The IRS must be able to accurately match information reporting with returns. Individuals are subject to the section 5000A requirement to maintain minimum essential coverage on a month-to-month basis. In the case of section 6055 reporting, a return or statement may be incomplete or incorrect as a result of a change in circumstances occurring after the coverage year has ended. For example, a child born during a month may be enrolled in coverage retroactive to the date of birth, or coverage may be retroactively cancelled due to a failure to pay premiums. Accordingly, consistent with other information reporting rules, the final regulations clarify that reporting entities that

fail to timely file corrected returns and furnish corrected statements when information changes as a result of a change in circumstances have filed returns that are incomplete or incorrect within the meaning of sections 6721 and 6722.

5. *Combined Reporting*

Applicable large employer members that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of both section 6055 and section 6056, as well as the requirement under section 6051 to file Form W–2, Wage and Tax Statement, reporting wages paid to employees and taxes withheld. The proposed regulations did not permit combining section 6055 reporting with reporting for section 6056 or 6051. The proposed regulations allowed the use of substitute forms for the statement to individuals, which might have permitted reporting entities to combine section 6055 and section 6056 reporting for this purpose. The preamble to proposed regulations under section 6056 (78 FR 54986) described a number of proposals to simplify reporting under that section.

Commenters supported allowing combined section 6055 and section 6056 reporting for applicable large employer members sponsoring self-insured plans, suggesting that there is significant duplication in the information reported. Some commenters requested that combined reporting be optional and that employers be permitted to combine reporting for some employees but not others.

In response to these comments, the final regulations provide that applicable large employer members will file a combined return and statement for all reporting under sections 6055 and 6056. An applicable large employer member that sponsors a self-insured plan will report on Form 1095–C, completing both sections to report the information required under sections 6055 and 6056. An applicable large employer member that provides insured coverage also will report on Form 1095–C, but will complete only the section of Form 1095–C that reports the information required under section 6056. Section 6055 reporting entities that are not applicable large employer members or are

not reporting as employers, such as health insurance issuers, sponsors of multiemployer plans, and providers of government-sponsored coverage, will report under section 6055 on Form 1095–B. In accordance with usual procedures, these forms will be made available in draft form in the near future.

6. *Statements Furnished to Individuals*

a. *Deceased recipients*

The proposed regulations provided that a reporting entity must furnish a statement to each responsible individual reporting the policy number and the name, address, and a contact number for the reporting entity, and the information required to be reported to the IRS. A responsible individual is a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

Commenters requested that the final regulations provide that a statement is not required to be furnished to a covered individual who dies during the year. The commenters suggested alternatively that a statement should not be required for an individual who dies during the first three months of a year who would be exempt from the shared responsibility payment under section 5000A because of a short coverage gap.

Under § 1.5000A–1(a), the minimum essential coverage requirement applies only to full months that an individual is alive. However, section 5000A does not provide a general exemption from coverage for the year of death and the coverage gap exception may not apply if the gap began in the previous calendar year. Accordingly, to ensure that minimum essential coverage is properly reflected on a decedent's final income tax return and the estate is not held liable for a section 5000A payment, the final regulations do not provide an exception for a covered individual who dies during the year.

b. *Time for furnishing statements*

Section 6055 and the proposed regulations required a reporting entity to furnish

the statement on or before January 31 of the year following the calendar year in which minimum essential coverage is provided. Commenters requested that the final regulations permit reporting entities to furnish statements within the last quarter of the calendar year of coverage with other material required to be sent at that time. The final regulations do not address furnishing a statement during the coverage year. However, the section 5000A requirement applies to each month during a calendar year, therefore a statement provided early in the last calendar quarter would not report coverage for those months. As a result, furnishing a statement before the end of the year increases the risk of reporting information that changes after the end of the year, potentially subjecting the reporting entity to penalties.

A commenter requested that the final regulations provide procedures for extending the time to furnish the section 6055 statement. Accordingly, in response to this comment, like other information reporting rules, the final regulations include rules allowing reporting entities showing good cause the flexibility to apply for an extension of time not exceeding 30 days to furnish statements.

A commenter requested that reporting entities be allowed to furnish statements reporting employer-sponsored coverage with the employees' Form W-2. Neither the final regulations nor regulations governing the furnishing of Forms W-2 under § 1.6051-1 prohibit mailing a 6055 statement with Form W-2. Accordingly, reporting entities may furnish the Form 1095-B or 1095-C with the Form W-2 in the same mailing.

c. Mailing address

The proposed regulations provided that, if mailed, the statement required under section 6055 must be sent to the individual's last known permanent address or, if no permanent address is known, to the individual's temporary address.

Commenters asked that reporting entities be allowed to send statements to an alternate address, such as an employer's address, for individuals residing outside of the United States for whom the entity does not have an address. Other commenters

requested clarification that the requirement to furnish a statement would be satisfied if a mailing is returned to the sender.

The final regulations adopt the rule in the proposed regulations requiring reporting entities to send statements to an individual's last known address. The final regulations add a rule, however, that a reporting entity's first class mailing to the recipient's last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement, even if the statement is returned. A reporting entity that has no address for an individual should send the statement to the address where the individual is most likely to receive it, for example to the address the reporting entity uses for requesting or providing information about the coverage.

d. Electronic furnishing of statements

The proposed regulations permitted electronic furnishing of statements to individuals if the recipient affirmatively consents. Commenters requested that reporting entities be permitted to furnish statements electronically unless the recipient requests paper statements, arguing that most recipients have access to a computer. Other commenters suggested that affirmative consent by the recipient should not be required. A commenter suggested that the final regulations provide rules for the electronic furnishing of statements to individuals that are similar to the rules under section 2715 of the Public Health Service Act for providing a summary of benefits and coverage, which allows furnishing in paper or electronic form.

Statutory and regulatory tax information reporting rules uniformly require a recipient's affirmative consent to receiving statements electronically. See, for example, section 401 of the Jobs Creation and Workers Assistance Act of 2002 (116 Stat. 21 (2002)); § 1.401(a)-21(b)(2); § 31.6051-1(j)(2)(i); 2014 General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G), page 12. These rules protect individuals who do not have access to or are not comfortable using a computer. Therefore, consistent with general information reporting rules, the final

regulations do not permit reporting entities to furnish statements electronically unless an individual affirmatively consents to electronic furnishing.

The proposed regulations provided that consent to receive statements electronically may be provided in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished. Commenters suggested that consent to electronic furnishing for other documents should be treated as consent to electronic furnishing of the section 6055 statement. Other commenters requested that employers be allowed to post a notice on the company's Web site advising employees that statements are available and provide paper statements only on request.

Consent to receive a statement in electronic format must be in a manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. See for example § 31.6051-1(j)(2)(i). The proposed and final regulations explicitly allow statement recipients to provide consent and to access section 6055 statements in response to a notice on a Web site. A reporting entity may simultaneously request consent to receive an electronic section 6055 statement and consent regarding other statements. For instance, a reporting entity may simultaneously request consent to provide electronic statements for Forms W-2 and 1095, but each form must be specifically referenced in the request. A general consent to receive statements electronically does not reasonably demonstrate that the recipient is able to access the section 6055 statement in an electronic format and does not serve as consent to receive the section 6055 statement electronically.

e. Form of statement

i. Information on the Statement

The proposed regulations provided that the statement furnished to the responsible individual must include a contact phone number for the person required to file the return. A commenter asked whether a reporting entity may provide an automated response to inquiries if a person ultimately is available. The final regulations do not

prohibit initial automated responses if a caller is able to reach a person during the call.

A commenter requested that a reporting entity be permitted to designate a third party to be the contact person. The final regulations clarify that the statement only must include a phone number for a person designated as the reporting entity's contact person. The final regulations do not specify that the contact person must be a reporting entity's employee or prohibit designating a third party as the contact person.

ii. Substitute Statements

The proposed regulations permitted substitute statements if they include the information required to be shown on the return filed with the IRS and comply with applicable requirements in published guidance relating to substitute statements, for example, Rev. Proc. 2012-38 (2012-48 IRB 575), see § 601.601(d)(2) of this chapter.

Commenters expressed an interest in creating substitute statements combining information reporting under sections 6055 and 6056 and requested publication of a revenue procedure providing the specifications. Other commenters asked that reporting entities be allowed flexibility in customizing section 6055 statements in a style recognizable to their recipients.

The final regulations permit the use of substitute statements under section 6055 that conform to requirements provided in published guidance. The IRS plans to provide these requirements in published guidance or instructions. Employers submitting Forms 1095-C combining reporting under sections 6055 and 6056 to the IRS also will report the information required by those sections to the individuals in a single statement.

Commenters requested that the final regulations allow reporting entities to provide general rather than personalized information in the section 6055 statement, for example "You were covered by minimum essential coverage for each month you were covered by the plan for at least one day." While the final regulations do not adopt this comment, it is anticipated that reporting entities will be able to check a box on the information return to report

that an individual was covered for all 12 months of the calendar year.

e. TIN matching program

Commenters requested that the IRS TIN matching program, see Rev. Proc. 2003-09 (2003-1 CB 516) and § 601.601(d), include section 6055 reporting. The TIN matching program may be used only for reportable payments subject to backup withholding under section 3406. Therefore, TIN matching is not permitted for purposes of section 6055 reporting and the final regulations do not include section 6055 reporting in the TIN matching program.

7. Penalties

The proposed regulations applied to calendar years beginning after December 31, 2014. Under Notice 2013-45 (2013-31 IRB 116), the IRS will not apply penalties for failure to comply with section 6055 for 2014 (for coverage in 2014 and information returns filed and statements furnished to covered individuals in 2015).

A commenter requested that the effective date of the section 6055 reporting requirements be extended an additional year if final regulations are not released by January 1, 2014, thus requiring no reporting in 2016 for coverage in 2015. Other commenters requested that the IRS waive penalties for reporting in 2016 on 2015 coverage if a reporting entity makes a good faith effort to comply. One commenter requested that penalties be waived for the two years following the release of final regulations.

In implementing new information reporting requirements, short-term relief from penalties frequently is provided. This relief generally allows additional time to develop appropriate procedures for collection of data and compliance with these new reporting requirements. After considering the comments received, the IRS will not impose penalties under sections 6721 and 6722 on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements. Specifically, relief is provided from penalties under sections 6721 and 6722 for returns and

statements filed and furnished in 2016 to report coverage in 2015, but only for incorrect or incomplete information reported on the return or statement, including TINs or dates of birth. No relief is provided in the case of reporting entities that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or furnish a statement. However, consistent with the existing information reporting rules, reporting entities that fail to timely meet the requirements of these regulations may be eligible for penalty relief if the IRS determines that the standards for reasonable cause under section 6724 are satisfied.

Effective/Applicability Date

These regulations apply for calendar years beginning after December 31, 2014. Consistent with Notice 2013-45, reporting entities will not be subject to penalties for failure to comply with the section 6055 reporting requirements for coverage in 2014 (including the provisions requiring the furnishing of statements to covered individuals in 2015 with respect to 2014). Accordingly, a reporting entity will not be subject to penalties if it first reports beginning in 2016 for 2015 (including the furnishing of statements to covered individuals).

Taxpayers are encouraged, however, to voluntarily comply with section 6055 information reporting for minimum essential coverage provided in 2014. Given significant changes in the information reporting provisions in response to commenters' feedback on the proposed regulations, including requiring applicable large employer members to file a return that combines section 6055 and section 6056 reporting, reporting entities that wish to voluntarily comply with the section 6055 information reporting provisions for 2014 should build their systems and report in accordance with these final regulations. Real-world testing of reporting systems and plan designs, built in accordance with the terms of these final regulations, through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) generally require agencies to prepare a regulatory flexibility analysis addressing the impact of proposed and final regulations, respectively, on small entities. Section 605(b) of the RFA, however, provides that sections 603 and 604 do not apply if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Section 6055 requires a person that provides minimum essential coverage to an individual to file a return with the IRS reporting information specified by the statute and to furnish a statement containing this information to an individual. These final regulations implement the underlying statute and the economic impact is principally a result of the underlying statute. Specifically, these final regulations primarily provide the time and manner for filing and furnishing the returns and statements that section 6055 requires.

Notice 2013–45 announced transition relief providing that information reporting under section 6055 will be optional for 2014. The notice advised that this relief would allow additional time for dialogue with prospective reporting entities in an effort to simplify the reporting requirements. Between publication of Notice 2013–45 and publication of the proposed regulations under section 6055, the IRS and the Treasury Department engaged in a series of discussions with employers, health insurance issuers, and other reporting entities. The proposed and final regulations address certain concerns expressed in those discussions.

These final regulations minimize the burden associated with the collection of

information imposed by section 6055 in a number of ways. The regulations limit reporting to only the information that the IRS will use to verify minimum essential coverage and administer the premium tax credit, all of which is specified in the statute. For example, the regulations do not require reporting the amount of advance payments of the premium tax credit and cost-sharing reductions or the amount of the premium for employer coverage paid by an employer. Similarly, the only information the regulations require for administration of the small employer health insurance credit under section 45R is whether a qualified health plan was enrolled in through an Exchange.

The final regulations reduce burden for applicable large employer members by allowing combined reporting under sections 6055 and 6056. The final regulations allow for substitute statements, furnishing of statements with Forms W–2, and electronic delivery consistent with other information reporting rules. Finally, the final regulations relieve health insurance issuers from reporting for individual market qualified health plans enrolled in through an Affordable Insurance Exchange because Exchanges will report on these enrollments under section 36B(f)(3).

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Andrew Braden of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 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 in part as follows:

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

Sections 1.6055–1 and 1.6055–2 also issued under 26 U.S.C. 6055.

Par. 2. Sections 1.6055–1 and 1.6055–2 are added to read as follows:

§ 1.6055–1 Information reporting for minimum essential coverage.

(a) *Information reporting requirement.* Every person that provides minimum essential coverage to an individual during a calendar year must file an information return and transmittal and furnish statements to responsible individuals on forms prescribed by the Internal Revenue Service.

(b) *Definitions—(1) In general.* The definitions in this paragraph (b) apply for purposes of this section.

(2) *Affordable Care Act.* The term *Affordable Care Act* refers to the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), and amendments to those acts.

(3) *ERISA.* The term *ERISA* means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001 et seq.).

(4) *Exchange.* *Exchange* has the same meaning as in 45 CFR 155.20.

(5) *Government employer.* The term *government employer* means an employer that is a governmental unit or an agency or instrumentality of a governmental unit.

(6) *Governmental unit.* The term *governmental unit* refers to the government of the United States, any State or political subdivision of a State, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)).

(7) *Agency or instrumentality of a governmental unit.* [Reserved]

(8) *Minimum essential coverage.* *Minimum essential coverage* is defined in section 5000A(f) and regulations issued under that section.

(9) *Qualified health plan.* The term *qualified health plan* has the same meaning as in section 1301(a) of the Affordable Care Act (42 U.S.C. 18021(a)).

(10) *Reporting entity.* A *reporting entity* is any person that must report, under section 6055 and this section, minimum essential coverage provided to an individual.

(11) *Responsible individual.* The term *responsible individual* includes a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

(12) *Taxpayer identification number.* The term *taxpayer identification number* (TIN) has the same meaning as in section 7701(a)(41).

(c) *Persons required to report*—(1) *In general.* The following persons must file the information return and transmittal form required under paragraph (a) of this section to report minimum essential coverage—

(i) Health insurance issuers, or carriers (as used in 5 U.S.C. 8901), for all insured coverage, except as provided in paragraph (c)(3)(ii) of this section;

(ii) Plan sponsors of self-insured group health plan coverage;

(iii) The executive department or agency of a governmental unit that provides coverage under a government-sponsored program (within the meaning of section 5000A(f)(1)(A)); and

(iv) Any other person that provides minimum essential coverage to an individual.

(2) *Plan sponsors of self-insured group health plan coverage*—(i) *In general.* For purposes of this section, a plan sponsor of self-insured group health plan coverage is—

(A) The employer for a self-insured group health plan or arrangement established or maintained by a single employer (determined without application of section 414(b), (c), (m) or (o) in the case of an employer described in paragraph (f)(2)(i)

of this section), including each participating employer with respect to a self-insured group health plan or arrangement established or maintained by more than one employer (and not including a multiemployer plan as defined in section 3(37) of ERISA or a Multiple Employer Welfare Arrangement as defined in section 3(40) of ERISA);

(B) The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan for a self-insured group health plan or arrangement that is a multiemployer plan (as defined in section 3(37) of ERISA).

(C) The employee organization for a self-insured group health plan or arrangement maintained solely by an employee organization;

(D) Each participating employer for a self-insured group health plan or arrangement maintained by a Multiple Employer Welfare Arrangement (as defined in section 3(40) of ERISA) with respect to the participating employer's own employees; and

(E) For a self-insured group health plan or arrangement for which a plan sponsor is not otherwise identified in paragraphs (c)(2)(i)(A) through (c)(2)(i)(D) of this section, the person designated by plan terms as the plan sponsor or plan administrator or, if no person is designated as the administrator and a plan sponsor cannot be identified, each entity that maintains the plan or arrangement.

(ii) *Government employers.* Unless otherwise provided by statute or regulation, a government employer that maintains a self-insured group health plan or arrangement may enter into a written agreement with another governmental unit, or an agency or instrumentality of a governmental unit, that designates the other governmental unit, agency, or instrumentality as the person required to file the returns and to furnish the statements required by this section for some or all of the individuals receiving minimum essential coverage under that plan or arrangement. The designated governmental unit, agency, or instrumentality must be part of or related to the same governmental unit as the government employer (for example, a political subdivision of a State may designate the State or another political subdivi-

vision of the state) and agree to the designation. The government employer must make or revoke the designation before the earlier of the deadline for filing the returns or furnishing the statements required by this section and must retain a copy of the designation in its books and records. If the requirements of this paragraph (c)(2)(ii) are met, the designated governmental unit, agency, or instrumentality is the sponsor under paragraph (c)(2)(i) of this section. If no entity is designated, the government employer that maintains the self-insured group health plan or arrangement is the sponsor under paragraph (c)(2)(i) of this section.

(3) *Special rules for government-sponsored programs*—(i) *Medicaid and Children's Health Insurance Program (CHIP) coverage.* The State agency that administers the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 and following sections) or the CHIP program under title XXI of the Social Security Act (42 U.S.C. 1396 and following sections) must file the returns and furnish the statements required by this section for those programs.

(ii) *Government-sponsored coverage provided through health insurance issuers.* An executive department or agency of a governmental unit that provides coverage under a government-sponsored program through a health insurance issuer (such as Medicaid, CHIP, or Medicare, including Medicare Advantage) must file the returns and furnish the statements required by this section.

(iii) *Nonappropriated Fund Health Benefits Program.* The Secretary of Defense may designate the Department of Defense components (as used in DoD Directive 5100.01, Functions of the Department of Defense and Its Major Components (December 21, 2010)) that must file the returns and furnish the statements required by this section for the Nonappropriated Fund Health Benefits Program.

(4) *Other arrangements recognized as minimum essential coverage.* The Commissioner may designate in published guidance, see § 601.601(d) of this chapter, the reporting entity for arrangements the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, recognizes under section

5000A(f)(1)(E) as minimum essential coverage.

(d) *Reporting not required*—(1) *Qualified health plans*. A health insurance issuer is not required to file a return or furnish a report under this section for coverage in a qualified health plan in the individual market enrolled in through an Exchange.

(2) *Additional health benefits*. No reporting is required under paragraph (a) of this section for minimum essential coverage that provides benefits in addition or as a supplement to a health plan or arrangement that constitutes minimum essential coverage if—

(i) The primary and supplemental coverages have the same plan sponsor; or

(ii) The coverage supplements government-sponsored coverage (as defined in section 5000A(f)(1)(A) and the regulations under that section) such as Medicare.

(3) *Individuals not enrolled in coverage*. No reporting is required under this section for coverage offered to individuals who do not enroll.

(e) *Information required to be reported to the Internal Revenue Service*—(1) *In general*. All information returns required by this section must report the following information for the calendar year of coverage—

(i) The name, address, and employer identification number (EIN) of the reporting entity required to file the return;

(ii) The name, address, and TIN, or date of birth if a TIN is not available, of the responsible individual, except that reporting entities may but are not required to report the TIN of a responsible individual not enrolled in the coverage;

(iii) The name and TIN, or date of birth if a TIN is not available, of each individual who is covered under the policy or program;

(iv) For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits; and

(v) Any other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602 of this chapter.

(2) *Information relating to employer-provided coverage*. In addition to the information described in paragraph (e)(1) of

this section, information returns reporting minimum essential coverage provided to an individual that is coverage provided by a health insurance issuer through a group health plan must report—

(i) The name, address, and EIN of the employer sponsoring the plan;

(ii) Whether the coverage is a qualified health plan enrolled in through the Small Business Health Options Program (SHOP) and the SHOP's unique identifier; and

(iii) Other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602 of this chapter.

(f) *Time and manner for filing return*—(1) *In general*. A reporting entity must file the return and transmittal form required under paragraph (a) of this section on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which it provided minimum essential coverage to an individual. A reporting entity must file the return and transmittal form as specified in forms or instructions. For extensions of time for filing returns under this section see §§ 1.6081-1 and 1.6081-8. See § 301.6011-2 of this chapter for rules relating to electronic filing.

(2) *Form of return*—(i) *Applicable large employer members*. A reporting entity that is reporting under section 6055 as an applicable large employer member (as defined in § 54.4980H-1(a)(5) of this chapter) makes the return required under this paragraph (f) on Form 1094-C and Form 1095-C or other form designated by the Internal Revenue Service.

(ii) *Reporting entities not reporting as applicable large employer members*. Entities reporting as health insurance issuers or carriers, sponsors of self-insured group health plans that are not reporting as applicable large employer members, sponsors of multiemployer plans, and providers of government-sponsored coverage, will report under section 6055 on Form 1094-B and Form 1095-B or other form designated by the Internal Revenue Service.

(iii) *Substitute forms*. Reporting entities may make the return required under this paragraph (f) on a substitute form. A substitute form must comply with revenue procedures or other published guidance

(see § 601.601(d)(2) of this chapter) that apply to substitute forms.

(g) *Statements to be furnished to responsible individuals*—(1) *In general*. Every person required to file a return under this section must furnish to the responsible individual identified on the return a written statement. For purposes of the penalty under section 6722, furnishing a statement to the responsible individual is treated as furnishing a statement to the payee. The statement must show—

(i) The phone number for a person designated as the reporting entity's contact person and policy number, if any; and

(ii) Information described in paragraph (e) of this section required to be shown on the section 6055 return for the responsible individual and each covered individual listed on the return.

(2) *Statements for individuals other than the responsible individual*. A reporting entity is not required to provide a statement described in paragraph (g)(1) of this section to an individual who is not the responsible individual.

(3) *Form of the statement*. A statement required under this paragraph (g) may be made either by furnishing to the responsible individual a copy of the return filed with the Internal Revenue Service or on a substitute statement. A substitute statement must include the information required to be shown on the return filed with the Internal Revenue Service and must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. An Internal Revenue Service truncated taxpayer identification number may be used as the identification number for an individual in lieu of the identification number appearing on the corresponding information return filed with the Internal Revenue Service.

(4) *Time and manner for furnishing statements*—(i) *Time for furnishing*—(A) *In general*. A reporting entity must furnish the statements required under this paragraph (g) on or before January 31 of the year following the calendar year in which minimum essential coverage is provided.

(B) *Extensions of time*—(1) *In general*. For good cause upon written application of the person required to furnish statements under this section, the Internal Revenue Service may grant an extension of

time not exceeding 30 days in which to furnish these statements. The application must be addressed to the Internal Revenue Service, and must contain a full recital of the reasons for requesting the extension to aid the Internal Revenue Service in determining the period of the extension, if any, that will be granted. A request in the form of a letter to the Internal Revenue Service, signed by the applicant, suffices as an application. The application must be filed on or before the date prescribed in paragraph (g)(4)(i)(A) of this section.

(2) *Automatic extension of time.* The Commissioner may, in appropriate cases, prescribe additional guidance or procedures, published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), for automatic extensions of time to furnish to one or more individuals the statement required under section 6055.

(ii) *Manner of furnishing.* If mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. For purposes of this paragraph (g)(4), a reporting entity's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement. A reporting entity may furnish the statement electronically if the requirements of § 1.6055-2 are satisfied.

(h) *Penalties—(1) In general.* For provisions relating to the penalty for failure to file timely a correct information return required under section 6055, see section 6721 and the regulations under that section. For provisions relating to the penalty for failure to furnish timely a correct statement to responsible individuals required under section 6055, see section 6722 and the regulations under that section. See section 6724 and the regulations under that section for rules relating to the waiver of penalties if a failure to file timely or accurately is due to reasonable cause and is not due to willful neglect.

(2) *Application of section 6721 and 6722 penalties to section 6055 reporting.* For purposes of section 6055 reporting, if the information reported on a return (including a transmittal) or a statement required by this section is incomplete or incorrect as a result of a change in circum-

stances (such as a retroactive change in coverage), a failure to timely file or furnish a corrected document is a failure to file or furnish a correct return or statement under sections 6721 and 6722.

(i) [Reserved.]

(j) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under section 6721 or 6722 for failure to comply with the section 6055 reporting requirements for coverage in 2014 (for information returns filed and statements furnished in 2015).

§ 1.6055-2 Electronic furnishing of statements

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6055 to furnish a statement (furnisher) to a responsible individual (a recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (a)(6) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date the furnisher receives it or on another date no more than 60 days later. The furnisher also may provide that a recipient's request for a paper statement will be treated as a withdrawal of the recipient's consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access a statement, a furnisher must, prior to changing the

hardware or software, notify the recipient. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware or software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(ii) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 6055 electronically on a web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the web site, downloading and completing the consent document, and e-mailing the completed consent back to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 6055 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 6055 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 6055 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive the statement required under section 6055 electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statement electronically. The consent via the secure Web page uses the same electronic format that F will use for electronically furnishing the statement. R accesses the secure Web page and follows the instructions for giving consent. R has consented to receive the statement required under section 6055 electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures—(i) In general.* Prior to, or at the time of, a recipient's consent, a furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in this paragraph (a)(3).

(ii) *Paper statement.* The furnisher must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The furnisher must inform the recipient of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the date of the consent.

(iv) *Post-consent request for a paper statement.* The furnisher must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The furnisher must inform the recipient that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The furnisher must inform the recipient of the conditions under which the furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with a furnisher who is the recipient's employer).

(vii) *Updating information.* The furnisher must inform the recipient of the procedures for updating the information needed to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The furnisher must provide the recipient with a description of the hardware and software required to access, print, and

retain the statement, and the date when the statement will no longer be available on the Web site. The furnisher must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable published guidance (see § 601.601(d) of this chapter) relating to substitute statements to recipients.

(5) *Notice—(i) In general.* If a statement is furnished on a Web site, the furnisher must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the furnisher cannot obtain the correct electronic address from the furnisher's records or from the recipient, the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statement.* If the furnisher has corrected a recipient's statement and the original statement was furnished electronically, the furnisher must furnish a corrected statement to the recipient electronically. If the original statement was furnished through a Web site posting, the furnisher must notify the recipient that it has posted the corrected statement on the Web site in the manner described in paragraph (a)(5)(i) of this section within 30 days of the posting. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of

the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* A furnisher must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished. A paper statement furnished after the statement due date under this paragraph (a)(7) is timely if furnished within 30 days after the date the furnisher receives the withdrawal of consent.

(b) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under section 6722 with respect to the reporting requirements for 2014 (for statements furnished in 2015).

Par. 3. Section 1.6081-8 is amended in paragraph (a) by adding the language "1095 series," between the words "1042-S," and "1098".

PART 301 — PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011-2 is amended in the first sentence of paragraph (b)(1) by adding "1094 series, 1095 series," after "1042-S".

Par 6. Section 301.6721-1 is amended by removing the word "or" at the end of paragraph (g)(3)(xxii), removing the period and adding a semi-colon in its place at the end of paragraph (g)(3)(xxiii), and adding paragraphs (g)(3)(xxiv) and (g)(3)(xxv) to read as follows:

§ 301.6721-1 Failure to file correct information returns.

* * * * *

(g) * * *

(3) * * *

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).

* * * * *

Par 7. Section 301.6722-1 is amended by removing the word "or" at the end of paragraph (d)(2)(xxxi), removing the period and adding a semi-colon in its place at the end of paragraph (d)(2)(xxxii), and adding paragraphs (d)(2)(xxxiii) and (d)(2)(xxxiv) to read as follows:

§ 301.6722-1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(2) * * *

(xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).

* * * * *

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In § 602.101, paragraph (b) is amended by adding two entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.6055-1.....	1545-2252
1.6055-2.....	1545-2252
* * * * *	

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved March 2, 2014,

Mark J. Mazur
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register on March 3, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 10, 2014, 79 F.R. 13231)

Section 6056.—Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

T.D. 9661

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602**

Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code (Code), enacted by the Affordable Care Act (gener-

ally employers with at least 50 full-time employees, including full-time equivalent employees). Section 6056 requires those employers to report to the IRS information about the health care coverage, if any, they offered to full-time employees, in order to administer the employer shared responsibility provisions of section 4980H of the Code. Section 6056 also requires those employers to furnish related statements to employees that employees may use to determine whether, for each month of the calendar year, they may claim on their individual tax returns a premium tax credit under section 36B (premium tax credit). The regulations provide for a general reporting method and alternative reporting methods designed to simplify and reduce the cost of reporting for employers subject to the information reporting requirements under section 6056. The regulations affect those employers, employees and other individuals.

DATES: *Effective Date:* These regulations are effective on March 10, 2014.

Applicability Date: For dates of applicability, see §§301.6056-1(m) and 301.6056-2(b).

FOR FURTHER INFORMATION CONTACT: Ligeia Donis at (202) 317-6846 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2251.

The collection of information in these regulations is in §§ 301.6056-1, and 301.6056-2. This information is collected in accordance with the return and employee statement requirements under section 6056 and is used to administer section 4980H and the premium tax credit. The likely respondents are employers that are applicable large employers, as defined under section 4980H(c)(2).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number

assigned by the Office of Management and Budget.

The burden for the collection of information contained in these final regulations will be reflected in the burden on Form 1095-C or another form that the IRS designates, which will request the information in the final regulations.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Sections I through V of the preamble (“Background”) describe the statutory provisions governing the information reporting requirements, as well as related statutory provisions. Sections VI through XIII of the preamble (“Explanation of Provisions and Summary of Comments”) describe and explain how these regulations implement the statutory provisions of section 6056 and include a discussion of alternative reporting methods and simplifications that are adopted in these final regulations. As is typical of regulations on information reporting, these regulations refer generally to additional information that may be required under applicable forms and instructions. Sections IX.B and C of the preamble set forth the specific data elements that will be included with the reporting, including the data elements that will be provided through the use of an indicator code.

I. Reporting Requirements for Applicable Large Employers (Section 6056)

Section 6056¹ requires applicable large employers, as defined in section 4980H(c)(2), to file returns at the time prescribed by the Secretary with respect to each full-time employee and to furnish a statement to each full-time employee by January 31 of the calendar year following the calendar year for which the return

must be filed. Section 6056 specifies certain information that must be reported on the return and related statement and authorizes the Secretary to require additional information and determine the form of the return. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, which information relates to the section 5000A individual shared responsibility provisions. Sections 6055 and 6056 are effective for periods beginning after December 31, 2013; however, Notice 2013-45 (2013-31 IRB 116) provides transition relief from the section 6056 information reporting requirements (and section 4980H), as well as the section 6055 information reporting requirements, so that reporting is not required with respect to 2014.

Proposed regulations under section 6056 were published in the **Federal Register** on September 9, 2013 (REG-136630-12 [78 FR 54996]). The proposed regulations provide guidance on the reporting method proposed to implement the statutory provisions of section 6056 (referred to as the general method), and discuss a variety of potential simplified reporting methods, on which public comments were requested. Comments responding to the proposed regulations and potential simplified reporting methods were submitted and are available for public inspection at www.regulations.gov or upon request. A public hearing was conducted on November 18, 2013.

Treasury and the IRS have sought to develop final information reporting rules that will be as streamlined, simple, and workable as possible, consistent with effective implementation of the law. This has reflected a considered balancing of the importance of (1) minimizing cost and administrative tasks for reporting by entities and individuals, (2) providing individuals the information to complete their tax returns accurately, including with respect to the individual shared responsibility provisions and potential eligibility for the premium tax credit, and (3) providing the

IRS with information needed for effective and efficient tax administration. After consideration of all of the comments and testimony, as well as the comments previously submitted in response to Notice 2012-33 (2012-20 IRB 912), the proposed regulations are adopted as amended by this Treasury Decision. The amendments are discussed in the Summary of Comments and Explanation of Provisions section of this preamble.

II. Shared Responsibility for Employers (Section 4980H)

Section 6056 reporting is needed for the administration of section 4980H. Generally, a payment will be assessed under section 4980H if the employer either does not offer minimum essential coverage to its full-time employees (and their dependents) or the coverage offered is not affordable or does not provide minimum value, and one or more of the full-time employees receive a premium tax credit for purchase of coverage on an Affordable Insurance Exchange (Exchange).² Section 4980H(c)(2) defines the term “applicable large employer” as, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. Generally, for purposes of determining applicable large employer status, a full-time employee includes any employee who was employed on average at least 30 hours of service per week and any full-time equivalents determined pursuant to section 4980H(c)(2)(E). As provided in section 4980H(c)(2)(C)(i), all employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status. Section 4980H contains rules for determining whether an employer qualifies as an applicable large employer, including special rules addressing an employer’s first year of existence. See section 4980H(c)(2)(C).

Section 4980H is effective for months after December 31, 2013; however, Notice 2013-45 provides transition relief for

¹Section 6056 was enacted by section 1514(a) of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), and further amended by the Department of Defense and Full-Year Continuing Appropriations Act of 2011, Public Law 112-10 (125 Stat. 38 (2011)) (collectively, the Affordable Care Act).

²An Exchange is also referred to in other published guidance as a Marketplace.

2014 for section 6056 reporting requirements which, given their role in administering section 4980H, means that no payments will be assessed under section 4980H for 2014. On February 12, 2014, Treasury and the IRS released final regulations under section 4980H (TD 9655 [79 FR 8544]).

The final regulations under section 4980H provide guidance on determining applicable large employer status and determining full-time employee status, including defining and providing rules for calculating hours of service. See §§ 54.4980H-1(a)(24) (definition of hours of service), 54.4980H-2 (determination of applicable large employer status), and 54.4980H-3 (determination of full-time employee status).

III. Premium Tax Credit (Section 36B)

Section 6056 reporting is also essential to the administration of the premium tax credit under section 36B, which was added by the Affordable Care Act. The advanceable and refundable section 36B premium tax credit helps individuals and families afford health insurance coverage purchased through an Exchange. An employee is not eligible for the premium tax credit to subsidize the cost of Exchange coverage if the employee is offered affordable minimum essential coverage under an employer-sponsored plan that provides minimum value, or if the employee enrolls in an employer-sponsored plan that provides minimum essential coverage. For purposes of the premium tax credit, an employer-sponsored plan is affordable if the employee's required contribution for the lowest-cost self-only minimum value coverage offered does not exceed 9.5 percent of the employee's household income. Since an employer ordinarily will not know an employee's household income, the final section 4980H regulations provide various safe harbors for determining affordability for purposes of section 4980H based on information available to the employer. Those safe harbors do not affect affordability for purposes of the premium tax credit, so that an employer will be treated as having offered affordable health care coverage for purposes of section 4980H if it meets one of the safe harbors under the

section 4980H regulations even if the coverage is not treated as affordable to the individual employee for purposes of the premium tax credit. An employee who is offered affordable minimum essential coverage providing minimum value under an employer-sponsored plan but instead purchases coverage on an Exchange will not be eligible for a premium tax credit (and if such an employee's spouse or dependents are also offered coverage under the employer-sponsored plan but instead purchase coverage on an Exchange, they also will not be eligible for a premium tax credit on the Exchange). Individuals and the IRS will use the information reported under section 6056 on the cost of the lowest-cost employer-sponsored self-only minimum essential coverage that provides minimum value for purposes of verifying an individual's eligibility for the premium tax credit.

Individuals, including employees, may be eligible for advance payments of the premium tax credit (APTC), which are administered by HHS and paid to issuers on behalf of individuals who enrolled in Exchange coverage. Individuals who do not request APTC also may be eligible to claim the premium tax credit on their Federal income tax returns if they purchased coverage on an Exchange and were not offered employer-sponsored minimum essential coverage that was affordable and provided minimum value. The IRS and employees will use the information provided on the section 6056 return and employee statement to determine whether an employee is eligible for the premium tax credit. Note that in connection with providing APTC, the Exchanges will employ a verification process.

IV. Individual Shared Responsibility (Section 500A)

The Affordable Care Act also added section 500A to the Code. Section 500A provides that every individual must have minimum essential coverage, qualify for an exemption, or include an additional payment with their Federal income tax return. Taxpayers who can claim a child or another individual as a dependent for federal income tax purposes are responsible for making the payment if the

dependent does not have minimum essential coverage or an exemption.

Section 500A(f)(1)(B) provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Under section 500A(f)(2) and § 1.500A-2(c)(1), an eligible employer-sponsored plan is, with respect to an employee, (1) group health insurance coverage offered by, or on behalf of, an employer to an employee that is either (a) a governmental plan within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg-91(d)(8)), (b) any other plan or coverage in the small or large group market within a State, or (c) a grandfathered health plan, as defined in section 500A(f)(1)(D), offered in a group market, or (2) a self-insured group health plan under which coverage is offered by, or on behalf of, an employer to an employee. Section 500A(f)(3) and regulations under that section provide that minimum essential coverage does not include coverage consisting solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act or regulations issued under these provisions. See § 1.500A-2(g).

V. Information Reporting By Providers of Coverage (Issuers, Self-Insuring Employers, and Sponsors of Certain Government-Sponsored Programs) (Section 6055)

The Affordable Care Act also added section 6055 to the Code, providing for information reporting for the administration of section 500A. The section 6055 reporting requirements are effective for years beginning after December 31, 2013; however, as noted above in section I of this preamble, Notice 2013-45 provides transition relief for 2014 from the section 6055 reporting requirements so that the reporting is not required with respect to 2014. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, including coverage provided under an eligible employer-sponsored plan, and the furnishing to taxpayers of a related statement covering each individual listed on the section 6055 return. The information reported under section 6055 may be used by indi-

viduals and the IRS to verify the months (if any) in which they were covered by minimum essential coverage. Treasury and the IRS are issuing final regulations under section 6055 (TD 9660) concurrently with these final regulations.

Summary of Comments and Explanation of Provisions

In general, in addition to the changes described elsewhere in this preamble, the final regulations adopt non-substantive changes that were made to certain sections of the proposed regulations in order to increase consistency with the final regulations under section 6055 issued concurrently with these final regulations. In addition, the proposed regulations provided that reporting entities must file section 6056 information returns electronically if they file 250 returns of any type. The final regulations provide that reporting entities must file section 6056 returns electronically if they file 250 returns under section 6056. These changes are discussed later in this preamble.

VI. Introduction

This Explanation of Provisions (Sections VI through XIII of this preamble) addresses the comments that were received and describes the provisions of these final regulations implementing the section 6056 reporting provisions discussed in the Background portion of the preamble. Specifically, this section includes the following:

Section VII.....Key Terms

Section VIII..... ALE Member Subject to Section 6056 Requirements With Respect to Full-Time Employees

Section IX.....General Method - Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees

Section X.....Alternative Methods for Section 6056 Information Reporting for Eligible ALE Members

Section XI.....Other Possible Alternative Methods Not Adopted in the Final Regulations

Section XII..... Person Responsible for Section 6056 Reporting

Section XIII.....Applicability of Information Return Requirements and Penalty Relief for 2015

VII. Key Terms

These regulations under section 6056 use a number of terms that are defined in other Code provisions or regulations. For example, section 6056(f) provides that any term used in section 6056 that is also used in section 4980H shall have the same meaning given to the term by section 4980H. The final regulations provide for the following defined terms:

A. *Applicable Large Employer* has the same meaning as in section 4980H(c)(2) and § 54.4980H-1(a)(4).

B. *Applicable Large Employer Member* has the same meaning as in § 54.4980H-1(a)(5). All persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status.³ Under these regulations, the section 6056 filing and furnishing requirements are applied separately to each person comprising the applicable large employer consistent with the approach taken in the section 4980H regulations with respect to the determination of any assessable payment under section 4980H. The person or persons that comprise the applicable large employer are referred to as applicable large employer members (and referred to elsewhere in this preamble as ALE members).

C. *Dependent* has the same meaning as in § 54.4980H-1(a)(12).

D. *Eligible Employer-Sponsored Plan* has the same meaning as in section 5000A(f)(2) and § 1.5000A-2(c)(1).

E. *Full-time Employee* has the same meaning as in section 4980H(c)(4) and § 54.4980H-1(a)(21), but only as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee (and therefore not including full-time equivalent employees as defined in § 54.4980H-1(a)(22)). The final regulations under section 4980H define an employee for

purposes of section 4980H as an individual who is an employee under the common law standard, and as not including a leased employee (as defined in section 414(n)(2)), a sole proprietor, a partner in a partnership, a 2-percent S corporation shareholder, or a worker described in section 3508.

F. *Governmental Unit and Agency or Instrumentality of a Governmental Unit*. The term *governmental unit* is defined as the government of the United States, any State or political subdivision of a State, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)). The regulations do not define the term *agency or instrumentality of a governmental unit* for purposes of section 6056, but reserve on the issue. Until future guidance is issued that defines the term for purposes of section 6056, an entity may determine whether it is an agency or instrumentality of a governmental unit based on a reasonable and good faith interpretation of existing rules relating to agency or instrumentality determinations for other federal tax purposes.

G. *Minimum Essential Coverage* has the same meaning as in section 5000A(f) and the regulations issued under that section.

H. *Minimum Value* has the same meaning as in section 36B and any applicable guidance. See proposed § 1.36B-6.

I. *Person* has the same meaning as provided in section 7701(a)(1) and the related regulations.

VIII. ALE Member Subject to Section 6056 Requirements with Respect to Full-Time Employees

As indicated earlier in section VII.B of this preamble, an ALE member is any person that is an applicable large employer or a member of an aggregated group (determined under section 414(b), 414(c), 414(m) or 414(o)) that is determined to be an applicable large employer. Under these regulations, the section 6056 filing and statement furnishing requirements apply on a member-by-member basis to each ALE member, even though the

³Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See section V.D. of the preamble to the final section 4980H regulations (TD 9655).

determination of whether an entity is an applicable large employer is made at the aggregated group level.⁴ For example, if an applicable large employer is comprised of a parent corporation and 10 wholly-owned subsidiary corporations, there are 11 ALE members (the parent corporation and each of the 10 subsidiary corporations). Under these regulations, each ALE member with full-time employees is the entity responsible for filing and furnishing statements with respect to its full-time employees under section 6056. This is consistent with the manner in which any potential assessable payments under section 4980H will be calculated and administered.

Some commenters requested that the applicable large employer be permitted to report and furnish statements on a consolidated basis, or that the sponsor of a health plan offering coverage to employees of more than one ALE member plan be permitted to report and furnish statements on behalf of all the employers of employees eligible to participate in the plan. While these regulations do not adopt these suggestions, Treasury and the IRS understand that ALE members may benefit from the assistance of a third party in preparing these returns, for example a third-party plan administrator or a related ALE member tasked with preparing the returns for all the members of that applicable large employer. For a discussion of how these third parties may help an ALE member fulfill its reporting obligations, see section XII.C of this preamble.

The section 6056 return will form the basis for the process leading to any assessment of the ALE member under section 4980H, which is determined separately with respect to each ALE member. Any assessable payment would be calculated based on the relevant information related to the number of full-time employees of each ALE member and the nature of the offer of coverage, if any, made to each of that ALE member's full-time employees for each cal-

endar month. Accordingly, the ALE member is the appropriate taxpayer to file the return relating to its potential tax liability.

Whether an employee is a full-time employee is determined under section 4980H(c)(4) and any applicable guidance. See §§ 54.4980H-1(a)(21) and 54.4980H-3. This includes any full-time employees who may perform services for multiple ALE members within the applicable large employer.⁵ Under these regulations, only ALE members with full-time employees are subject to the filing and statement furnishing requirements of section 6056 (and only with respect to their full-time employees). Accordingly, ALE members without any full-time employees are not subject to the section 6056 reporting requirements.

Generally, the ALE member providing the section 6056 reporting is the common law employer. An ALE member that is a qualified subchapter S subsidiary under section 1361(b)(3)(B) or an entity described in § 301.7701-2(c)(2)(i) (collectively, a disregarded entity) is treated as an entity separate from its owner for purposes of section 4980H and section 6056 under §§ 1.1361-4(a)(8)(i)(E) and 301.7701-2(c)(2)(v)(A)(5) for periods after December 31, 2014. See TD 9655. Therefore, the reporting requirements under section 6056 apply to an ALE member that is a disregarded entity, and not to its owner.⁶

IX. General Method - Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees

This section describes the general method for reporting to the IRS and furnishing statements to employees pursuant to section 6056 that is set forth in these regulations. This general method is available for all employers and with respect to reporting for all full-time employees. These regulations also provide alternative

reporting methods, which in some cases may be available only with respect to a certain group or groups of employees. In those cases, with respect to those employees for whom an alternative reporting method is not available, the employer must use the general method. In any case, the alternative reporting methods are optional so that an employer may choose to report for any or all of its full-time employees using the general method even if an alternative reporting method is available. For a further description of the alternative reporting methods, see section X of this preamble.

A. Information Reporting to the IRS

In accordance with section 6056, the regulations provide for each ALE member to file a section 6056 return with respect to its full-time employees. Similar to the separate Form W-2, Wage and Tax Statement, filed by an employer for each employee and the Form W-3, Transmittal of Wage and Tax Statements, filed as a transmittal form for the Forms W-2, these regulations provide that a separate return is required for each full-time employee, accompanied by a single transmittal form for all of the returns filed for a given calendar year.

Many commenters recommended that the regulations allow combined information reporting under sections 6055 and 6056 for applicable large employers that sponsor self-insured plans and must report under both sections. The proposed regulations did not provide for combined reporting. In an effort to minimize taxpayer burden and streamline the reporting process as authorized by section 6056(d), while minimizing the need for employers and the IRS to build multiple systems to accommodate multiple forms, these final regulations adopt this suggestion by providing for use by all ALE members of a single combined form for reporting the

⁴Government entities, churches, and a convention or association of churches should, for purposes of section 6056 reporting, use an interpretation of section 414(b), (c), (m), and (o) that is consistent with that used for purposes of section 4980H in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See § 54.4980H-2(b)(4).

⁵For example, if a full-time employee performs services for two ALE members within an applicable large employer during a calendar month, the employee is treated as the employee of the ALE member for which the employee was credited the majority of the hours of service for that month. See § 54.4980H-5(d). Because an ALE member must report for any employee that is its full-time employee for one or more months of the year, all ALE members that are an employer of an employee that is its full-time employee for one or more months of the calendar year must file and furnish a section 6056 return with respect to services performed by the employee reflecting the months in which the employee was a full-time employee of that ALE member.

⁶Section 301.7701-2(c)(2)(v)(B) provides that an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701-2 is treated as a corporation with respect to the reporting requirements under section 6056.

information required under both section 6055 and section 6056.

Accordingly, as a general method, these regulations provide that the section 6056 return may be made by filing Form 1094-C (a transmittal) and Form 1095-C (an employee statement), or other forms the IRS designates. Alternatively, the section 6056 return may be made by filing a substitute form. Under these regulations, a substitute form must include all of the information required to be reported on Forms 1094-C and 1095-C or other forms the IRS designates and comply with applicable revenue procedures or other published guidance relating to substitute returns. See §§ 301.6056-1(d)(2) and 601.601(d)(2). For a discussion of substitute statements for employees, see section IX.D of this preamble.

Form 1095-C will be used by ALE members to satisfy the section 6055 and 6056 reporting requirements, as applicable. An ALE member that sponsors a self-insured plan will report on Form 1095-C, completing both sections to report the information required under both sections 6055 and 6056. An ALE member that provides insured coverage will also report on Form 1095-C, but will complete only the section of Form 1095-C that reports the information required under section 6056. Section 6055 reporting entities that are not ALE members or are not reporting in their capacity as employers, such as health insurance issuers, self-insured multiemployer plans, and providers of government-sponsored coverage, will report under section 6055 on Form 1095-B. In accordance with usual procedures, these forms will be made available in draft form in the near future.

In response to comments, Treasury and the IRS also considered suggestions to use, for section 6055 and 6056 reporting purposes, information that employers communicate to employees about employer-sponsored coverage prior to employees' potential enrollment in Exchange coverage. These comments observed that, under the Affordable Care Act, employers provide pre-enrollment in-

formation to employees by various means, including information in the Notice of Coverage Options provided to employees pursuant to the requirements under section 18B of the Fair Labor Standards Act⁷ and the Employer Coverage Tool developed by the Department of Health and Human Services (HHS) that supports the application for enrollment in a qualified health plan and insurance affordability programs.⁸

Treasury and the IRS have considered and coordinated with the Departments of HHS and Labor regarding the various provisions with a view to identifying ways to make the entire process as effective and efficient as possible for all parties. That said, the various reports are designed for different purposes, and pre-enrollment reporting regarding anticipated employer coverage in an upcoming coverage year is unlikely to be helpful to individual taxpayers in accurately completing their tax returns more than a year later (and after the coverage year has already ended). Among other issues, the pre-enrollment information may not be readily available to individuals at the time they are filing their tax returns, could be confused with other information (such as the pre-enrollment information provided to the individual pertaining to the coverage year following the calendar year to which the tax return relates), may not include certain information, like premiums, necessary for tax administration, and is in a format that does not facilitate easy transfer to the appropriate location on the Federal income tax return. In addition, the pre-enrollment information is generally not specific to the particular employee's experience at the employer. For these reasons, these regulations do not adopt these suggestions.

B. Information Required to Be Reported and Furnished

Except as otherwise provided as part of an alternative reporting method, these final regulations provide that each ALE member reports on the section 6056 information return the same information set forth in the proposed regulations. Specif-

ically, the final regulations require the following information: (1) the name, address, and employer identification number of the ALE member, and the calendar year for which the information is reported; (2) the name and telephone number of the ALE member's contact person; (3) a certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month; (4) the number of full-time employees for each calendar month during the calendar year, by calendar month; (5) for each full-time employee, the months during the calendar year for which minimum essential coverage under the plan was available; (6) for each full-time employee, the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month; and (7) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan. In addition, these regulations provide, as with other information reporting, that the section 6056 information return may request such other information as the Secretary may prescribe or as may be required by forms or instructions.

Some commenters requested that ALE members be permitted to provide the name and telephone number of a third party in the part of the section 6056 return requesting the name and telephone number of the ALE member's contact person. An ALE member may provide the name and telephone number of any contact person, whether an employee of the ALE member or an agent of the ALE member, acting on behalf of the ALE member for purposes of section 6056 reporting.

Some commenters requested that the final regulations not require the reporting of social security numbers for an employee's spouse or dependents. Neither the

⁷On May 8, 2013, the Department of Labor issued Technical Release 2013-02 providing temporary guidance under Fair Labor Standards Act section 18B, as well as model notices. See Technical Release 2013-02, model notice for employers who offer a health plan to some or all employees, and model notice for employers who do not offer a health plan, available at <http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html> Guidance on the Notice to Employees of Coverage

⁸Available at https://www.healthcare.gov/downloads/ECT_Application_508_130615.pdf

proposed regulations nor these final regulations require reporting of such information for purposes of section 6056.⁹ These final regulations require only that an ALE member report the social security number of the full-time employee.

Some commenters requested that the final regulations permit employers to report dates of coverage rather than months of coverage. Other commenters requested that ALE members be permitted to provide the information on a payroll period basis, rather than a monthly basis, to address situations in which coverage is provided based on payroll periods. Other commenters requested that the ALE member be permitted to report by multi-month periods, rather than on a monthly basis, such as stating that coverage was offered January through October of a particular year. As provided in the final regulations under section 4980H and adopted by cross-reference in these regulations, the individuals who are full-time employees of an ALE member for a particular calendar month generally may be identified on a weekly basis or a payroll period basis that approximates the calendar month. See §§ 54.4980H-3(c)(3) and 54.4980H-3(d)(1)(ii). However, both section 4980H and the premium tax credit are administered based on the calendar month, so that whether the individual identified as a full-time employee was offered coverage for the entire calendar month is relevant to the administration of both Code provisions. Accordingly, ALE members are required to report on the basis of the twelve calendar months with respect to the coverage offered (or not offered) to each full-time employee.

As part of the effort to minimize the cost and administrative steps associated with the reporting requirements, the final regulations omit information that is not relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and section 4980H or that is already provided at the same time through other means. Specifically, consistent with the proposed regulations, these final regulations do not require the reporting of the following four data elements

(and a more detailed description of the data elements that will be included is provided later in this section of the preamble):

First, the final regulations do not require the reporting of the length of any permissible waiting periods under section 4980H¹⁰, because the length of a waiting period is not relevant for administration of the premium tax credit or section 4980H or for an individual in preparing his or her tax return. However, Treasury and the IRS anticipate that information will be requested, using an indicator code, regarding whether coverage was not offered to an employee during certain months because of a permissible waiting period under section 4980H, since this information is relevant to the administration of section 4980H.

Second, these regulations do not require reporting of the employer's share of the total allowed costs of benefits provided under the plan because this information also is not relevant to the administration of the premium tax credit and section 4980H. In contrast, whether the employer-sponsored plan provides minimum value coverage is relevant information; accordingly, Treasury and the IRS anticipate that information will be requested, using an indicator code. Some commenters requested that information on the employer contribution continue to be required because it would be informative to the employee. Given that this information is not relevant to tax administration, and generally may be discerned by the employee from the information reported at the same time on the Form W-2, Box 12 using Code DD pursuant to section 6051(a)(14) (reporting of the total value of employer-provided health benefits provided to the employee), these regulations do not adopt this suggestion.

Third, these regulations do not require the reporting of the monthly premium for the lowest-cost option in each of the enrollment categories (such as self-only coverage or family coverage) under the plan. Rather, because only the lowest-cost option of self-only coverage providing minimum value offered under any of the en-

rollment categories for which the employee is eligible is relevant to the determination of whether coverage is affordable (and thus to the administration of the premium tax credit and section 4980H), that is the only cost information requested.

Fourth, the regulations do not require the reporting of the months, if any, during which any of the employee's dependents were covered under the plan. Instead, the regulations require reporting only regarding whether the employee was covered under a plan. Information relating to the months, if any, during which any of the employee's dependents were covered under the plan will be reported as part of the section 6055 information return associated with that employee's coverage, whether on the combined Form 1095-C return submitted by an ALE member with a self-insured plan or otherwise on the Form 1095-B return submitted by the insurance company or other person providing the minimum essential coverage.

Some commenters requested that information related to whether the employee was covered under a plan not be required to be reported as part of the section 6056 reporting because that information will be reported on the section 6055 return. Although this information is required to be reported under section 6055 and section 6056, this suggestion is not adopted in the final regulations because the employee's coverage under the eligible employer-sponsored plan means that the employee is not eligible for the premium tax credit. However, under the final regulations, ALE members with self-insured group health plans will now use a combined Form 1095-C to satisfy the section 6055 and section 6056 reporting requirements and will therefore only be required to report on a single form information regarding whether an employee was covered. ALE members that provide insured coverage will report information regarding whether an employee was covered once on the section 6056 section of the combined Form 1095-C and will leave the section of the form pertaining to section 6055 information blank.

⁹However, section 6055 requires reporting of taxpayer identification numbers for a responsible individual's spouse and/or dependents enrolled in minimum essential coverage.

¹⁰References throughout this preamble to *permissible waiting periods under section 4980H* refer to any periods that are included in the term *limited non-assessment period*, as defined in § 54.4980H-1(a)(26).

Under the regulations, each ALE member must file and furnish the section 6056 return and employee statement using its EIN. Any ALE member that does not have an EIN may easily apply for one online, or by telephone, fax, or mail. See Publication 1635, Employer Identification Number, for further information at www.irs.gov.

To assist in administering section 4980H and the premium tax credit, the IRS will need certain information not specifically set forth under section 6056 but authorized under section 6056(b)(2)(F).

Under the general method of section 6056 reporting, the following information will be reported through the use of indicator codes for some information, as part of the section 6056 return (as well as the number of individual employee statements being submitted):

(1) Information as to whether the coverage offered to full-time employees and their dependents under an employer-sponsored plan provides minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage;

(2) the total number of employees, by calendar month;

(3) whether an employee's effective date of coverage was affected by a permissible waiting period under section 4980H, by calendar month;

(4) whether the ALE member had no employees or otherwise credited any hours of service during any particular month, by calendar month;

(5) whether the ALE member is a person that is a member of an aggregated group, determined under section 414(b), 414(c), 414(m), or 414(o), and, if applicable, the name and EIN of each employer member of the aggregated group constituting the applicable large employer on any day of the calendar year for which the information is reported;

(6) if an appropriately designated person is reporting on behalf of an ALE member that is a governmental unit or any agency or instrumentality thereof for purposes of section 6056, the name, address, and identification number of the appropriately designated person;

(7) if an ALE member is a contributing employer to a multiemployer plan, whether, with respect to a full-time employee, the employer is not subject to an assessable payment under section 4980H due to the employer's contributions to the multiemployer plan; and

(8) if a third party is reporting for an ALE member with respect to the ALE member's full-time employees, the name, address, and identification number of the third party (in addition to the name, address, and EIN of the ALE member already required under the final regulations).

Some commenters requested that further explanation be provided regarding the meaning of the provision included in the proposed regulations asking whether an ALE member was conducting business. To clarify the intent, this provision is changed to require an ALE member, using an indicator code, to report any months during which no employees were providing services or otherwise being credited with hours of service for the ALE member.

Some commenters requested that employers not be required to report whether they expect to be an ALE member the following year. This comment is adopted in the final regulations.

Some commenters requested that employers be required to report information in addition to what was described in the proposed regulations. Commenters requested that employers be required to report information relating to the look-back measurement method for determining full-time employee status set forth in § 54.4980H-3(d). Specifically, commenters requested that employers be required to report on each variable hour employee who may be subject to the look-back measurement method. For variable hour employees, as defined in § 54.4980H-1(a)(49), commenters requested that employers be required to report the administrative and stability period start and end dates and length, as well as the months in which coverage was offered. Commenters also requested that the cost of coverage available to spouses and dependents be reported. Although Treasury

and the IRS agree that this information may be helpful to employees and their spouses and dependents in certain circumstances, reporting such information on the section 6056 return is not necessary for the administration of the premium tax credit or section 4980H and is not directly relevant to the employee in determining whether the employee is eligible for a premium tax credit and is accurately claiming the credit on the employee's individual tax return. Accordingly, this suggestion is not incorporated in the final regulations.

Other commenters requested that the section 6056 return provide a means to indicate whether an employee is a tribal member who is exempt from the individual shared responsibility provision under section 5000A(e). Because an individual's exempt status for purposes of section 5000A is not relevant to the administration of the premium tax credit or section 4980H, this suggestion is not incorporated in the final regulations.

C. Use of Indicator Codes to Provide Information With Respect to a Particular Full-Time Employee

In an effort to simplify and streamline the section 6056 reporting process under the general section 6056 reporting rules, Treasury and the IRS anticipate that certain information described above as applied to a particular full-time employee will be reported to the IRS, and furnished to the full-time employee, through the use of a code rather than by providing specific or detailed information. Specifically, it is contemplated that the following information will be reported with respect to each full-time employee for each calendar month using a code:¹¹

(1) minimum essential coverage meeting minimum value was offered to:

- a. the employee only;
- b. the employee and the employee's dependents only;
- c. the employee and the employee's spouse only; or
- d. the employee, the employee's spouse and dependents;

¹¹Section XV of the preamble to the section 4980H final regulations provides certain transition relief for 2015. Treasury and the IRS anticipate that additional indicator codes will be available on the section 6056 return to indicate that an employer is using the transition relief.

(2) coverage was not offered to the employee and:

a. any failure to offer coverage will not result in a payment under section 4980H(a) or (b), for example because the employee was in a limited non-assessment period for certain employees, as defined in § 54.4980H-1(a)(26);

b. the employee was not a full-time employee;

c. the employee was not employed by the ALE member during that month; or

d. no other code or exception applies;

(3) coverage was offered to the employee for the month although the employee was not a full-time employee for that month;

(4) the employee was covered under the plan; and

(5) the ALE member met one of the affordability safe harbors under § 54.4980H-5(e)(2) with respect to the employee.

It is anticipated that if multiple codes apply with respect to a full-time employee for a particular calendar month, the reporting format will accommodate the necessary codes.

D. Section 6056 Statements to Full-time Employees

Under the general section 6056 reporting rules set forth in these regulations, every ALE member required to file a section 6056 return must furnish a section 6056 employee statement to each of its full-time employees that includes the name, address and EIN of the ALE member and the information required to be shown on the section 6056 return with respect to the full-time employee. The section 6056 employee statement is not required to include a copy of the transmittal form that accompanies the return. As part of the alternative reporting methods, in certain circumstances, other methods of furnishing information to an employee may be sufficient. For a detailed description of these alternative reporting methods, see section X of this preamble.

Some employers may wish to have the flexibility to use a substitute type of statement to provide the necessary information to full-time employees. These regulations provide that the section 6056 employee statement may be made by furnishing a

copy of the section 6056 return on Form 1095-C (or another form the IRS designates) or a substitute employee statement for that full-time employee. Under these regulations, a substitute statement must include the information required to be shown on the section 6056 return filed with the IRS with respect to that employee and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See § 601.601(d)(2). These regulations provide that section 6056 employee statements on Form 1095-C or another form the IRS designates may identify the employee using an IRS truncated TIN rather than the social security number or other identifying number of the employee shown on the corresponding information return filed with the IRS. See the proposed regulations on IRS Truncated Taxpayer Identification Numbers (REG-148873-09 [78 FR 913]).

E. Time for Filing Section 6056 Returns and Furnishing Employee Statements

1. In general

These regulations provide that section 6056 returns must be filed with the IRS annually, no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. This is the same filing schedule applicable to other information returns with which employers are familiar, such as Forms W-2 and 1099. Because Notice 2013-45 provides transition relief for section 6056 reporting with respect to 2014, the first section 6056 returns required to be filed are for the 2015 calendar year and must be filed no later than March 1, 2016 (February 28, 2016, being a Sunday), or March 31, 2016, if filed electronically. In addition, the regulations provide that the section 6056 employee statements be furnished annually to full-time employees on or before January 31 of the year immediately following the calendar year to which the employee statements relate. This means that the first section 6056 employee statements (meaning the statements for 2015) must be furnished no later than February 1, 2016 (January 31, 2016, being a Sunday). However, see section X.C of this

preamble for a discussion of the 2015 section 6056 transition relief available for employers eligible for the transition relief set forth in section XV.D.6 of the preamble to the final regulations under section 4980H (2015 section 4980H transition relief for employers with at least 50 and less than 100 full-time employees (including full-time equivalent employees) that meet certain conditions).

Some commenters asked for use of an alternate filing date for employers whose health plan is not a calendar year plan. While Treasury and the IRS understand that employers may collect information on a plan year basis, employees will need to receive their section 6056 employee statements early in the calendar year in order to have the requisite information to correctly and completely file their income tax returns covering the calendar year and reflecting any available premium tax credit for that calendar year. For this reason, these regulations do not adopt this suggestion.

The final regulations do not include rules regarding extensions of the time to file section 6056 returns. This topic is addressed in the final regulations under section 6055, which include amendments to the regulations under section 6081 relating to general rules on extensions of time to file to include returns under both sections 6055 and 6056. The final section 6055 regulations cross-reference the amendments to the regulations under section 6081; these regulations also include this cross-reference.

2. Voluntary Reporting for Calendar Year 2014

Under Notice 2013-45 and the proposed regulations, in preparation for the application of the section 4980H provisions beginning in 2015, employers were encouraged to voluntarily comply for 2014 (that is, by filing and furnishing section 6056 returns and statements in early 2015) with the information reporting provisions as described in the proposed regulations, and to maintain or expand health coverage in 2014. At the time the notice and proposed regulations were issued, Treasury and the IRS anticipated that at least as to the general method of reporting, the final regulations would not differ sig-

nificantly from the proposed regulations. While the information required to be provided to the IRS and furnished to employees has remained largely unchanged under the general method of reporting, in response to comments on the proposed regulations the format in which that information is provided has changed significantly to streamline the process and reduce administrative burden. Specifically, under the final regulations, as suggested in comments, all ALE members will file a single combined return providing the relevant section 6056 information and, as applicable, also the relevant section 6055 information.

Given this change in the information reporting provisions in response to commenters' feedback on the proposed regulations, employers that wish to voluntarily comply with the information reporting provisions with respect to 2014 should do so in accordance with these final regulations (generally meaning providing both section 6056 and, if applicable, section 6055 information on a single form). Treasury and the IRS continue to anticipate that real-world testing of reporting systems and plan designs, built in accordance with the terms of these final regulations, through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

F. Manner of Filing of Section 6056 Information Returns and Furnishing of Section 6056 Employee Statements.

Treasury and the IRS understand that electronic filing is often easier and more efficient for taxpayers, and several commenters requested that employers be permitted to file section 6056 returns electronically. Some commenters requested that the proposed regulations be modified so that the section 6056 return would not be aggregated with other returns for purposes of determining whether the returns are required to be filed electronically. The final regulations adopt these suggestions. Consistent with

other tax information reporting requirements, the final regulations require electronic filing of section 6056 information returns (Forms 1094-C and 1095-C) except for an ALE member filing fewer than 250 returns under section 6056 during the calendar year, and provide that only section 6056 returns are counted in applying the 250 return threshold for section 6056 reporting. The final regulations under section 6055, issued contemporaneously with these final regulations, amend § 301.6011-2 to add forms in the 1094 and 1095 series. Proposed § 301.6011-9 will be removed in a separate document.

Each section 6056 return for a full-time employee is counted as a separate return. ALE members filing fewer than 250 returns during the calendar year may choose to make the section 6056 returns on the prescribed paper form, but are permitted (and encouraged) to file section 6056 returns electronically. This requirement for electronic filing is the same as the current requirements for other information returns.

In addition to electronic filing, Treasury and the IRS understand that electronic methods are often a simpler and more efficient method to supply employees with the required information, and several commenters requested that employers be permitted to electronically furnish section 6056 employee statements to full-time employees. In response, the regulations permit electronic furnishing of section 6056 employee statements if notice, consent, and hardware and software requirements modeled on existing rules are met. To provide rules for electronic furnishing with which employers are already familiar, these final regulations, consistent with the proposed regulations, adopt a process substantially similar to the process currently in place for the electronic furnishing of employee statements (that is, Forms W-2) pursuant to section 6051 and applicable regulations.

Some commenters requested that ALE members be permitted simply to post the

information on a website accessible to the employee (similar to the current process available to plan administrators of group health plans for furnishing Summary of Benefits and Coverage (SBCs)),¹² or to provide the information to an employee only upon request. Other commenters requested that the ALE member not be required to obtain consent to furnish the information electronically. For many employees, the information provided in the section 6056 employee statement will be essential to the accurate preparation of their individual tax return with respect to a claim for the premium tax credit. Because the employee's eligibility for the premium tax credit will be based on household income for that taxable year, which the employer will not know, the employer will not be able to determine the identity of the employees for which the section 6056 information is relevant. Moreover, given the individualized nature of the information required to be furnished to a full-time employee on a section 6056 employee statement and its intended use in preparing the employee's individual tax return, permitting an employer to furnish such information electronically without first having obtained the employee's consent to such electronic furnishing would be inconsistent with the current procedures for other information returns. Unlike section 6056 employee statements that contain individualized information, SBCs are the same for a particular benefit package under the plan. For these reasons, the regulations require that with respect to each full-time employee to whom the information is required to be furnished, the ALE member must obtain consent from the employee before the section 6056 employee statement may be provided electronically.

With respect to the consent requirement, some ALE members requested that an employee's consent to receive the Form W-2 electronically be deemed a consent to also receive the employee statement under section 6056 electronically. Because an employee cannot provide an informed consent to receive a

¹²The procedures for providing SBCs electronically via internet posting are found at 26 CFR 54.9815-2715(a)(4), 29 CFR 2590.715-2715(a)(4), and 45 CFR 147.200(a)(4). For participants and beneficiaries covered under the plan, the plan must meet the requirements of the Department of Labor's regulations at 29 CFR 2520-104b-1. Notably, the internet posting option is for SBCs provided by an issuer to a plan or by a plan to participants and beneficiaries who are eligible but not enrolled in coverage, and requires that the format of the posting be readily accessible, that the SBC is provided in paper form free of charge upon request, and that the issuer or plan provide timely notification by paper or email that the SBC is available on the internet and the internet address. See Q1 of FAQs about Affordable Care Act Implementation (Part IX), available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html, which allows SBCs to be provided electronically to participants and beneficiaries in connection with their online enrollment or online renewal of coverage under the plan, and allows SBCs to be provided electronically to participants and beneficiaries who request an SBC online.

statement electronically about which he or she does not have information, and because the information furnished on the section 6056 employee statement will be relevant in determining the employee's eligibility for the premium tax credit, any consent given must specifically identify the section 6056 return. Additionally, the requirement for affirmative consent to receive section 6056 employee statements electronically is consistent with the requirements for other tax information returns (See §§ 1.6050S-2; 1.6050S-4; 31.6051-1(j); Rev. Proc. 2012-17, 2012-10 I.R.B. 453; 2014 General Instructions for Forms 1097, 1099, 1098, 3921, 3922, 5498, and W-2G, page 12). Accordingly, the final regulations are consistent with all other tax information reporting regulations and do not adopt this suggestion.

Some commenters also requested confirmation that the section 6056 employee statement and the section 6055 employee statement (if the section 6055 employee statement is provided by the ALE member) may be provided in the same mailing, and in the same mailing as the Form W-2, in cases in which two or more of those forms are provided by mailing to the same employee. Because the final regulations provide for ALE members to combine section 6055 and section 6056 reporting, ALE members will be providing only a single employee statement (with the section 6056 information and, with respect to employers with a self-insured group health plan, section 6055 information). Additionally, there is no requirement that employers mail information returns separately, and the regulations under sections 6051 do not prohibit furnishing in the same mailing as the Form W-2. Accordingly, employers are permitted to mail to an employee in the same mailing one or more of the required information returns such as the combined section 6055 and section 6056 employee statement and the Form W-2.

X. Alternative Methods for Section 6056 Information Reporting for Eligible ALE Members

In developing these regulations, Treasury and the IRS have sought to develop alternative reporting methods that will

minimize the cost and administrative tasks for employers, consistent with the statutory requirements to file an information return with the IRS and furnish an employee statement to each full-time employee. Comments suggested that, at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because its employees will generally be ineligible for a premium tax credit. In response to these concerns and as part of the development of the proposed regulations, Treasury and the IRS formulated certain potential simplified reporting methods described in section XI of the preamble to the proposed regulations and requested comments on those methods and on other possible simplified approaches that would minimize compliance costs while providing sufficient and timely information to individual taxpayers and the IRS. After considering all of the comments, Treasury and the IRS have formulated the alternative reporting methods described in this section X of the preamble as optional alternatives to the general reporting method.

The information provided to the IRS and the employee pursuant to section 6056 is important for administering section 4980H and the premium tax credit. However, in some circumstances, only some of the information required under the general method is necessary. Treasury and the IRS have identified specific groups of employees for whom alternative reporting would provide sufficient information, and alternative reporting approaches for these groups are outlined below. In many situations, not every full-time employee of an employer fits into the groups of employees for which an alternative reporting method is available. In that case, the employer would continue to use the general reporting method in the regulations for those full-time employees for whom an alternative reporting method is not applicable. Commenters noted that many employers, especially larger employers, may choose not to use an alternative reporting method because an insufficient number or an insufficient portion of

their employees will be eligible for the alternative reporting method so that it is not advantageous to use. However, it is anticipated that many employers will find use of an alternative reporting method preferable to the general reporting method because a sufficient number of their employees will fit into one or more of the alternative method categories described below, and the more extensive reporting will be required only for a sufficiently limited number of their employees.

Subsections A through C of this section X of this preamble describe alternative methods of reporting under section 6056 that are permitted under these final regulations. Each of these methods is optional for the reporting employer, and, except as otherwise specified, does not affect any reporting obligations under section 6055.

Subsection A.....Reporting Based on Certification of Qualifying Offers

Subsection B.....Option to Report Without Separate Identification of Full-Time Employees If Certain Conditions Related to Offers of Coverage Are Satisfied (98 Percent Offers)

Subsection C.....Reporting for Applicable Large Employers with Fewer Than 100 Full-time Employees Eligible for Transition Relief Under Section 4980H.

Subsection D.....Combinations of Alternative Reporting Methods

A. Reporting Based on Certification of Qualifying Offers

1. In General

Under the final regulations, an ALE member that satisfies specific requirements is permitted to certify that it offered certain coverage (a qualifying offer, as defined in this section X.A.1) to one or more of its full-time employees and to report simplified section 6056 return information with respect to those employees. Under this alternative method, the ALE member also could provide a simplified employee statement in lieu of a copy of the Form 1095-C to each full-time employee who received a qualifying offer for all 12 months of the calendar year. To be eligible to use this alternative method with respect to full-time employees, the ALE

member must certify that for all months during the year in which the employee was a full-time employee with respect to whom a section 4980H assessable payment could apply¹³, the ALE member (1) offered minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5 percent of the mainland single federal poverty line to one or more of its full-time employees, and (2) offered minimum essential coverage to the employee's spouses and dependents (a qualifying offer). For this purpose, the applicable federal poverty line is the federal poverty line as defined in § 54.4980H-1(a)(19), as calculated and applied to the 48 contiguous states and the District of Columbia. If the employee cost of the employee-only coverage does not exceed 9.5 percent of the mainland single federal poverty line, then, regardless of the size of the employee's household or other income or loss of any member of the employee's household, either the employer's coverage will be affordable for purposes of the premium tax credit or the employee's household income will be less than 100 percent of the federal poverty line so the employee will generally not be an applicable taxpayer for purposes of eligibility for the premium tax credit.

For this purpose, an ALE member is treated as offering coverage to an employee's spouse or dependents even if the employee does not have a spouse or dependent, provided that the employee would have been able to elect such coverage if the employee did have a spouse or dependent. Note that an ALE member utilizing the transition relief provided in the final section 4980H regulations pertaining to the offer of coverage to dependents in 2015 will not be treated as offering coverage to an employee's dependents for purposes of this alternative reporting method. Treasury and the IRS anticipate that the certification of eligibility based on the qualifying offer will be made as part of the section 6056 transmittal submitted by the ALE member.

Treasury and the IRS anticipate that an ALE member eligible for and using this certification method will provide further

information depending on the circumstances of the qualifying offer. With respect to employees for whom the qualifying offer was made for all 12 months of the calendar year, Treasury and the IRS anticipate that the ALE member will be treated as reporting the required section 6056 information if it completes Form 1095-C by providing particular information about the employee, specifically the employee's name, social security number, and address, and indicates, using an indicator code, that a qualifying offer was made for all 12 months of the calendar year. In addition, the ALE member will be treated as fulfilling the requirement under section 6056 to furnish information to those employees if it provides each of them, by January 31 of the year following the year to which the offer applies, either a copy of the Form 1095-C filed with the IRS, or a general statement in a format prescribed by the IRS informing the employee that the employee, the employee's spouse (if any), and the employee's dependents (if any) received a qualifying offer for all 12 months of the calendar year for which the ALE member is reporting, and therefore the employee and the employee's spouse (if any) and dependents (if any) are generally ineligible for a premium tax credit for all of those 12 months.

Some ALE members may provide a qualifying offer for all 12 months of a calendar year to employees who are employed during the entire year, but are not full-time employees for one or more months during the calendar year. These ALE members may elect to report for these employees using the certification method, and to furnish those employees with a copy of Form 1095-C filed with the IRS or the prescribed statement, or may use the general reporting method with respect to those employees.

For each employee who received a qualifying offer for fewer than 12 months of the calendar year, for example because the full-time employee was an employee for fewer than 12 months of the calendar year (for example, because the employee was hired or terminated employment during the calendar year or was in a permis-

sible waiting period under section 4980H or look-back measurement period under section 4980H for one or more months), the ALE member will file and furnish section 6056 returns and statements under the general reporting method. The ALE member will report information under the general reporting method for those months for which a qualifying offer was not received, but may use an indicator code to report for months for which the qualifying offer was received, in accordance with forms and instructions. However, see section X.A.2 of this preamble for an alternative method applicable to 2015.

2. Alternative Method Based on Certification of Qualifying Offers for 2015

Solely for 2015, an ALE member may use an alternative method as described below. To utilize this method the ALE member must (1) certify that it has made a qualifying offer (as described in section X.A.1) to at least 95 percent of its full-time employees and to their spouses and dependents, and (2) in lieu of providing a Form 1095-C (or another form the IRS designates) to its employees, satisfy its section 6056 furnishing requirement with respect to all of its full-time employees by furnishing a statement to each of its full-time employees, by January 31 of the year following the year to which the statement relates. The statement will be in a format prescribed by the IRS and the form of the statement may vary depending on whether the employee received a qualifying offer from the employer for all, some, or none of the months of the calendar year. As with section X.A.1, if the qualifying offer applied to an employee to all 12 months of the calendar year, it is anticipated that the statement will inform the employee that the employee and the employee's spouse (if any) and dependents (if any) will not be eligible to claim a premium tax credit for any of the twelve calendar months. If the qualifying offer did not apply to an employee for all 12 months of the calendar year, it is anticipated the statement will inform the employee that the em-

¹³If the employee was not offered coverage by the employer, a section 4980H assessable payment might not apply, for example, for a month in which an employee was not a full-time employee or was in a permissible waiting period or initial measurement period under section 4980H and the associated regulations.

employee and the employee's spouse (if any) and dependents (if any) may be eligible to claim a premium tax credit for one or more of the 12 calendar months. The statement furnished to the employee must include a contact name and contact telephone number for the ALE member from whom further information may be obtained regarding the offer of coverage that may affect the eligibility of the employee (or any spouse or dependents of the employee) for the premium tax credit. The contact name and telephone number can be a name and telephone number at the ALE member or at another entity, such as a third party administrator, that is authorized to provide information on behalf of the ALE member.

If the ALE member meets the two conditions described above, then the employer will be treated as reporting the required section 6056 information to the IRS if it files with the IRS Form 1095-C, providing the employee's name, social security number, and address, and indicates, using an indicator code, either that a qualifying offer was made for all 12 months or the specific months of the calendar year or it was not, and provides the statement to the employee. Further details will be provided in forms and instructions.

This alternative reporting method for 2015 is optional and an ALE member may use any other available reporting method.

B. Option to Report Without Separate Identification of Full-Time Employees If Certain Conditions Related to Offers of Coverage Are Satisfied (98 percent Offers)

In section XI.B of the preamble to the proposed regulations, Treasury and the IRS stated that they understand that some employers offer minimum essential coverage to all or nearly all of their employees, and are able to accurately represent that the only employees not offered coverage are also not full-time employees. An employer making an offer of minimum essential coverage to all of its full-time employees would not owe an assessable payment under section 4980H(a), which requires such an offer only to 95 percent of an employer's full-time employees. See § 54.4980H-4(a). However, while the employer might know that it is offering

such coverage to a group consisting of almost all of its full-time employees and some of its other employees, the employer might not have determined, in the case of each employee in the offeree group, whether that employee is, in fact, a full-time employee or not. This might arise, for example, if an employer offers such coverage to all of its employees whose hours of service average at least 20 hours per week. Section XI.B of the preamble to the proposed regulations suggested a possible approach under which employers offering coverage to 100 percent of their full-time employees would be permitted to provide section 6056 reporting without determining whether each employee offered coverage is a full-time employee and without specifying the number of the employer's full-time employees.

Some commenters requested that eligibility to use this simplified method be expanded to include an employer that can represent that it offered coverage to substantially all of its full-time employees, and requested that "substantially all" be defined for this purpose as at least 95 percent of the full-time employees. These commenters suggested that while some employers may be able to certify that they meet a 100 percent offer standard, other, especially larger, employers could not be certain that an offer had been extended to every full-time employee (including employees who were full-time employees for only certain months of the year).

In response to these concerns, the final regulations relax the condition on use of this simplified method, which allows the employer to report without identifying or specifying the number of full-time employees. To be eligible to use this method under the final regulations, an employer must certify on its transmittal form that it offered minimum essential coverage providing minimum value that is affordable, to at least 98 percent of the employees on whom it reports in its section 6056 return. For this purpose, coverage is treated as affordable if the cost of employee-only coverage satisfies any applicable affordability safe harbor under the section 4980H final regulations. Setting the level at 98 percent will help ensure that the employer has offered coverage to at least 95 percent of its full-time employees and therefore is not subject to an assessable payment under section 4980H(a), without

knowing which reported employees are full-time and which are part-time. While this alternative method allows reporting without identifying or specifying the number of full-time employees, it does not exempt the employer from any penalties that might apply for failure to report with respect to any full-time employee. Thus, reporting is still required under the normal rules for all full-time employees, including those employees not offered coverage. Accordingly, to the extent the employer fails to report with respect to any full-time employee, the alternative method described here will not affect the application of any generally applicable penalties for failure to report (subject to any relief that might be provided for under these regulations or other applicable guidance), and the possible application of any such penalties will not preclude the employer from using this simplified alternative method if the employer satisfies the 98 percent condition.

As noted, the 98 percent offer is required to provide minimum value and be affordable for purposes of section 4980H to avoid overburdening employers and the IRS with the need to determine at a later date whether a substantial number of employees who received a premium tax credit were full-time employees. If an employer were permitted to report under section 6056 on a large number of employees who were offered coverage that either was not minimum value or not affordable, the reporting could include large numbers of employees who may well be eligible to claim a premium tax credit on the Exchange, without identifying the employee's status as a full-time employee. In such a case, both employers and the IRS would be overburdened with the process of determining at a later date whether any employees who received a premium tax credit were full-time employees with respect to whom the employer is liable for an assessable payment under section 4980H(b). The 98 percent standard helps avoid the need for excessive inquiries to employers as to whether particular employees claiming a premium tax credit were full-time employees.

Example: Employer has 1,000 employees who are expected to have at least 27 hours of service per week in a calendar year. Employer does not want to determine which of these employees are full-time employees for purposes of section 4980H. Before the start of the year, Employer makes an offer of mini-

minimum essential coverage providing minimum value that is affordable for section 4980H purposes to 990 of these 1,000 employees and reports under section 6056 for all 1,000 employees. Because Employer has satisfied the conditions set forth in this section X.B, Employer is not required to report either the total number of full-time employees for the year or whether any particular employee was a full-time employee for any calendar month during the year. If an employee included as part of the return declines the offer of coverage and properly claims a premium tax credit with respect to coverage provided through an Exchange for one or more months during the calendar year, and the employer is contacted by the IRS to determine whether the employer did or did not owe an assessable payment under section 4980H(b), the employer could determine at that point whether the employee was a full-time employee for those months and supply that information to the IRS.

C. Reporting for Applicable Large Employers with Fewer Than 100 Full-time Employees Eligible for Transition Relief Under Section 4980H.

To assist applicable large employers that are in the smaller size range, such as those with at least 50 full-time employees but fewer than 100 full-time employees (including full-time equivalent employees), in transitioning into compliance with section 4980H, the final regulations provide transition relief from section 4980H for 2015 (plus, in the case of any non-calendar plan year that begins in 2015, the portion of the 2015 plan year that falls in 2016). See section XV.D.6 of the preamble to the final regulations under section 4980H for a description of eligibility conditions for transition relief. (Note section 4980H does not apply to employers with fewer than 50 full-time employees (including full-time equivalent employees)). Employers eligible for this section 4980H transition relief will still report under section 6056 for 2015 in accordance with these final regulations.

As part of this transition relief, the ALE member must certify on its section 6056 transmittal form for calendar year 2015 (that is, for the section 6056 transmittal form that will be filed in 2016), as prescribed by the form and instructions, that it meets the eligibility requirements set forth in section XV.D.6(a)(1) through (3) of the preamble to the final regulations under section 4980H. ALE members with non-calendar year plans will certify with regard to their 2015 plan year, including the months of their 2015 plan year that fall

in calendar year 2015, on the section 6056 transmittal form for 2015 (that is for the section 6056 transmittal form that will be filed in 2016), and will certify with regard to the months of their 2015 plan year that fall in calendar year 2016 on the section 6056 transmittal form for 2016 (that is the section 6056 transmittal form that will be filed in 2017).

D. Combinations of Alternative Reporting Methods

The alternative reporting methods described above would apply to particular groups of employees that in many cases would not be identical. An employer is permitted to use different alternative reporting methods for different employees at the employer's election, as specified in forms and instructions..

XI. Other Possible Alternative Methods Not Adopted in the Final Regulations

A. Mandatory Self-Insured No-Cost Minimum Value Coverage

In section IX.B of the preamble to the proposed regulations, Treasury and the IRS stated they were considering whether employers that provide mandatory minimum value coverage to an employee, an employee's spouse, and an employee's dependents, with no employee contribution, could file and furnish only the return required under section 6055, include a code on the employee's Form W-2, and complete only summary information on the section 6056 transmittal form.

This alternative method of reporting was not adopted because its use would leave gaps in information needed for tax administration of the premium tax credit, in particular because codes will not be used on the Form W-2 to report months of mandatory minimum essential coverage providing minimum value.

However, an ALE member that offers no-cost minimum essential coverage providing minimum value coverage to all of its employees will not be liable for a potential assessable payment under section 4980H for any month in which an employee received such an offer. Thus, ALE members will be treated as reporting the required section 6056 information if the employer files a Form 1095-C statement

and provides particular information about the employee, specifically the employee's name, social security number, and address, and indicates using a code if the coverage was offered for all 12 calendar months or for some months of the year if, for example, the employee was not full-time in certain months or was no longer employed. The employer must also furnish each employee a copy of the Form 1095-C filed with the IRS. See also section X.A.1., Reporting Based on Certification of Qualifying Offers, of this preamble for a description of alternative reporting available.

If a self-insured employer is an ALE member, the employer will report the coverage information on the part of the Form 1095-C that is required under section 6055. If the ALE member offers no cost mandatory minimum essential coverage providing minimum value to all its employees, it will use an indicator code on the Form 1094-C transmittal to indicate that it offered this type of coverage. Self-insured employers that are not ALE members will file the section 6055 information return under section 6055. Further details will be provided in forms and instructions.

B. Eliminating Section 6056 Employee Statements in Favor of Form W-2 Reporting for Certain Groups of Employees Offered Coverage

The proposed regulations outlined a possible alternative reporting method under which employers would be permitted in certain circumstances to report offers of minimum value coverage on Form W-2, in accordance with the form and instructions, instead of reporting the offers to the IRS on a section 6056 return or furnishing a section 6056 employee statement to the employee. The proposed regulations specified that this possible alternative method, if permitted, could be used only for an employee employed by the employer for the entire calendar year in which the offer, the individuals to whom the offer is made, and the employee contribution for the lowest-cost option for self-only coverage providing minimum value, all remained the same for all twelve months of the calendar year.

Commenters indicated that such a proposed alternative reporting method, if per-

mitted, would need to be expanded to be available for employees offered coverage under their employer's plan for less than a full calendar year or for whom the offer of coverage changed during the calendar year in order to be useful. Specifically, commenters suggested that additional codes or other modifications to the Form W-2 should be made so that the alternative reporting method could be extended to employees who were not employed for the entire calendar year or not employed as full-time employees during the entire calendar year, were not offered coverage for the entire calendar year, or for whom the cost of coverage changed during the calendar year.

Expanding the alternative reporting method as requested would leave gaps in information that is needed for tax administration. For example, if used for employees who were not employed during the full calendar year, the reporting would not provide any information regarding the particular calendar months for which coverage was offered (or not offered). Even if the employer represented that the coverage was offered during all periods of employment, the reporting could not be reconciled, for example, with another Form W-2 received by the employee from another employer using the same reporting method. That is because while both employers would report the number of months coverage was offered, that information would not be sufficient to determine whether offers of coverage were overlapping (because the employee was employed simultaneously at both employers). Additionally, for months for which coverage was not offered, information as to whether the employee was employed and also the reason coverage was not offered during certain months of the calendar year would not be captured (for example, the employee was in a permissible waiting period under section 4980H or employed but not as a full-time employee).

The specific reason coverage was not offered is relevant to the administration of section 4980H because the failure to offer coverage for certain reasons does not result in an assessable payment under section 4980H for a calendar month, even if the full-time employee receives a premium tax credit for that month. More

codes and other data to be reported on the Form W-2 would be needed to administer section 4980H and the premium tax credit.

Commenters noted that, unless expanded, this proposed alternative reporting method would be of little use to most large employers.

Other commenters suggested that the increase in complexity and, in some cases, modifications to the Form W-2, should not be made because the Form W-2 is such an established and integral part of the payroll and tax system. These commenters noted that revising Form W-2 would result in additional administrative burden and substantial added cost to employers given the need to modify the payroll and online systems and could result in delayed furnishing of Forms W-2 to employees or require corrected Forms W-2 to account for new information related to offers of coverage. Commenters further noted that revised Forms W-2 could create confusion among employees, particularly since the addition of information related to offers of coverage would likely result in an increase in the number of pages of the Form W-2, requiring time for employees to understand the changes, and possibly resulting in disruptions in the preparation of individual tax returns. Treasury and the IRS agree with the commenters that the suggested expansions of this alternative reporting method are in some cases not feasible, and in other cases do not provide sufficient administrative simplification to warrant the proposed increase in the complexity of the data reported on the Form W-2. Given that it is not feasible to expand this proposed alternative method, that commenters indicated the method is not workable as proposed because it does not reduce cost or burden for employers, and that other simplified reporting methods are available, including the combination of section 6055 and section 6056 reporting for employers, the final regulations do not adopt this alternative reporting method.

C. Voluntarily Reporting Section 6056 Elements During or Prior to the Year of Coverage

Some commenters have expressed an interest in voluntarily reporting information about the coverage they offer their

employees prior to the end of a coverage year, for example at their open enrollment or before the open enrollment at the Exchanges, on the theory that earlier section 6056 reporting to the IRS could lead to greater efficiency in the employer verification system employed by Exchanges to determine eligibility for premium tax credits.

A proposal of this kind would need to address a number of issues. The regulations under section 6103 do not authorize the IRS to share taxpayer information in this manner. Even if this information sharing were permitted, individuals would not receive the information for their tax return preparation proximate to when they are completing their tax returns. In addition, the information about the offer of coverage before the year starts may change during the calendar year. Gaps in complete and timely information increase the need for additional follow-up communication among employers, employees, and the IRS.

Also, offering 2 sets of reporting alternatives with filing occurring at different time periods would present challenges. Because the reporting options would be voluntary, different reporting protocols and regimes would need to be established and would need to accommodate employer choices to change the method of reporting from year to year. The multiple forms, procedures, and protocols would create complexity and be difficult to administer. Accordingly, the final regulations do not adopt this approach.

D. Reporting for Employees Potentially Ineligible for the Premium Tax Credit

Some commenters have requested an exemption from reporting for employers that have many employees who are relatively highly paid, on the theory that those employees are unlikely to be eligible for a premium tax credit. The assumption is that a relatively highly paid employee's household income is likely to exceed 400 percent of the federal poverty line and therefore the employee is unlikely to qualify for a premium tax credit. The precondition of a section 4980H(b) assessable payment—that the employee receive a premium tax credit—is unlikely to be satisfied.

Treasury and the IRS have considered this request and have concluded that such an exemption would not be useful for many employers or administrable. Employers would not be in a position to know the correlation between an employee's Form W-2 wages and household income with sufficient accuracy to determine whether an employee may be eligible for the premium tax credit. The only pertinent information the employer retains is the employee's annual wages, yet the poverty level from which the premium tax credit income ceiling is determined varies considerably based on family size (which employers may not know). In addition, employees for whom an employer may use an affordability safe harbor based on wages for purposes of compliance with section 4980H might still be eligible for a premium tax credit based on their household income.

The preamble to the proposed regulations requested comments as to whether there is a level of Form W-2 wages at which such a determination might be made with sufficient confidence, and whether that level of wages would be so high as not to be of practical use to employers. Comments indicated that some employers would be interested in exploring options that would permit them to not file a section 6056 return for an employee if, for example, the employee's wages were \$150,000, except if the employer has actual knowledge that the coverage would be unaffordable to the employee's family. Other commenters indicated that if additional follow-up would be required it would create further economic and administrative burden, such that it would be doubtful that the method would be utilized. Additionally, the vast majority of employers would be required to report with respect to at least some full-time employees with lower income than this threshold. Accordingly, the final regulations do not adopt this suggestion.

XII. Person Responsible For Section 6056 Reporting

Under the regulations, in general, each ALE member must file a section 6056

return with respect to its full-time employees for a calendar year.

A. Special Rules for Governmental Units: Designation

In accordance with section 6056(e), these regulations provide that in the case of any ALE member that is a governmental unit or any agency or instrumentality thereof (together referred to in this preamble as a governmental unit), that governmental unit may report under section 6056 on its own behalf or may appropriately designate another person or persons to report on its behalf.¹⁴ For purposes of designation, another person is appropriately designated for purposes of the filing and furnishing requirements of section 6056 if that other person is part of or related to the same governmental unit as the ALE member. For example, a political subdivision of a state may designate the state, another political subdivision of the state, or an agency or instrumentality of the foregoing as the designated person for purposes of section 6056 reporting. The person designated might be the governmental unit that operates the relevant health plan or the governmental unit that does other information reporting on behalf of the designating governmental unit. If the designation is accepted by the designee and is made before the filing deadline, the designated governmental unit is the designated entity responsible for section 6056 reporting.

The person (or persons) appropriately designated for this purpose would report under section 6056 on behalf of the ALE member. Accordingly, the person (or persons) appropriately designated is (are) the person(s) responsible for section 6056 reporting on behalf of the ALE member and subject to the penalties for failure to comply with information return requirements under sections 6721 and 6722. However, the ALE member remains subject to section 4980H.

Under these regulations, a separate section 6056 return must be filed for each ALE member for which the appropriately designated person is reporting. The designated entity would provide the name of

both the designated entity and the ALE member for which it is reporting. Additionally, the regulations require that there be a single identified section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member (including full-time employees of the ALE member the reporting for which has been transferred to a designated person), and that there be only one section 6056 employee statement (Form 1095-C) for each full-time employee of the ALE member with respect to employment with that ALE member. Further details will be provided in forms and instructions.

These regulations further provide that the designation under section 6056(e) must be in writing, must contain certain language, must be signed by both the ALE member and the designated person, and must be effective under all applicable laws. These regulations also require that the designation set forth the name and EIN of the designated person, and appoint that person as the person responsible for reporting under section 6056 on behalf of the ALE member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, provided that the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the ALE member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an ALE member, the designation should so indicate.

The designation must also contain language that the designated person agrees that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the ALE member and subject to the requirements of section 6056 and the information reporting penalty provisions of sections 6721 and 6722. The designation must also set forth the name, address, and EIN of the ALE member, identifying the ALE mem-

¹⁴Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer.

ber as the person subject to the requirements of section 4980H. These regulations provide that an equivalent applicable statutory or regulatory designation containing similar language will be treated as a written designation for purposes of section 6056(e). The designation will not be submitted to the IRS and should be maintained under the normal record-retention rules under section 6103.

B. ALE Members Participating in Multiemployer Plans

Several commenters noted that the unique structure of many multiemployer plans means that some of the information relevant to the section 6056 return, such as the employee contribution (if any) for the lowest-cost self-only coverage providing minimum value, is held by the multiemployer arrangement. On the other hand, some of the information relevant to the section 6056 return, such as whether a participant is a full-time employee for a particular month, is held by the ALE member. As noted by commenters, this may make the preparation, filing, and furnishing of the returns challenging.

In response to this operating structure and its impact on the administration of section 4980H, section XV.E of the preamble to the final regulations under section 4980H provides that until further guidance is issued, employers generally will be treated as having met their obligations under section 4980H with respect to a full-time employee if the employer is required by a collective bargaining agreement (or appropriate related participation agreement) to contribute on behalf of that employee to a multiemployer plan that provides coverage, to individuals who satisfy the plan's eligibility conditions, meeting the affordability and minimum value requirements and that offers coverage to those individuals' dependents. Commenters to the section 6056 proposed regulations noted that an employer could also provide this information with respect to its full-time employees and thereby provide the information to the IRS that is relevant to the administration of section 4980H. However, that reporting would not provide all the relevant information needed to administer the premium tax credit because the employer's contribution to the mul-

tiemployer plan on behalf of an employee for a particular calendar month may not necessarily align with whether the plan offered coverage to that particular full-time employee, nor would it provide the amount of the required employee contribution for the lowest-cost self-only coverage providing minimum value.

Some commenters requested that the regulations apply the reporting requirement to the multiemployer plan; however, section 6056 applies the reporting and furnishing requirements only to the employer and not the relevant plan in which the employee participates. In the alternative, commenters requested that the regulations require the multiemployer plan to transfer any information to which it has access that is required to be reported under section 6056 to the contributing employer in a timely manner and form. However, there is no authority under section 6056 or elsewhere in the Code that would permit imposing such a requirement on a multiemployer plan. Furthermore, given that section 6056 does not apply to the multiemployer plan, and that the return relates to the employer's potential liability under section 6056, Treasury and the IRS do not have the statutory authority to transfer the reporting obligations from the relevant employer to the multiemployer plan.

Some commenters suggested that the multiemployer plan be permitted to submit the section 6056 return on behalf of the contributing employers. Treasury and the IRS understand that the plan administrator of a multiemployer plan may have better access than a participating employer to certain information on eligible employees required to be included as part of section 6056 reporting. For this reason, section 6056 reporting with respect to full-time employees on behalf of whom an ALE member contributed to a multiemployer plan is permitted under an approach whereby the multiemployer plan administrator would prepare returns pertaining to the full-time employees covered by the collective bargaining agreement eligible to participate in the multiemployer plan and the ALE member would prepare returns pertaining to the remaining full-time employees (those who are not eligible to participate in a multiemployer plan). The administrator of the multiemployer plan would file a separate section

6056 return for each ALE member that is a contributing employer on behalf of whom it files, providing the name, address, and identification number for both the plan and the ALE member for whom it is reporting. In addition, the multiemployer plan may assist the employer in furnishing statements to the employees.

The regulations also require that there be a single identified section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member (including full-time employees of the ALE member the reporting for which was done by a multiemployer plan), and that there be only one section 6056 employee statement (Form 1095-C) for each full-time employee of the ALE member with respect to the employee's employment with the ALE member. Further details will be provided in forms and instructions.

The ALE member would remain the responsible person under section 6056 with respect to all of its full-time employees and accordingly would be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the plan administrator that prepares returns or statements required under section 6056 is a tax return preparer, it is subject to the requirements generally applicable to return preparers. See section XII.C for information about third party reporting.

C. Section 6056 Reporting Facilitated by Third Parties

Treasury and the IRS understand that third party administrators or other third party service providers are integral to the operation of many employers' health plans, including with respect to compliance with any reporting requirements. As requested by several commenters, ALE members are permitted to contract with and use third parties to facilitate filing returns and furnishing employee statements to comply with section 6056, although ALE members remain responsible for reporting under section 6056, with the exception of certain governmental unit applicable large employers that properly designate under section 6056(e). While these regulations do not provide guidance on contractual or other reporting arrange-

ments between private ALE members and other parties, they do not prohibit these arrangements. Such contractual arrangements would not transfer the potential liability of the ALE member for failure to report and furnish under section 6056 and the regulations, or the ALE member's potential liability under section 4980H. To the extent the other party that prepares returns or statements required under section 6056 is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.

As one example, an ALE member that is a member of an aggregated group of related entities (determined under section 414(b), 414(c), 414(m) or 414(o)) may facilitate the filing of returns and the furnishing of employee statements on behalf of one or more of the other ALE members of the aggregated group. Each other ALE member of the group, for example, could have the ALE member that operates the employer-sponsored plan facilitate the filing of section 6056 returns and furnish section 6056 employee statements on its behalf.

In general, a separate section 6056 return must be filed for each ALE member, providing that ALE member's EIN. If more than one third party is facilitating reporting for an ALE member, for example, because the ALE member has contracted with two or more third parties each of which will facilitate reporting with respect to certain groups of the ALE member's employees, or if the ALE member reports with respect to some of its employees and has a third party report with respect to other employees, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the ALE member. Additionally, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to each employee's employment with the ALE member, so that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C. Further details will be provided in forms and instructions to accommodate third parties in facilitating section 6056 reporting for ALE members (including for third

party service providers and multiemployer plan administrators).

XIII. Applicability of Information Return Penalties and Penalty Relief for 2015

These regulations provide that an ALE member that fails to comply with the section 6056 information return and employee statement requirements may be subject to the general reporting penalty provisions under sections 6721 (failure to file correct information returns), and 6722 (failure to furnish correct payee statement). These regulations also provide, however, that the waiver of penalty and special rules under section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, apply. The final regulations under section 6055 include amendments to the regulations under sections 6721 and 6722 to include returns under both sections 6055 and 6056 in the definitions of information return and payee statement. The final regulations under section 6056 cross-reference those amendments to the regulations under sections 6721 and 6722.

In implementing new information reporting requirements, short term relief from penalties frequently is provided. This relief generally allows additional time to develop appropriate procedures for collection of data and compliance with these new reporting requirements. After considering the comments received, the IRS will not impose penalties under sections 6721 and 6722 on ALE members that can show they make good faith efforts to comply with the information reporting requirements. Specifically, relief from penalties is provided under sections 6721 and 6722 for returns and statements filed and furnished in 2016 to report offers of coverage in 2015, but only for incorrect or incomplete information reported on the return or statement, including social security numbers. No relief is provided in the case of ALE members that do not make a good faith effort to comply with these regulations or that fail to timely file an information return or statement. However, ALE members that fail to timely meet the requirements of these regulations may be eligible for penalty relief if the IRS deter-

mines that the standards for reasonable cause under section 6724 are satisfied.

Effective/Applicability Dates

These regulations are effective March 10, 2014. These regulations apply for calendar years beginning after December 31, 2014. Consistent with Notice 2013-45, reporting entities will not be subject to penalties for failure to comply with the section 6056 information reporting provisions for 2014 (including the provisions requiring the furnishing of employee statements in 2015 with respect to 2014). Accordingly, a reporting entity will not be subject to penalties if it first reports beginning in 2016 for 2015 (including the furnishing of employee statements). Taxpayers are encouraged, however, to voluntarily comply with section 6056 information reporting for 2014 by using any of the available reporting methods set forth in these final regulations.

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 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

Sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) (RFA) generally require agencies to prepare a regulatory flexibility analysis addressing the impact of proposed and final regulations, respectively, on small entities. Section 605(b) of the RFA, however, provides that sections 603 and 604 shall not apply if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the reasons set forth in the following paragraphs, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

The regulations under sections 6011 and 6056 affect employers that are applicable large employers, as defined in section 4980H(c)(2). Some small entities fall into this category. Therefore, it has been

determined that these regulations will affect a substantial number of small entities. It has also been determined, however, that the economic impact on entities affected by these regulations will not be significant.

The regulations implement the underlying statute and the economic impact is principally a result of the underlying statute, rather than the regulations. The regulations direct employers that are applicable large employers to file information returns with the IRS and to furnish statements to employees providing information as required by section 6056. Specifically, the regulations require applicable large employers, as defined in section 4980H(c)(2), to file a return with the IRS for each full-time employee reporting certain information regarding the health care coverage offered and provided to the employee for the year. The regulations further require applicable large employers to furnish to each full-time employee a copy of the return, or a substitute statement, required to be filed by the applicable large employer with respect to the employee. As discussed in the Summary of Comments and Explanation of Provisions section of the preamble to this Treasury Decision, Treasury and the IRS engaged in dialogue with stakeholders. The final regulations address certain concerns that were expressed by those stakeholders and minimize the cost and administrative steps associated with the reporting requirements. Specifically, the regulations limit the reporting requirements on applicable large employers by only requiring them to file and furnish information that is necessary for the IRS to administer section 4980H and the premium tax credit, and information employees will need in order to complete their tax returns. Additionally, the regulations limit the reporting requirements by providing for alternative optional reporting methods for certain employers that will permit in certain situations an employer to provide more limited information on its return and employer statement, thus lowering that employer's burden.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6056-1 is added to read as follows:

§ 301.6056-1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

(a) *In general.* Section 6056 requires an applicable large employer subject to the requirements of section 4980H to report certain health insurance coverage information to the Internal Revenue Service, and to furnish certain related employee statements to its full-time employees. Paragraph (b) of this section contains definitions for purposes of this section. Paragraph (c) of this section prescribes general rules for filing the required information with the IRS and furnishing the required employee statements to employees. Paragraphs (d) and (e) of this section describe the information required to be reported on a section 6056 information return and the time and manner for filing. Paragraph (f)

of this section provides information about the statement required to be furnished to a full-time employee. Paragraph (g) of this section prescribes the time and manner of furnishing the statement, including extensions of time to furnish, to a full-time employee. Paragraph (h) addresses corrections of returns. Paragraph (i) of this section describes the information return penalties applicable to section 6056 returns. Paragraph (j) of this section describes alternative reporting methods available to certain applicable large employers with certain employees. Paragraph (k) of this section describes certain special rules applicable to applicable large employers that are governmental units.

(b) *Definitions*—(1) *In general.* The definitions in this paragraph (b) apply for purposes of this section.

(2) *Applicable large employer.* The term *applicable large employer* has the same meaning as in section 4980H(c)(2) and § 54.4980H-1(a)(4) of this chapter.

(3) *Applicable large employer member.* The term *applicable large employer member* has the same meaning as in § 54.4980H-1(a)(5) of this chapter.

(4) *Dependent.* The term *dependent* has the same meaning as in § 54.4980H-1(a)(11) of this chapter.

(5) *Eligible employer-sponsored plan.* The term *eligible employer-sponsored plan* has the same meaning as in section 5000A(f)(2) and § 1.5000A-2(c)(1) of this chapter.

(6) *Full-time employee.* The term *full-time employee* has the same meaning as in section 4980H and § 54.5980H-1(a)(21) of this chapter, as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee, and not as applied to the determination of status as an applicable large employer, if different.

(7) *Governmental unit.* The term *governmental unit* refers to the government of the United States, any State or political subdivision thereof, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)).

(8) *Agency or instrumentality of a governmental unit.* [Reserved]

(9) *Minimum essential coverage.* The term *minimum essential coverage* has the

same meaning as in section 5000A(f) and the regulations issued under that section.

(10) *Minimum value.* The term *minimum value* has the same meaning as in section 36B and any applicable regulations.

(11) *Person.* The term *person* has the same meaning as in section 7701(a)(1) and applicable regulations.

(c) *Content and timing of reporting by applicable large employer members.*—(1) *In general.* Each applicable large employer member required to make a return and furnish a related statement to its full-time employees under section 6056 for a calendar year must make a return and furnish the related statement using such form(s) as may be prescribed by the Internal Revenue Service. An applicable large employer member will satisfy its reporting requirements under section 6056 if it files with the Internal Revenue Service a return for each full-time employee using Form 1095-C or another form the IRS designates, and a transmittal form using Form 1094-C or another form the IRS designates, as prescribed in this section and in the instructions to the forms. Each Form 1095-C and the transmittal Form 1094-C will together constitute an information return to be filed with the Internal Revenue Service.

(2) *Reporting facilitated by third parties.* A separate section 6056 information return must be filed for each applicable large employer member. If more than one section 6056 information return is being filed for an applicable large employer member, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the applicable large employer member, in accordance with forms and instructions. Additionally, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to that full-time employee's employment with the applicable large employer member, so that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C.

(d) *Information required to be reported to the Internal Revenue Service.*—(1) *In general.* Except as provided in paragraph (j) of this section (relating to alternative

reporting methods for eligible applicable large employer members), every applicable large employer member must make a section 6056 information return with respect to each full-time employee. Each section 6056 information return must show—

(i) The name, address, and employer identification number of the applicable large employer member,

(ii) The name and telephone number of the applicable large employer member's contact person,

(iii) The calendar year for which the information is reported,

(iv) A certification as to whether the applicable large employer member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month,

(v) The months during the calendar year for which minimum essential coverage under the plan was available,

(vi) Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month;

(vii) The number of full-time employees for each month during the calendar year,

(viii) The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan, and

(ix) Any other information specified in forms, instructions, or published guidance, see §§ 601.601(d) and 601.602 of this chapter.

(2) *Form of the return.* A return required under this paragraph (d) may be made on Forms 1094-C and 1095-C or other form(s) designated by the Internal Revenue Service, or a substitute form. A substitute form must include the information required to be reported on Forms 1094-C and 1095-C and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See § 601.601(d)(2) of this chapter.

(e) *Time and manner for filing return.* An applicable large employer member

must file the return and transmittal form required under paragraph (d)(2) of this section on or before February 28 (March 31 if filed electronically) of the year succeeding the calendar year to which it relates in accordance with any applicable guidance and the instructions to the form. An applicable large employer member must file the return and transmittal form at the address specified on the return form or its instructions. For extensions of time for filing returns under this section, see §§ 1.6081-1 and 1.6081-8 of this chapter. See § 301.6011-2 for rules relating to electronic filing.

(f) *Statements required to be furnished to full-time employees.*—(1) *In general.* Except as provided in paragraph (j) of this section, every applicable large employer member required to file a return under section 6056 must furnish to each of its full-time employees identified on the return a written statement showing—

(i) The name, address and employer identification number of the applicable large employer member, and

(ii) The information required to be shown on the section 6056 return with respect to the full-time employee.

(2) *Form of the statement.* A statement required under this paragraph (f) may be made either by furnishing to the full-time employee a copy of Form 1095-C or another form the IRS designates as prescribed in this section and in the instructions to such forms, or a substitute statement. A substitute statement must include the information required to be shown on the return filed with the IRS and must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. An IRS truncated taxpayer identification number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the IRS.

(g) *Time and manner for furnishing statements.*—(1) *Time for furnishing.*—(i) *In general.* Each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding that calendar year in accordance with applicable Internal Revenue Service procedures and instructions

(ii) *Extensions of time*—(A) *In general.* For good cause upon written application of the person required to furnish statements under this section, the Internal Revenue Service may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Internal Revenue Service, and must contain a full recital of the reasons for requesting the extension to aid the Internal Revenue Service in determining the period of the extension, if any, that will be granted. A request in the form of a letter to the Internal Revenue Service, signed by the applicant, suffices as an application. The application must be filed on or before the date prescribed in paragraph (g)(1) of this section.

(B) *Automatic extension of time.* The Commissioner may, in appropriate cases, prescribe additional guidance or procedures, published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), for automatic extensions of time to furnish to one or more full-time employees the statement required under section 6056.

(2) *Manner of furnishing.* If mailed, the statement must be sent to the full-time employee's last known permanent address or, if no permanent address is known, to the employee's temporary address. For purposes of this paragraph (g), an applicable large employer member's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement. An applicable large employer member may furnish the statement electronically in accordance with § 301.6056-2.

(h) *Correction of returns.* See § 301.6056-1(i)(2).

(i) *Penalties.*—(1) *In general.* For provisions relating to the penalty for failure to file timely a correct information return required under section 6056, see section 6721 and the regulations under that section. For provisions relating to the penalty for failure to furnish timely a correct statement to full-time employees required under section 6056, see section 6722 and the regulations under that section. See section 6724 and the regulations under that section for rules relating to the waiver of penalties if a failure to file timely or ac-

curately is due to reasonable cause and is not due to willful neglect.

(2) *Application of section 6721 and 6722 penalties to section 6056 reporting.* For purposes of section 6056 reporting, if the information reported on a return (including a transmittal) or a statement required by this section is incomplete or incorrect as a result of a change in circumstances (such as a retroactive change in coverage), a failure to timely file or furnish a corrected document is a failure to file or furnish a correct return or statement under sections 6721 and 6722.

(j) *Alternative reporting methods for eligible applicable large employer members.* In lieu of the general reporting method described in paragraph (d) of this section, eligible applicable large employer members may use the following alternative reporting methods described in this paragraph (j).

(1) *Certification of qualifying offer.* An applicable large employer member is an eligible applicable large employer member and is treated as meeting its reporting obligation under section 6056 if:

(i) The applicable large employer member certifies on the section 6056 transmittal form, in accordance with the form and the instructions to the form, that it made a qualifying offer. A qualifying offer is an offer to one or more of its full-time employees for all months during the year for which the employee was a full-time employee and which are not within a limited nonassessment period (as defined in § 54.4980H-1(a)(26) of this chapter), of minimum essential coverage providing minimum value at an employee cost for employee-only coverage not exceeding 9.5 percent of the mainland single federal poverty line, and that includes an offer of minimum essential coverage to the employees' spouses and dependents. For this purpose, the applicable federal poverty line is the federal poverty line as defined in § 54.4980H-1(a)(19) of this chapter, as calculated and applied to the 48 contiguous states and the District of Columbia;

(ii) The applicable large employer member provides on the Form 1095-C or other form as designated by the IRS, in accordance with the form and the instructions to the form, the information with respect to each full-time employee to

whom a qualifying offer, as defined in paragraph (j)(1)(i) of this section, is made for all twelve months of the applicable calendar year;

(iii) The applicable large employer member provides a statement to each full-time employee to whom a qualifying offer (as defined in paragraph (j)(1)(i) of this section) was made for all twelve months of the applicable calendar year, in such form and manner as prescribed by the Secretary, or a copy of the Form 1095-C filed with the IRS with respect to that full-time employee; and

(D) The applicable large employer member files section 6056 returns and furnishes section 6056 employee statements with respect to all other full-time employees under the general reporting method described in paragraph (d) of this section, in accordance with forms and instructions.

(2) *Option to report without separate identification of full-time employees if certain conditions related to offers of coverage are satisfied (98 percent offers).* An applicable large employer member that otherwise meets its reporting obligation under section 6056 is not required to identify on its section 6056 return whether a particular employee is a full-time employee for one or more calendar months of the reporting year or report the total number of its full-time employees for the reporting year, if it certifies that it offered minimum essential coverage providing minimum value that was affordable under section 4980H to at least 98 percent of the employees (and their dependents) with respect to whom it reports for purposes of section 6056 in accordance with paragraph (d) of this section (regardless of whether the employee is a full-time employee for purposes of section 4980H for a calendar month during the year).

(k) *Special rules for governmental units*—(1) *Person appropriately designated.* In the case of any applicable large employer member that is a governmental unit or any agency or instrumentality thereof, the person or persons appropriately designated under section 6056(e) for purposes of the filing and furnishing requirements of section 6056 must be part of or related to the same governmental unit as the applicable large employer member. The applicable large employer member must make (or revoke) the design-

nation before the earlier of the deadline for filing the returns or furnishing the statements required by this section. A person that has been appropriately designated under section 6056(e) must file a separate section 6056 return and transmittal for each applicable large employer member for which the person is reporting. The person appropriately designated under section 6056(e) assumes responsibility for the section 6056 requirements on behalf of the applicable large employer member for which the person is designated. Notwithstanding the designation, a separate section 6056 information return must be filed for each applicable large employer member that is a governmental unit. If more than one section 6056 information return is being filed for an applicable large employer member, there must be one authoritative section 6056 transmittal (Form 1094-C) reporting aggregate employer-level data for all full-time employees of the applicable large employer member, in accordance with forms and instructions. In addition, notwithstanding the designation, there must be only one section 6056 employee statement (Form 1095-C) for each full-time employee with respect to that full-time employee's employment with the applicable large employer member, so that all required information for a particular full-time employee of the applicable large employer member is reflected on a single Form 1095-C.

(2) *Written designation.* The designation under section 6056(e) must be made in writing, must be signed by both the applicable large employer member and the designated person, and must be effective under all applicable laws. The designation must set forth the name, address, and employer identification number of the designated person, and appoint such person as the person responsible for reporting under section 6056 on behalf of the applicable large employer member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, as long as the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member. If the des-

ignated person is responsible for reporting under section 6056 for all full-time employees of an applicable large employer member, the designation must so indicate. The designation must contain language that the designated person agrees and certifies that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member and subject to the requirements of section 6056, including for purposes of information reporting requirements under sections 6721, 6722, and 6724. The designation must also set forth the name and employer identification number of the applicable large employer member, identifying the applicable large employer member as the person subject to the requirements of section 4980H. An equivalent applicable statutory or regulatory designation containing the language described in this paragraph (k)(2) will be treated as a written designation for purposes of section 6056(e) and this section. The designation will not be submitted to the IRS and should be maintained under the normal record-retention rules under section 6103.

(3) *Application to alternative reporting methods.* A person designated under this paragraph (k) may use the alternative reporting method identified in paragraph (j)(1) of this section for the full-time employees for which it is reporting with respect to a particular governmental unit if that particular governmental unit meets the eligibility requirements with respect to those employees, but may use the alternative reporting method identified in paragraph (j)(2) of this section only if the governmental unit on whose behalf it is reporting would itself be eligible to use that alternative reporting method.

(l) *Additional guidance.* The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) to provide additional rules under section 6056, including rules permitting use of alternative optional methods to meet reporting requirements.

(m) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting

entities will not be subject to penalties under sections 6721 or 6722 for failure to comply with the section 6056 reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Par 4. Section 301.6056-2 is added to read as follows:

§ 301.6056-2 Electronic furnishing of statements

(a) *Electronic furnishing of statements—(1) In general.* An applicable large employer member required by § 301.6056-1 to furnish a statement (furnisher) to a full-time employee (a recipient) as required by section 6056 may furnish the section 6056 employee statement (the statement) in an electronic format in lieu of a paper format, provided that the furnisher meets the requirements of paragraphs (a)(2) through (a)(6) of this section. An applicable large employer member who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The recipient may make the consent electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the recipient may make the consent in a paper document if the recipient confirms the consent electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a recipient's request for a paper statement will be treated as a withdrawal of the recipient's consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the state-

ment, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 6056 electronically on a web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and accesses the web site, downloads and completes the consent document, and emails the completed consent back to F. R has consented to receive the statement required under section 6056 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 6056 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 6056 electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its web site stating that Recipient R may receive the statement required under section 6056 electronically instead of in a paper format. The web site contains instructions on how R may access a secure web page and consent to receive the statement electronically. The consent via the secure web page uses the same electronic format that F will use for the electronically furnished statement. R accesses the web site and follows the instructions for giving consent. R has consented to receive section 6056 statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures—(i) In general.* Prior to, or at the time of, a recipient's consent, a furnisher must provide to the recipient a clear and conspicuous dis-

closure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The furnisher must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The furnisher must inform the recipient of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the first statement required to be furnished following the date of the consent.

(iv) *Post-consent request for a paper statement.* The furnisher must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The furnisher must inform the recipient that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement,

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper), and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The furnisher must inform the recipient of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information.* The furnisher must inform the recipient of the procedures for updating the information needed to contact the recipient. The furnisher must inform the recipient of any

change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The furnisher must provide the recipient with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site. The furnisher must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice—(i) In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statement.* If the furnisher has corrected a recipient's statement as directed in § 301.6056-1(k) and the original statement was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the original statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the web site posting of an original statement or the corrected statement was returned as undeliverable, and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a web site must be retained on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* A furnisher must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect be-

fore the statement is furnished. A paper statement furnished after the statement due date under this paragraph (a)(7) is timely if furnished within 30 days after the date the furnisher receives the withdrawal of consent.

(b) *Effective/applicability date.* This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under section 6722 with respect to the reporting requirements for 2014 (for statements furnished in 2015).

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

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

Par. 6. In § 602.101, paragraph (b) is amended by adding two entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
301.6056-1.....	1545-2251
301.6056-2.....	1545-2251
* * * * *	

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved March 2, 2014.

Mark J. Mazur
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on March 3, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 10, 2014, 79 F.R. 13231)R

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part 1, §§ 1502, 1.1502-75)

Rev. Proc. 2014-24

SECTION 1. PURPOSE

.01 Section 1.1502-75(b) of the Income Tax Regulations authorizes the Commissioner in certain cases to treat a subsidiary member of an affiliated group of corporations as if it had filed a Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, even though it failed to do so. The Commissioner will treat one or more subsidiary members of an affiliated group (hereinafter, subsidiary) as if it had filed a Form 1122 under the conditions described in section 3 of this revenue procedure.

.02 Except as provided in section 1.04 of this revenue procedure, if an affiliated group satisfies the requirements of section 3 of this revenue procedure, the automatic determination by the Commissioner under § 1.1502-75(b) granted by section 3.01 of this revenue procedure is the exclusive means for the Commissioner to determine under § 1.1502-75(b) that a subsidiary is treated as if it filed Form 1122 and thus joined in the making of a consolidated return by the affiliated group, notwithstanding that the subsidiary failed to actually file Form 1122. Such an automatic determination by the Commissioner is available regardless of whether the return of the common parent of the affiliated group is under examination.

.03 If an affiliated group cannot satisfy the requirements of section 3 of this revenue procedure, a determination by the Commissioner under § 1.1502-75(b) is available only pursuant to a determination letter issued by a Director (and not a letter ruling issued by the Associate Chief Counsel (Corporate)). See Rev. Proc. 2014-1, 2014-1 I.R.B. 1 (or a successor revenue procedure), for the procedures for requesting a determination letter and the information that must be submitted in a determination letter request. An affiliated group may not request a determination letter for a determination by the Commissioner under § 1.1502-75(b) if, at the time of the request, the identical issue is under

examination or consideration or in litigation. See section 6.01 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 14 (or a successor revenue procedure). A user fee is required for a determination letter request. See Appendix A of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 67 (or a successor revenue procedure).

.04 The Commissioner, on his own accord, or at the request of the common parent of the affiliated group, may, upon examination, determine pursuant to § 1.1502-75(b)(2) or (3), based on the standards described therein, that a subsidiary is treated as if it filed a Form 1122, pursuant to § 1.1502-75(h)(2).

SECTION 2. BACKGROUND

.01 Section 1.1502-75(a)(1) provides that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502 (in the manner prescribed in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, a consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return. The consolidated return may not be withdrawn after such last day (but the group may withdraw the consolidated return at any time prior to such last day).

.02 Section 1.1502-75(b)(1) provides, as a general rule, that a corporation's consent shall be made by the corporation joining in the making of the consolidated return. A corporation shall be deemed to have joined in the making of a consolidated return if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

.03 Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that the member has joined in the making of a consolidated return by the group. The fol-

lowing circumstances, among others, will be taken into account in making this determination: (i) whether or not the income and deductions of the member were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included on Form 851, *Affiliations Schedule*. If the Commissioner determines that the member has joined in the making of the consolidated return, the member shall be treated as if it had filed a Form 1122 for the year for purposes of § 1.1502-75(h)(2).

.04 Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either § 1.1502-75(b)(1) or § 1.1502-75(b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of the member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, the member shall be treated as if it had filed a Form 1122 for the year for purposes of § 1.1502-75(h)(2), and thus joined in the making of the consolidated return for the year.

.05 Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

SECTION 3. AUTOMATIC DETERMINATION UNDER § 1.1502-75(b)

.01 Pursuant to § 1.1502-75(b), if an affiliated group satisfies the conditions de-

scribed in sections 3.02, 3.03, 3.04, and 3.05 of this revenue procedure, it is hereby determined by the Commissioner that a subsidiary that actually failed to file a Form 1122 (non-filing subsidiary) is treated as if it filed a Form 1122 and thus joined in the making of a consolidated return by the affiliated group.

.02 The affiliated group timely filed what purported to be a consolidated return for the taxable year, either (a) including Form 851 with the affiliated group's return, or (b) providing some other clear and unequivocal indication on the return that the return was intended as a consolidated return for the affiliated group, for example, checking of the appropriate box in Item A at the top of the tax return.

.03 The non-filing subsidiary was not prevented from joining in the filing of the consolidated return by any applicable rule of law, other than the failure to file Form 1122 (for example, section 1504(a)(3) of the Internal Revenue Code, concerning the five-year prohibition on a member that disaffiliated from a consolidated group joining in the filing of a consolidated return by the affiliated group or by another affiliated group with the same common parent).

.04 A separate return was not filed by the non-filing subsidiary for any period of time included in the consolidated return, or any subsequent taxable year, other than (a) a separate return for a period in which the non-filing subsidiary's income and deductions were not properly includible in the affiliated group's consolidated return, or (b) a partnership return, all the income and deductions of which were included on the consolidated return as part of the income and deductions of the partners, all of which were members of the affiliated group.

.05 One of the following three conditions is met:

(1) The consolidated return did not include a Form 1122 for the non-filing subsidiary due to a mistake of law or fact, or to inadvertence, provided that the affiliated group believed that the non-filing subsidiary was a member of the affiliated group for the taxable year and included the non-filing subsidiary's income and deductions in the consolidated return as if the non-filing subsidiary was a member of the affiliated group;

(2) The consolidated return did not include a Form 1122 for the non-filing subsidiary due to a mistake of law or fact, or to inadvertence, provided that all of the non-filing subsidiary's income and deductions were included on the consolidated return as part of the income and deductions of another member of the group. For example, the affiliated group believed that the non-filing subsidiary was disregarded as an entity separate from its owner for Federal income tax purposes or had formally ceased to exist pursuant to a merger or liquidation into another member of the group; or

(3) The consolidated return did not include a Form 1122 for the non-filing subsidiary because the affiliated group believed that the non-filing subsidiary was taxable as a partnership for Federal income tax purposes, provided that all of the non-filing subsidiary's income and deductions were included on the consolidated return as part of the income and deductions of its partners.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014-3, 2014-1 I.R.B. 111, is amplified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is generally effective March 24, 2014. A determination letter may be issued with respect to a request for a determination letter postmarked or, if not mailed, received on or before March 24, 2014. Requests for a determination letter postmarked, or if not mailed, received, on or before March 24, 2014, that are not in substantial compliance with Rev. Proc. 2014-1, 2014-1 I.R.B.1 (or a successor revenue procedure), will be considered as not postmarked or received on or before March 24, 2014, and will be returned to the taxpayer.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Ken Cohen of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Mr. Cohen on (202) 317-6848 (not a toll-free number).

Maximum Vehicle Values for 2014 for Use of Vehicle Cents-Per-Mile and Fleet-Average Valuation Rules

Notice 2014-11

This notice provides the maximum vehicle values for 2014 that taxpayers need to determine the value of personal use of employer-provided vehicles under the special valuation rules provided under section 1.61-21 (d) and (e) of the Income Tax Regulations.

MAXIMUM VEHICLE VALUES

The maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2014 for which the vehicle cents-per-mile valuation rule provided under Regulation section 1.61-21(e) may be applicable is \$16,000 for a passenger automobile and \$17,300 for a truck or van.

The maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2014 for which the fleet-average valuation rule provided under Regulation section 1.61-21(d) may be applicable is \$21,300 for a passenger automobile and \$22,600 for a truck or van.

EFFECTIVE DATE

This notice applies to employer provided passenger automobiles first made available to employees for personal use in calendar year 2014.

DRAFTING INFORMATION

The principal author of this notice is Don M. Parkinson of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information on this notice contact Don Parkinson on (202) 317-4766 (not a toll-free number).

Application of Section 871(m) to Specified Equity-Linked Instruments

Notice 2014-14

I. Background

On December 5, 2013, a withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing were published in the Federal Register at 78 FR 73128 (2013) (the “2013 proposed regulations”). The 2013 proposed regulations proposed new rules for determining whether a transaction is subject to tax pursuant to section 871(m) of the Internal Revenue Code (“Code”). Generally, section 871(m)(1) provides that a dividend equivalent is treated as a dividend from sources within the United States for purposes of sections 871(a), 881, 4948(a), and chapters 3 and 4. The proposed regulations provide that a dividend equivalent includes any payment pursuant to a specified notional principal contract (“specified NPC”) or a specified equity-linked instrument (“specified ELI”) that references the payment of a dividend from an underlying security, each as defined in the 2013 proposed regulations. An ELI, however, is only a specified ELI under the 2013 proposed regulations if the long party acquired it on or after March 5, 2014.

The Treasury Department and the Internal Revenue Service (the “Service”) have received comments recommending that an ELI issued prior to January 1, 2016, not be treated as a specified ELI or, alternatively, that an ELI not be treated as a specified ELI if it is issued prior to the date that the final regulations are published. Comments note that the 2013 proposed regulations significantly expanded the scope of ELIs that would be subject to tax pursuant to section 871(m). Comments further note that this expansion will create uncertainty in pricing transactions today and will not give market participants sufficient time to implement the systems necessary to track the information required by the 2013 proposed regulations by March 5, 2014.

II. Amendment to the Term “Specified ELI” in Final Regulations

When § 1.871-15(e) of the 2013 proposed regulations is finalized, the Treasury Department and the Service intend to limit specified ELIs to ELIs issued on or after 90 days after the date of publication of the final regulations.

III. Effective Date

This Notice is effective March 4, 2014.

IV. Effect on Other Documents

This Notice announces the intention of Treasury and the Service to modify Prop. Reg. § 1.871-15(e) as published in the Federal Register 78 FR 73128 (2013) when the Treasury Decision adopting those rules as final regulations is published in the Federal Register.

V. Request for Comments

The Treasury Department and the Service invite comments on the change to the 2013 proposed regulations described in this Notice. Comments on this Notice may be submitted along with comments to the 2013 proposed regulations. To provide written or electronic comments, send submissions to: CC:PA:LPD:PR (REG-120282-10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-120282-10), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-120282-10).

The principal authors of this Notice are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). For further information regarding this notice call (202) 317-6938 (not a toll-free number).

Per Capita Distributions of Funds Held in Trust by the Secretary of the Interior

Notice 2014-17

This notice provides interim guidance concerning the federal income tax treatment of per capita distributions made to members of Indian tribes from funds held in trust by the Secretary of the Interior.

The Internal Revenue Service (Service) and the Treasury Department are issuing this notice to allow Indian tribes to review the interim guidance and provide comments prior to the issuance of final guidance. Comments may be submitted in writing on or before September 17, 2014. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2014-17), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to notice.comments@irscounsel.treas.gov.

Please include “Notice 2014-17” in the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2014-17), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

BACKGROUND

The Department of the Interior (DOI), primarily through the Office of Special Trustee (OST), is responsible for holding in trust certain funds on behalf of individual Indians and federally recognized Indian tribes.

Current DOI regulations under 25 C.F.R. §§ 115.700-701 provide that funds may be accepted by the Secretary of the Interior on behalf of federally recognized Indian tribes and certain individual Indians who have an interest in trust lands, trust resources, or trust assets. Funds accepted on behalf of Indian tribes are deposited into tribal “Trust Accounts” as defined at 25 C.F.R. § 115.002. The OST has the responsibility to manage the funds and make them available to the tribe upon request.

Funds held in tribal Trust Accounts by the DOI may be distributed per capita to members of the tribes. Prior to the enactment of the Per Capita Act, Pub. L. No. 98-64, 97 Stat. 365, 25 U.S.C. §§ 117a-117c, in 1983, the DOI had the sole authority for making per capita distributions out of tribal Trust Accounts. However, the Per Capita Act provided Indian tribes authority to make per capita distributions directly to members of the tribe out of the tribe's Trust Account.

CONSULTATION

In the spirit of Executive Order 13175, representatives of the Service and the Treasury Department consulted with tribal leaders and members of Indian tribes concerning the federal income tax treatment of per capita distributions made to Indian tribal members from funds held in tribal Trust Accounts. These consultations and conversations were extremely useful in preparing this notice.

APPLICABLE PROVISIONS OF LAW

Section 61(a) of the Internal Revenue Code, 26 U.S.C. § 61, states that, except as otherwise provided by law, gross income means all income from whatever source derived, including but not limited to compensation, gross income derived from business, and dividends. Under 26 U.S.C. § 61, Congress intends to tax all gains and undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

Indians are U.S. citizens subject to the requirement to pay income taxes. *Squire v. Capoman*, 351 U.S. 1 (1956), 1956-1 C.B. 605. There is no provision in the Internal Revenue Code that exempts an individual from the payment of federal income tax solely because he or she is an Indian. Therefore, exemption of Indians from the payment of tax must derive plainly from treaties or agreements with the Indian tribes concerned or an act of Congress. *See Rev. Rul. 67-284*, 1967-2 C.B. 55.

The Per Capita Act provides authority to Indian tribes to make per capita distributions to members of the tribe out of

funds held in a tribal Trust Account. Under 25 U.S.C. § 117a, funds subject to that section may be distributed by either the Secretary of the Interior or, at the request of the governing body of the tribe and subject to the approval of the Secretary of the Interior, the tribe. In practice, proceeds from trust assets or trust resources (both defined at 25 C.F.R. § 115.002) are deposited into a tribal Trust Account for a tribe and that tribe subsequently makes a per capita distribution using funds from that Trust Account.

The Indian Tribal Judgment Funds Use or Distribution Act, Pub. L. No. 93-134, 87 Stat 466, 25 U.S.C. §§ 1401-1408, concerns the distribution of certain judgment funds to Indian tribes. Under 25 U.S.C. § 117b(a), per capita distributions made pursuant to 25 U.S.C. § 117a are subject to the provisions of 25 U.S.C. § 1407. Pursuant to 25 U.S.C. § 1407, none of the funds that are distributed per capita or held in trust pursuant to a plan approved under 25 U.S.C. § 1401 *et. seq.*, including all interest and investment income accrued on the funds while held in trust, are subject to federal income taxes. *See also H.R. Rep. No. 98-230 at 3* (1983), which provides that per capita distributions of tribal trust revenue "shall be subject to the provisions of [25 U.S.C. § 1407] with respect to tax exemptions." However, per capita distributions to tribal members of "net revenues" from Indian gaming activity that are subject to the Indian Gaming Regulatory Act (net gaming revenues) are subject to federal income taxation and are subject to the information reporting and withholding requirements of 26 U.S.C. §§ 6041 and 3402(r). *See 25 U.S.C. §§ 2701-2721 and 25 C.F.R. Part 290.* Under the Indian Gaming Regulatory Act, net gaming revenues means "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. § 2703(9).

Under 25 C.F.R. § 115.703, the Secretary of the Interior accepts and deposits into tribal Trust Accounts only funds from sources listed in the table in 25 C.F.R. § 115.702. The 25 C.F.R. § 115.702 table provides that the Secretary of the Interior will accept, among other payments, payments resulting from money directly de-

rived from title conveyance or use of trust lands, payments resulting from penalties for trespass on trust lands, and payments resulting from a final order from a court of competent jurisdiction for a cause of action related to trust assets. The Secretary of the Interior also accepts deposits of funds derived directly from trust lands, restricted fee lands, or trust resources. *See 25 C.F.R. § 115.702* for a full list of funds that the Secretary of the Interior accepts and deposits into tribal Trust Accounts.

FEDERAL INCOME TAX TREATMENT OF PER CAPITA DISTRIBUTIONS OF TRIBAL TRUST ACCOUNT FUNDS

a. General Rule

Under 25 U.S.C. § 117b(a) and 25 U.S.C. § 1407, per capita distributions made from funds the Secretary of the Interior holds in a Trust Account for the benefit of a tribe are generally excluded from the gross income of the members of the tribe receiving the per capita distributions. For example, if proceeds from timber sales, an agricultural lease, or a grazing permit are deposited into a tribe's Trust Account and that tribe subsequently makes a per capita distribution using funds from the Trust Account, the per capita distributions are excluded from the tribal members' gross income.

b. Exception

Distributions to tribal members from a tribal Trust Account constitute gross income under 26 U.S.C. § 61 to the members of the tribe receiving the distributions if a Trust Account is used to mischaracterize taxable income as nontaxable per capita distributions. For example, distributions from a tribal Trust Account constitute gross income under 26 U.S.C. § 61 if based on the facts and circumstances the distributions are mischaracterized compensation to tribal members for their services, mischaracterized distributions of business profits, or mischaracterized gaming revenues.

The following examples illustrate situations in which distributions from a tribal Trust Account are not treated as nontaxable per capita distributions and are included in gross income under 26 U.S.C. § 61.

Example 1 – Mischaracterized Compensation

B is a housing authority established by Tribe C, a federally recognized Indian tribe. The Director and the Assistant Director of B are both members of Tribe C. During each of the 2011, 2012, and 2013 taxable years, the Director and the Assistant Director are each paid bonuses in the amount of \$15x. In the 2014 taxable year, members of Tribe C's Tribal Council authorize per capita distributions out of the tribe's Trust Account in the amount of \$1x to every member of the tribe and an additional \$2x in per capita distributions to every elder in the tribe. In addition, the members of Tribe C's Tribal Council authorize distributions out of the Trust Account to the Director and Assistant Director in the amount of \$15x each, instead of paying bonuses to the Director and the Assistant Director. The distributions of \$15x to the Director and the Assistant Director are mischaracterized compensation and, therefore, are included in their gross income under 26 U.S.C. § 61.

Example 2 – Mischaracterized Distributions of Business Profits

Tribe D is a federally recognized Indian tribe. A group of Tribe D members own Corporation E, an information technology company that provides call center services. Corporation E's headquarters is located on land held in trust by the Secretary of the Interior for the benefit of Tribe D. Tribe D charges Corporation E rent at fair market value for its headquarters. However, the lease agreement with Tribe D includes a provision whereby Corporation E deposits an amount approximating its net revenues into Tribe

D's Trust Account, characterizing the revenue as additional rent. Subsequently, members of Tribe D's Tribal Council authorize per capita distributions out of the Trust Account in an aggregate amount equal to the purported "additional rent" to the group of Tribe D members who own Corporation E. The distributions of the mischaracterized business profits from the Trust Account constitute gross income under 26 U.S.C. § 61 to the members receiving the distributions.

Example 3 – Mischaracterized Gaming Revenues

Tribe F is a federally recognized Indian tribe. Tribe F owns all of Corporation G, which owns and operates a casino located on land held in trust by the Secretary of the Interior for the benefit of Tribe F. All of Corporation G's gaming revenues are subject to the Indian Gaming Regulatory Act. Corporation G distributes 50% of its net gaming revenues to Tribe F. Under a lease agreement with Tribe F, Corporation G deposits the remaining 50% of its net gaming revenues into Tribe F's Trust Account, characterizing the deposits as rent for use of the land for the casino. Subsequently, members of Tribe F's Tribal Council authorize per capita distributions to every member of the tribe out of the net gaming revenues that are held in the Trust Account. The distributions out of the Trust Account are mischaracterized gaming revenues. Because per capita distributions of net gaming revenues are subject to federal income taxation, the distributions constitute gross income under 26 U.S.C. § 61 to the members of the tribe receiving the distributions.

LIMITATION

This notice applies only to per capita distributions made by the Secretary of the Interior or an Indian tribe out of a tribal Trust Account, as defined at 25 C.F.R. § 115.002. This notice does not affect the federal income taxation of distributions made from individual Indian trust accounts, from which per capita distributions cannot be made. This notice also does not affect the federal income taxation of and withholding from distributions made pursuant to a Revenue Allocation Plan under the Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2475, 25 U.S.C. §§ 2701-2721.

DRAFTING INFORMATION

The principal author of this notice is James Martin of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information, please contact Mr. Martin at (202) 317-5800 (not a toll-free number).

Part IV. Items of General Interest

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

REG-130967-13

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

SUMMARY: In this issue of the **Bulletin**, the IRS and the Department of the Treasury (Treasury Department) are issuing final and temporary regulations that provide guidance under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code). These regulations address reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. The text of the temporary regulations published in the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and/or electronic comments must be received by May 5, 2014. Outlines of topics to be discussed at the public hearing scheduled for June 24, 2014, at 10 a.m. must be received by May 5, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-130967-13), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-130967-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW,

Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-130967-13). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Tara Ferris, Nancy Lee, Michael Kaercher, or Kamela Nelan at (202) 317-6942; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, at (202) 317-5179 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR part 1) under chapter 4 of Subtitle A of the Code. The temporary regulations set forth rules relating to information reporting by FFIs with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. The temporary regulations revise and refine final regulations (TD 9610) under chapter 4 that were published in the **Federal Register** (78 FR 5874) on January 28, 2013, as corrected on September 10, 2013 (78 FR 55202). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant

economic impact on a substantial number of small business 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 business entities will be affected by the collection of information in this notice of proposed rulemaking, 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 the collection of information in this notice of proposed rulemaking are those domestic business entities that are payors of certain U.S. source 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 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 income to satisfy the payor's obligations under chapters 3 and 4. As a result, the information collection requirements of this notice of proposed rulemaking 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. Because the information collection and reporting requirements of chapter 4 and this notice of proposed rulemaking build on existing chapter 3 information collection and reporting systems of domestic small business entities making payments of U.S. source income to foreign persons, the information collec-

tion requirements of this notice of proposed rulemaking impose little additional burden on those domestic entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The IRS invites the public to comment on this certification.

Comments and Public Hearing

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

A public hearing has been scheduled for June 24, 2014, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, an outline of the topics to be discussed, and the time to be devoted to each topic. Submit a signed original and eight (8) copies or an electronic copy of the topics outline by May 5, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Tara Ferris, Nancy Lee, Michael Kaercher, and Kamela Nelan of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part 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 1.1471-3 is also issued under 26 U.S.C. 1473.

Section 1.1474-1 is also issued under 26 U.S.C. 1474.

Section 1.1474-6 is also issued under 26 U.S.C. 1474.

Par. 2. Section 1.1471-1 is amended by:

1. Removing paragraph (b)(81).

2. Redesignating paragraphs (b)(115) through (b)(142) as (b)(124) through (b)(151), paragraphs (b)(108) through (b)(114) as (b)(116) through (b)(122), paragraph (b)(107) as (b)(114), paragraphs (b)(82) through (b)(106) as (b)(88) through (b)(112), paragraphs (b)(75) through (b)(80) as (b)(82) through (b)(87), paragraphs (b)(62) through (b)(74) as (b)(68) through (b)(80), paragraphs (b)(39) through (b)(61) as (b)(44) through (b)(66), paragraphs (b)(28) through

(b)(38) as (b)(32) through (b)(42), paragraphs (b)(18) through (b)(27) as (b)(21) through (b)(30), paragraphs (b)(9) through (b)(17) as (b)(11) through (b)(19), and paragraphs (b)(7) and (b)(8) as (b)(8) and (b)(9).

3. Adding new paragraphs (b)(7), (b)(10), (b)(20), (b)(31), (b)(43), (b)(67), (b)(81), (b)(113), (b)(115), and (b)(123).

4. Revising paragraphs (b)(23), (b)(35), (b)(41), (b)(48), (b)(50), (b)(76), (b)(77), (b)(83), (b)(88), (b)(91), (b)(98), (b)(100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105), (b)(124), (b)(125), (b)(128), (b)(135) and (b)(141).

The revisions and additions read as follows:

§ 1.1471-1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(7) [The text of proposed § 1.1471-1(b)(7) is the same as the text of § 1.1471-1T(b)(7) published elsewhere in this issue of the **Bulletin**.]

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(10) [The text of proposed § 1.1471-1(b)(10) is the same as the text of § 1.1471-1T(b)(10) published elsewhere in this issue of the **Bulletin**.]

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(20) [The text of proposed § 1.1471-1(b)(20) is the same as the text of § 1.1471-1T(b)(20) published elsewhere in this issue of the **Bulletin**.]

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(23) [The text of the proposed amendment to § 1.1471-1(b)(23) is the same as the text of § 1.1471-1T(b)(23) published elsewhere in this issue of the **Bulletin**.]

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(31) [The text of proposed § 1.1471-1(b)(31) is the same as the text of § 1.1471-1T(b)(31) published elsewhere in this issue of the **Bulletin**.]

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(35) [The text of the proposed amendment to § 1.1471-1(b)(35) is the same as the text of § 1.1471-1T(b)(35) published elsewhere in this issue of the **Bulletin**.]

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(41) [The text of the proposed amendment to § 1.1471-1(b)(41) is the same as the text of § 1.1471-1T(b)(41) published elsewhere in this issue of the **Bulletin**.]

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(43) [The text of proposed § 1.1471-1(b)(43) is the same as the text of § 1.1471-1T(b)(43) published elsewhere in this issue of the **Bulletin**].

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(48) [The text of the proposed amendment to § 1.1471-1(b)(48) is the same as the text of § 1.1471-1T(b)(48) published elsewhere in this issue of the **Bulletin**].

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(50) [The text of the proposed amendment to § 1.1471-1(b)(50) is the same as the text of § 1.1471-1T(b)(50) published elsewhere in this issue of the **Bulletin**].

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(67) [The text of proposed § 1.1471-1(b)(67) is the same as the text of § 1.1471-1T(b)(67) published elsewhere in this issue of the **Bulletin**].

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(76) [The text of the proposed amendment to § 1.1471-1(b)(76) is the same as the text of § 1.1471-1T(b)(76) published elsewhere in this issue of the **Bulletin**].

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(77) [The text of the proposed amendment to § 1.1471-1(b)(77) is the same as the text of § 1.1471-1T(b)(77) published elsewhere in this issue of the **Bulletin**].

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(81) [The text of proposed § 1.1471-1(b)(81) is the same as the text of § 1.1471-1T(b)(81) published elsewhere in this issue of the **Bulletin**].

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(83) [The text of the proposed amendment to § 1.1471-1(b)(83) is the same as the text of § 1.1471-1T(b)(83) published elsewhere in this issue of the **Bulletin**].

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(88) [The text of the proposed amendment to § 1.1471-1(b)(88) is the same as the text of § 1.1471-1T(b)(88) published elsewhere in this issue of the **Bulletin**].

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(91) [The text of the proposed amendment to § 1.1471-1(b)(91) is the same as the text of § 1.1471-1T(b)(91) published elsewhere in this issue of the **Bulletin**].

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(98) [The text of the proposed amendment to § 1.1471-1(b)(98) is the same as the text of § 1.1471-1T(b)(98) published elsewhere in this issue of the **Bulletin**].

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(100) [The text of the proposed amendment to § 1.1471-1(b)(100) is the same as the text of § 1.1471-1T(b)(100) published elsewhere in this issue of the **Bulletin**].

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(104) * * * (i) [The text of the proposed amendment to § 1.1471-1(b)(104)(i) is the same as the text of § 1.1471-1T(b)(104)(i) published elsewhere in this issue of the **Bulletin**].

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471-1(b)(104)(ii)(A) is the same as the text of § 1.1471-1T(b)(104)(ii)(A) published elsewhere in this issue of the **Bulletin**].

(B) [The text of the proposed amendment to § 1.1471-1(b)(104)(ii)(B) is the same as the text of § 1.1471-1T(b)(104)(ii)(B) published elsewhere in this issue of the **Bulletin**].

(C) [The text of the proposed amendment to § 1.1471-1(b)(104)(ii)(C) is the same as the text of § 1.1471-1T(b)(104)(ii)(C) published elsewhere in this issue of the **Bulletin**].

(105) [The text of the proposed amendment to § 1.1471-1(b)(105) is the same as the text of § 1.1471-1T(b)(105) published elsewhere in this issue of the **Bulletin**].

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(113) [The text of proposed § 1.1471-1(b)(113) is the same as the text of § 1.1471-1T(b)(113) published elsewhere in this issue of the **Bulletin**].

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(115) [The text of proposed § 1.1471-1(b)(115) is the same as the text of § 1.1471-1T(b)(115) published elsewhere in this issue of the **Bulletin**].

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(123) [The text of proposed § 1.1471-1(b)(123) is the same as the text of § 1.1471-1T(b)(123) published elsewhere in this issue of the **Bulletin**].

(124) [The text of the proposed amendment to § 1.1471-1(b)(124) is the same as the text of § 1.1471-1T(b)(124) published elsewhere in this issue of the **Bulletin**].

(125) [The text of the proposed amendment to § 1.1471-1(b)(125) is the same as the text of § 1.1471-1T(b)(125) published elsewhere in this issue of the **Bulletin**].

* * * * *

(128) [The text of the proposed amendment to § 1.1471-1(b)(128) is the same as

the text of § 1.1471-1T(b)(128) published elsewhere in this issue of the **Bulletin**].

* * * * *

(135) [The text of the proposed amendment to § 1.1471-1(b)(135) is the same as the text of § 1.1471-1T(b)(135) published elsewhere in this issue of the **Bulletin**].

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(141) [The text of the proposed amendment to § 1.1471-1(b)(141) is the same as the text of § 1.1471-1T(b)(141) published elsewhere in this issue of the **Bulletin**].

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Par. 3. In § 1.1471-2,

a. Revise paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(2)(iii)(A), and (a)(2)(v).

b. Remove the heading of paragraph (a)(4)(ii), and add introductory text to paragraph (a)(4)(ii).

c. Revise paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (b)(2)(i)(A)(I), (b)(2)(ii)(A)(4), (b)(2)(ii)(B)(2), (b)(2)(iv), and (b)(4)(ii).

The revisions read as follows:

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

(a) * * *

(1) [The text of the proposed amendment to § 1.1471-2(a)(1) is the same as the text of § 1.1471-2T(a)(1) published elsewhere in this issue of the **Bulletin**].

(2) * * *

(i) [The text of the proposed amendment to § 1.1471-2(a)(2)(i) is the same as the text of § 1.1471-2T(a)(2)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1471-2(a)(2)(ii) introductory text is the same as the text of § 1.1471-2T(a)(2)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471-2(a)(2)(iii)(A) is the same as the text of § 1.1471-2T(a)(2)(iii)(A) published elsewhere in this issue of the **Bulletin**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471-2(a)(2)(v) is the same as the text of § 1.1471-2T(a)(2)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(ii) [The text of the proposed amendment to § 1.1471-2(a)(4)(ii) is the same as the text of § 1.1471-2T(a)(4)(ii) published elsewhere in this issue of the **Bulletin**].

(A) [The text of the proposed amendment to § 1.1471-2(a)(4)(ii)(A) is the same as the text of § 1.1471-2T(a)(4)(ii)(A) published elsewhere in this issue of the **Bulletin**].

(B) [The text of the proposed amendment to § 1.1471-2(a)(4)(ii)(B) is the same as the text of § 1.1471-2T(a)(4)(ii)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(I) [The text of the proposed amendment to § 1.1471-2(b)(2)(i)(A)(I) is the same as the text of § 1.1471-2T(b)(2)(i)(A)(I) published elsewhere in this issue of the **Bulletin**].

* * * * *

(ii) * * *

(A) * * *

(4) [The text of the proposed amendment to § 1.1471-2(b)(2)(ii)(A)(4) is the same as the text of § 1.1471-2T(b)(2)(ii)(A)(4) published elsewhere in this issue of the **Bulletin**].

* * * * *

(B) * * *

(2) [The text of the proposed amendment to § 1.1471-2(b)(2)(ii)(B)(2) is the same as the text of § 1.1471-2T(b)(2)(ii)(B)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iv) [The text of the proposed amendment to § 1.1471-2(b)(2)(iv) is the same as the text of § 1.1471-2T(b)(2)(iv) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(ii) [The text of the proposed amendment to § 1.1471-2(b)(4)(ii) is the same as the text of § 1.1471-2T(b)(4)(ii) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 4. Section 1.1471-3 is amended by:

1. By adding paragraphs (c)(6)(ii)(B)(7), (c)(8)(v), (d)(5)(iii), and (d)(11)(x) through (xii).

2. By revising paragraphs (a)(3)(iii), (a)(3)(v) through (vi), (b)(3), (c)(3)(ii)(C) through (D), (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(5), (c)(3)(iii)(B)(I) through (4), (c)(5)(ii)(B), (c)(6)(ii)(B)(3), (c)(6)(ii)(B)(5) through (6), (c)(6)(ii)(C)(3) through (5), (c)(6)(ii)(E)(3), (c)(6)(iv), (c)(6)(v)(A) through (B), (c)(9)(ii)(B), (c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory text, (d)(4)(iii)(A)(I), (d)(4)(iv)(A), (d)(4)(iv)(C) through (D), (d)(4)(v), (d)(5)(i) through (ii), (d)(6)(vii)(A)(I), (d)(11)(viii)(A) introductory text, (d)(11)(viii)(C), (d)(12)(iii)(A) through (B), (e)(2) through (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v) introductory text, (e)(4)(v)(B)(I) through (2), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii)(A)(4), and (f)(1) through (9).

The revisions and additions read as follows:

§ 1.1471-3 Identification of payee.

(a) * * *

(3) * * *

(iii) [The text of the proposed amendment to § 1.1471-3(a)(3)(iii) is the same as the text of § 1.1471-3T(a)(3)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471-3(a)(3)(v) is the same as the text of § 1.1471-3T(a)(3)(v) published elsewhere in this issue of the **Bulletin**].

(vi) [The text of the proposed amendment to § 1.1471-3(a)(3)(vi) is the same as the text of § 1.1471-3T(a)(3)(vi) published elsewhere in this issue of the **Bulletin**].

* * * * *

(b) * * *

(3) [The text of the proposed amendment to § 1.1471-3(b)(3) is the same as the text of § 1.1471-3T(b)(3) published elsewhere in this issue of the **Bulletin**].

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(C) [The text of the proposed amendment to § 1.1471-3(c)(3)(ii)(C) is the

same as the text of § 1.1471-3T(c)(3)(ii)(C) published elsewhere in this issue of the **Bulletin**].

(D) [The text of the proposed amendment to § 1.1471-3(c)(3)(ii)(D) is the same as the text of § 1.1471-3T(c)(3)(ii)(D) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(A) introductory text is the same as the text of § 1.1471-3T(c)(3)(iii)(A) published elsewhere in this issue of the **Bulletin**].

* * * * *

(5) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(A)(5) is the same as the text of § 1.1471-3T(c)(3)(iii)(A)(5) published elsewhere in this issue of the **Bulletin**].

* * * * *

(B) * * *

(I) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(B)(I) is the same as the text of § 1.1471-3T(c)(3)(iii)(B)(I) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(B)(2) is the same as the text of § 1.1471-3T(c)(3)(iii)(B)(2) published elsewhere in this issue of the **Bulletin**].

(3) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(B)(3) is the same as the text of § 1.1471-3T(c)(3)(iii)(B)(3) published elsewhere in this issue of the **Bulletin**].

(4) [The text of the proposed amendment to § 1.1471-3(c)(3)(iii)(B)(4) is the same as the text of § 1.1471-3T(c)(3)(iii)(B)(4) published elsewhere in this issue of the **Bulletin**].

* * * * *

(5) * * *

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471-3(c)(5)(ii)(B) is the same as the text of § 1.1471-3T(c)(5)(ii)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(6) * * *

(ii) * * *

(B) * * *

(3) [The text of the proposed amendment to § 1.1471-3(c)(6)(ii)(B)(3) is the

same as the text of § 1.1471–3T(c)(6)(ii)(B)(3) published elsewhere in this issue of the **Bulletin**.

* * * * *

(5) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(B)(5) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(5) published elsewhere in this issue of the **Bulletin**].

(6) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(B)(6) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(6) published elsewhere in this issue of the **Bulletin**].

(7) [The text of proposed § 1.1471–3(c)(6)(ii)(B)(7) is the same as the text of § 1.1471–3T(c)(6)(ii)(B)(7) published elsewhere in this issue of the **Bulletin**].

(C) * * *

(3) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(3) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(3) published elsewhere in this issue of the **Bulletin**].

(4) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(4) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(4) published elsewhere in this issue of the **Bulletin**].

(5) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(C)(5) is the same as the text of § 1.1471–3T(c)(6)(ii)(C)(5) published elsewhere in this issue of the **Bulletin**].

* * * * *

(E) * * *

(3) [The text of the proposed amendment to § 1.1471–3(c)(6)(ii)(E)(3) is the same as the text of § 1.1471–3T(c)(6)(ii)(E)(3) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iv) [The text of the proposed amendment to § 1.1471–3(c)(6)(iv) is the same as the text of § 1.1471–3T(c)(6)(iv) published elsewhere in this issue of the **Bulletin**].

(v) * * *

(A) [The text of the proposed amendment to § 1.1471–3(c)(6)(v)(A) is the same as the text of § 1.1471–3T(c)(6)(v)(A) published elsewhere in this issue of the **Bulletin**].

(B) [The text of the proposed amendment to § 1.1471–3(c)(6)(v)(B) is the same as the text of § 1.1471–

3T(c)(6)(v)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(8) * * *

(v) [The text of proposed § 1.1471–3(c)(8)(v) is the same as the text of § 1.1471–3T(c)(8)(v) published elsewhere in this issue of the **Bulletin**].

(9) * * *

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471–3(c)(9)(ii)(B) is the same as the text of § 1.1471–3T(c)(9)(ii)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(v) [The text of the proposed amendment to § 1.1471–3(c)(9)(v) is the same as the text of § 1.1471–3T(c)(9)(v) published elsewhere in this issue of the **Bulletin**].

(d) * * *

(1) [The text of the proposed amendment to § 1.1471–3(d)(1) is the same as the text of § 1.1471–3T(d)(1) published elsewhere in this issue of the **Bulletin**].

(2) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(2)(i) is the same as the text of § 1.1471–3T(d)(2)(i) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1471–3(d)(2)(iii) is the same as the text of § 1.1471–3T(d)(2)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(4)(i) is the same as the text of § 1.1471–3T(d)(4)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1471–3(d)(4)(ii) is the same as the text of § 1.1471–3T(d)(4)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of the proposed amendment to § 1.1471–3(d)(4)(iii) introductory text is the same as the text of § 1.1471–3T(d)(4)(iii) published elsewhere in this issue of the **Bulletin**].

(A) * * *

(J) [The text of the proposed amendment to § 1.1471–3(d)(4)(iii)(A)(J) is the same as the text of § 1.1471–

3T(d)(4)(iii)(A)(J) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iv) * * *

(A) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(A) is the same as the text of § 1.1471–3T(d)(4)(iv)(A) published elsewhere in this issue of the **Bulletin**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(C) is the same as the text of § 1.1471–3T(d)(4)(iv)(C) published elsewhere in this issue of the **Bulletin**].

(D) [The text of the proposed amendment to § 1.1471–3(d)(4)(iv)(D) is the same as the text of § 1.1471–3T(d)(4)(iv)(D) published elsewhere in this issue of the **Bulletin**].

(v) [The text of the proposed amendment to § 1.1471–3(d)(4)(v) is the same as the text of § 1.1471–3T(d)(4)(v) published elsewhere in this issue of the **Bulletin**].

(5) * * *

(i) [The text of the proposed amendment to § 1.1471–3(d)(5)(i) is the same as the text of § 1.1471–3T(d)(5)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1471–3(d)(5)(ii) is the same as the text of § 1.1471–3T(d)(5)(ii)(A) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of proposed § 1.1471–3(d)(5)(iii) is the same as the text of § 1.1471–3T(d)(5)(iii) published elsewhere in this issue of the **Bulletin**].

(6) * * *

(vii) * * *

(A) * * *

(J) [The text of the proposed amendment to § 1.1471–3(d)(6)(vii)(A)(J) is the same as the text of § 1.1471–3T(d)(6)(vii)(A)(J) published elsewhere in this issue of the **Bulletin**].

* * * * *

(11) * * *

(viii) * * *

(A) [The text of the proposed amendment to § 1.1471–3(d)(11)(viii)(A) introductory text is the same as the text of § 1.1471–3T(d)(11)(viii)(A) published elsewhere in this issue of the **Bulletin**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471-3(d)(11)(viii)(C) is the same as the text of § 1.1471-3T(d)(11)(vii)(C) published elsewhere in this issue of the **Bulletin**].

* * * * *

(x) [The text of proposed § 1.1471-3(d)(11)(x) is the same as the text of § 1.1471-3T(d)(11)(x) published elsewhere in this issue of the **Bulletin**].

(xi) [The text of proposed § 1.1471-3(d)(11)(xi) is the same as the text of § 1.1471-3T(d)(11)(xi) published elsewhere in this issue of the **Bulletin**].

(xii) [The text of proposed § 1.1471-3(d)(11)(xii) is the same as the text of § 1.1471-3T(d)(11)(xii) published elsewhere in this issue of the **Bulletin**].

(12) * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471-3(d)(12)(iii)(A) is the same as the text of § 1.1471-3T(d)(12)(iii)(A) published elsewhere in this issue of the **Bulletin**].

(B) [The text of the proposed amendment to § 1.1471-3(d)(12)(iii)(B) is the same as the text of § 1.1471-3T(d)(12)(iii)(B) published elsewhere in this issue of the **Bulletin**].

(e) * * *

(2) [The text of the proposed amendment to § 1.1471-3(e)(2) is the same as the text of § 1.1471-3T(e)(2) published elsewhere in this issue of the **Bulletin**].

(3) [The text of proposed § 1.1471-3(e)(3) is the same as the text of § 1.1471-3T(e)(3) through (e)(3)(iv) published elsewhere in this issue of the **Bulletin**].

(4) [The text of the proposed amendment to § 1.1471-3(e)(4) introductory text is the same as the text of § 1.1471-3T(e)(4) introductory text published elsewhere in this issue of the **Bulletin**].

(i) through (iv) [The text of the proposed amendment to § 1.1471-3(e)(4)(i) through (iv) is the same as the text of § 1.1471-3T(e)(4)(i) through (iv)(B)(2) published elsewhere in this issue of the **Bulletin**].

(v) [The text of the proposed amendment to § 1.1471-3(e)(4)(v) introductory text is the same as the text of § 1.1471-3T(e)(4)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

(B) * * *

(I) [The text of the proposed amendment to § 1.1471-3(e)(4)(v)(B)(I) is the same as the text of § 1.1471-3T(e)(4)(v)(B)(I) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1471-3(e)(4)(v)(B)(2) is the same as the text of § 1.1471-3T(e)(4)(v)(B)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(vi) * * *

(B) [The text of the proposed amendment to § 1.1471-3(e)(4)(vi)(B) is the same as the text of § 1.1471-3T(e)(4)(vi)(B) published elsewhere in this issue of the **Bulletin**].

(vii) * * *

(B) [The text of the proposed amendment to § 1.1471-3(e)(4)(vii)(B) is the same as the text of § 1.1471-3T(e)(4)(vii)(B) published elsewhere in this issue of the **Bulletin**].

(viii) * * *

(A) * * *

(4) [The text of the proposed amendment to § 1.1471-3(e)(4)(viii)(A)(4) is the same as the text of § 1.1471-3T(e)(4)(viii)(A)(4) published elsewhere in this issue of the **Bulletin**].

* * * * *

(f) * * *

(1) through (9) [The text of the proposed amendment to § 1.1471-3(f)(1) through (9) is the same as the text of § 1.1471-3T(f)(1) through (f)(9)(ii) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 5. Section 1.1471-4 is amended by:

1. Removing paragraph (d)(3)(v).

2. Redesignating paragraphs (d)(3)(vi) through (viii) as paragraphs (d)(3)(v) through (vii) and paragraph (d)(6)(vi) as paragraph (d)(6)(vii).

3. Adding paragraphs (b)(3)(i) through (iii), (d)(2)(ii)(F), (d)(2)(iii)(C), and (d)(6)(vi).

4. Revising paragraphs (a)(3), (b)(1) through (3), (b)(6), (c)(5)(iv)(B)(2)(vi), (c)(5)(iv)(E), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B)(2), (d)(2)(ii)(E), (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(3)(ii)(E), (d)(3)(iii)(F), (d)(5)(v) through (vi), (d)(7)(i), (d)(7)(ii)(A), (d)(7)(iii), (d)(7)(iv)(A) through (B), (d)(8), (d)(9) *Example 3, Example 5, and*

Example 7, (e)(1), (e)(2)(ii), (f)(4)(i) through (ii), (g)(1) introductory text, (g)(1)(ii), and (g)(2).

5. By removing the heading of paragraph (d)(7) and adding introductory text to paragraph (d)(7).

The additions and revisions read as follows:

§ 1.1471-4 FFI agreement.

(a) * * *

(3) [The text of the proposed amendment to § 1.1471-4(a)(3) is the same as the text of § 1.1471-4T(a)(3) published elsewhere in this issue of the **Bulletin**].

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1471-4(b)(1) is the same as the text of § 1.1471-4T(b)(1) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1471-4(b)(2) is the same as the text of § 1.1471-4T(b)(2) published elsewhere in this issue of the **Bulletin**].

(3) [The text of the proposed amendment to § 1.1471-4(b)(3) is the same as the text of § 1.1471-4T(b)(3) published elsewhere in this issue of the **Bulletin**].

(i) [The text of proposed § 1.1471-4(b)(3)(i) is the same as the text of § 1.1471-4T(b)(3)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of proposed § 1.1471-4(b)(3)(ii) is the same as the text of § 1.1471-4T(b)(3)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of proposed § 1.1471-4(b)(3)(iii) is the same as the text of § 1.1471-4T(b)(3)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(6) [The text of the proposed amendment to § 1.1471-4(b)(6) is the same as the text of § 1.1471-4T(b)(6) published elsewhere in this issue of the **Bulletin**].

* * * * *

(c) * * *

(5) * * *

(iv) * * *

(B) * * *

(2) * * *

(vi) [The text of the proposed amendment to § 1.1471-4(c)(5)(iv)(B)(2)(vi) is the same as the text of § 1.1471-

4T(c)(5)(iv)(B)(2)(vi) published elsewhere in this issue of the **Bulletin**.

* * * * *

(E) [The text of the proposed amendment to § 1.1471-4(c)(5)(iv)(E) is the same as the text of § 1.1471-4T(c)(5)(iv)(E) published elsewhere in this issue of the **Bulletin**.

* * * * *

(d) * * *

(1) [The text of the proposed amendment to § 1.1471-4(d)(1) is the same as the text of § 1.1471-4T(d)(1) published elsewhere in this issue of the **Bulletin**.

(2) * * *

(i) [The text of the proposed amendment to § 1.1471-4(d)(2)(i) is the same as the text of § 1.1471-4T(d)(2)(i) published elsewhere in this issue of the **Bulletin**.

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471-4(d)(2)(ii)(A) is the same as the text of § 1.1471-4T(d)(2)(ii)(A) published elsewhere in this issue of the **Bulletin**.

(B) * * *

(2) [The text of the proposed amendment to § 1.1471-4(d)(2)(ii)(B)(2) is the same as the text of § 1.1471-4T(d)(2)(ii)(B)(2) published elsewhere in this issue of the **Bulletin**.

* * * * *

(E) [The text of the proposed amendment to § 1.1471-4(d)(2)(ii)(E) is the same as the text of § 1.1471-4T(d)(2)(ii)(E) published elsewhere in this issue of the **Bulletin**.

(F) [The text of proposed § 1.1471-4(d)(2)(ii)(F) is the same as the text of § 1.1471-4T(d)(2)(ii)(F) published elsewhere in this issue of the **Bulletin**.

(iii) * * *

(A) [The text of the proposed amendment to § 1.1471-4(d)(2)(iii)(A) is the same as the text of § 1.1471-4T(d)(2)(iii)(A) published elsewhere in this issue of the **Bulletin**.

(B) [The text of the proposed amendment to § 1.1471-4(d)(2)(iii)(B) introductory text is the same as the text of § 1.1471-4T(d)(2)(iii)(B) published elsewhere in this issue of the **Bulletin**.

* * * * *

(C) [The text of proposed § 1.1471-4(d)(2)(iii)(C) is the same as the text of § 1.1471-4T(d)(2)(iii)(C) published elsewhere in this issue of the **Bulletin**.

(3) * * *

(ii) * * *

(E) [The text of the proposed amendment to § 1.1471-4(d)(3)(ii)(E) is the same as the text of § 1.1471-4T(d)(3)(ii)(E) published elsewhere in this issue of the **Bulletin**.

(iii) * * *

(F) [The text of the proposed amendment to § 1.1471-4(d)(3)(iii)(F) is the same as the text of § 1.1471-4T(d)(3)(iii)(F) published elsewhere in this issue of the **Bulletin**.

* * * * *

(5) * * *

(v) [The text of the proposed amendment to § 1.1471-4(d)(5)(v) is the same as the text of § 1.1471-4T(d)(5)(v) published elsewhere in this issue of the **Bulletin**.

(vi) [The text of the proposed amendment to § 1.1471-4(d)(5)(vi) is the same as the text of § 1.1471-4T(d)(5)(vi) published elsewhere in this issue of the **Bulletin**.

* * * * *

(6) * * *

(vi) [The text of proposed § 1.1471-4(d)(6)(vi) is the same as the text of § 1.1471-4T(d)(6)(vi) published elsewhere in this issue of the **Bulletin**.

* * * * *

(7) [The text of the proposed amendment to § 1.1471-4(d)(7) introductory text is the same as the text of § 1.1471-4T(d)(7) introductory text published elsewhere in this issue of the **Bulletin**.

(i) [The text of the proposed amendment to § 1.1471-4(d)(7)(i) is the same as the text of § 1.1471-4T(d)(7)(i) published elsewhere in this issue of the **Bulletin**.

(ii) * * *

(A) [The text of the proposed amendment to § 1.1471-4(d)(7)(ii)(A) is the same as the text of § 1.1471-4T(d)(7)(ii)(A) published elsewhere in this issue of the **Bulletin**.

* * * * *

(iii) [The text of the proposed amendment to § 1.1471-4(d)(7)(iii) is the same as the text of § 1.1471-4T(d)(7)(iii) published elsewhere in this issue of the **Bulletin**.

(iv) * * *

(A) [The text of the proposed amendment to § 1.1471-4(d)(7)(iv)(A) is the same as the text of § 1.1471-

4T(d)(7)(iv)(A) published elsewhere in this issue of the **Bulletin**.

(B) [The text of the proposed amendment to § 1.1471-4(d)(7)(iv)(B) is the same as the text of § 1.1471-4T(d)(7)(iv)(B) published elsewhere in this issue of the **Bulletin**.

(8) [The text of the proposed amendment to § 1.1471-4(d)(8) is the same as the text of § 1.1471-4T(d)(8) published elsewhere in this issue of the **Bulletin**.

(9) * * *

Example 3. [The text of the proposed amendment to Example 3 of § 1.1471-4(d)(9) is the same as the text of Example 3 of § 1.1471-4T(d)(9) published elsewhere in this issue of the **Bulletin**.

* * * * *

Example 5. [The text of the proposed amendment to Example 5 of § 1.1471-4(d)(9) is the same as the text of Example 5 of § 1.1471-4T(d)(9) published elsewhere in this issue of the **Bulletin**.

* * * * *

Example 7. [The text of the proposed amendment to Example 7 of § 1.1471-4(d)(9) is the same as the text of Example 7 of § 1.1471-4T(d)(9) published elsewhere in this issue of the **Bulletin**.

(e) * * *

(1) [The text of the proposed amendment to § 1.1471-4(e)(1) is the same as the text of § 1.1471-4T(e)(1) published elsewhere in this issue of the **Bulletin**.

(2) * * *

(ii) [The text of the proposed amendment to § 1.1471-4(e)(2)(ii) is the same as the text of § 1.1471-4T(e)(2)(ii) published elsewhere in this issue of the **Bulletin**.

* * * * *

(f) * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471-4(f)(4)(i) is the same as the text of § 1.1471-4T(f)(4)(i) published elsewhere in this issue of the **Bulletin**.

(ii) [The text of the proposed amendment to § 1.1471-4(f)(4)(ii) is the same as the text of § 1.1471-4T(f)(4)(ii) published elsewhere in this issue of the **Bulletin**.

(g) * * *

(1) [The text of the proposed amendment to § 1.1471-4(g)(1) introductory text is the same as the text of § 1.1471-4T(g)(1) introductory text published elsewhere in this issue of the **Bulletin**.

* * * * *

(ii) [The text of the proposed amendment to § 1.1471-4(g)(1)(ii) is the same as the text of § 1.1471-4T(g)(1)(ii) pub-

lished elsewhere in this issue of the **Bulletin**].

* * * * *

(2) [The text of the proposed amendment to § 1.1471-4(g)(2) is the same as the text of § 1.1471-4T(g)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 6. Section 1.1471-5 is amended by:

1. By removing paragraphs (a)(3)(ii)(b)(3)(v)(B)(3), and (b)(3)(vi)(B)(3).

2. By redesignating paragraphs (a)(3)(iii) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(v) and paragraph (j) as paragraph (l).

3. By adding paragraphs (f)(1)(i)(F)(3)(vii), (f)(1)(i)(F)(3)(viii), (f)(2)(v), (j), and (k).

4. By revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(2), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(I) through (2), (b)(3)(vi), (c), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* through *Example 8*, (e)(5)(i)(A)(3), (e)(5)(i)(B) introductory text, (e)(5)(i)(B)(I), (e)(5)(i)(C), (e)(5)(i)(D)(I)(iv) through (v), (e)(5)(iv)(B), (f)(1)(i)(A)(6), (f)(1)(i)(B)(I), (f)(1)(i)(B)(3), (f)(1)(i)(C)(2), (f)(1)(i)(D)(4) through (6), (f)(1)(i)(D)(7) introductory text, (f)(1)(i)(E), (f)(1)(i)(F)(I)(ii), (f)(1)(i)(F)(3)(v) through (vi), (f)(1)(i)(F)(5), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (iv), (f)(4)(i), (g)(3)(i)(D), and (i).

The additions and revisions read as follows:

§ 1.1471-5 Definitions applicable to section 1471.

(a) * * *

(3) * * *

(i) [The text of the proposed amendment to § 1.1471-5(a)(3)(i) is the same as the text of § 1.1471-5T(a)(3)(i) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471-5(a)(4)(i) is the same as the text of § 1.1471-5T(a)(4)(i) published elsewhere in this issue of the **Bulletin**].

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(2) [The text of the proposed amendment to § 1.1471-5(b)(1)(iii)(B)(2) is the same as the text of § 1.1471-5T(b)(1)(iii)(B)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) * * *

(iv) [The text of the proposed amendment to § 1.1471-5(b)(3)(iv) is the same as the text of § 1.1471-5T(b)(3)(iv) published elsewhere in this issue of the **Bulletin**].

(v) * * *

(A) [The text of the proposed amendment to § 1.1471-5(b)(3)(v)(A) is the same as the text of § 1.1471-5T(b)(3)(v)(A) published elsewhere in this issue of the **Bulletin**].

(B) * * *

(I) [The text of the proposed amendment to § 1.1471-5(b)(3)(v)(B)(I) is the same as the text of § 1.1471-5T(b)(3)(v)(B)(I) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1471-5(b)(3)(v)(B)(2) is the same as the text of § 1.1471-5T(b)(3)(v)(B)(2) published elsewhere in this issue of the **Bulletin**].

(vi) [The text of the proposed amendment to § 1.1471-5(b)(3)(vi) is the same as the text of § 1.1471-5T(b)(3)(vi) through (b)(3)(vi)(B)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(c) [The text of the proposed amendment to § 1.1471-5(c) is the same as the text of § 1.1471-5T(c) published elsewhere in this issue of the **Bulletin**].

* * * * *

(e) * * *

(1) * * *

(v) * * *

(A) [The text of the proposed amendment to § 1.1471-5(e)(1)(v)(A) is the same as the text of § 1.1471-5T(e)(1)(v)(A) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.1471-5(e)(3)(ii) is the same as the text of § 1.1471-5T(e)(3)(ii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(v) * * *

Example 7. [The text of the proposed amendment to *Example 7* of § 1.1471-5(e)(4)(v) is the same as the text of *Example 7* of § 1.1471-5T(e)(4)(v) published elsewhere in this issue of the **Bulletin**].

Example 8. [The text of the proposed amendment to *Example 8* of § 1.1471-5(e)(4)(v) is the same as the text of *Example 8* of § 1.1471-5T(e)(4)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

(5) * * *

(i) * * *

(A) * * *

(3) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(A)(3) is the same as the text of § 1.1471-5T(e)(5)(i)(A)(3) published elsewhere in this issue of the **Bulletin**].

(B) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(B) introductory text is the same as the text of § 1.1471-5T(e)(5)(i)(B) published elsewhere in this issue of the **Bulletin**].

(I) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(B)(I) is the same as the text of § 1.1471-5T(e)(5)(i)(B)(I) published elsewhere in this issue of the **Bulletin**].

* * * * *

(C) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(C) is the same as the text of § 1.1471-5T(e)(5)(i)(C) published elsewhere in this issue of the **Bulletin**].

(D) * * *

(I) * * *

(iv) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(D)(I)(iv) is the same as the text of § 1.1471-5T(e)(5)(i)(D)(I)(iv) published elsewhere in this issue of the **Bulletin**].

(v) [The text of the proposed amendment to § 1.1471-5(e)(5)(i)(D)(I)(v) is the same as the text of § 1.1471-5T(e)(5)(i)(D)(I)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iv) * * *

(B) [The text of the proposed amendment to § 1.1471-5(e)(5)(iv)(B) is the same as the text of § 1.1471-5T(e)(5)(iv)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) * * *

(6) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(A)(6) is the same as the text of § 1.1471-5T(f)(1)(i)(A)(6) published elsewhere in this issue of the **Bulletin**].

* * * * *

(B) * * *

(I) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(B)(I) is the same as the text of § 1.1471-5T(f)(1)(i)(B)(I) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(B)(3) is the same as the text of § 1.1471-5T(f)(1)(i)(B)(3) published elsewhere in this issue of the **Bulletin**].

(C) * * *

(2) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(C)(2) is the same as the text of § 1.1471-5T(f)(1)(i)(C)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(D) * * *

(4) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(D)(4) is the same as the text of § 1.1471-5T(f)(1)(i)(D)(4) published elsewhere in this issue of the **Bulletin**].

(5) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(D)(5) is the same as the text of § 1.1471-5T(f)(1)(i)(D)(5) published elsewhere in this issue of the **Bulletin**].

(6) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(D)(6) is the same as the text of § 1.1471-5T(f)(1)(i)(D)(6) published elsewhere in this issue of the **Bulletin**].

(7) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(D)(7) introductory text is the same as the text of § 1.1471-5T(f)(1)(i)(D)(7) introductory text published elsewhere in this issue of the **Bulletin**].

* * * * *

(E) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(E) is the same as the text of § 1.1471-5T(f)(1)(i)(E) through (f)(1)(i)(E)(2) published elsewhere in this issue of the **Bulletin**].

(F) * * *

(I) * * *

(ii) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(F)(I)(ii) is the same as the text of § 1.1471-5T(f)(1)(i)(E)(I)(ii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) * * *

(v) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(F)(3)(v) is the same as the text of § 1.1471-5T(f)(1)(i)(F)(3)(v) published elsewhere in this issue of the **Bulletin**].

(vi) [The text of proposed § 1.1471-5(f)(1)(i)(F)(3)(vi) is the same as the text of § 1.1471-5T(f)(1)(i)(F)(3)(vi) published elsewhere in this issue of the **Bulletin**].

(vii) [The text of proposed § 1.1471-5(f)(1)(i)(F)(3)(vii) is the same as the text of § 1.1471-5T(f)(1)(i)(F)(3)(vii) published elsewhere in this issue of the **Bulletin**].

(viii) [The text of proposed § 1.1471-5(f)(1)(i)(F)(3)(viii) is the same as the text of § 1.1471-5T(f)(1)(i)(F)(3)(viii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(5) [The text of the proposed amendment to § 1.1471-5(f)(1)(i)(F)(5) is the same as the text of § 1.1471-5T(f)(1)(i)(F)(5) published elsewhere in this issue of the **Bulletin**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1471-5(f)(1)(ii)(B) is the same as the text of § 1.1471-5T(f)(1)(ii)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(2) [The text of the proposed amendment to § 1.1471-5(f)(2) introductory text is the same as the text of § 1.1471-5T(f)(2) published elsewhere in this issue of the **Bulletin**].

(i) * * *

(B) [The text of the proposed amendment to § 1.1471-5(f)(2)(i)(B) is the same as the text of § 1.1471-5T(f)(2)(i)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1471-5(f)(2)(iii) is the same as the text of § 1.1471-5T(f)(2)(iii) through (f)(2)(iii)(E) pub-

lished elsewhere in this issue of the **Bulletin**].

(iv) [The text of the proposed amendment to § 1.1471-5(f)(2)(iv) is the same as the text of § 1.1471-5T(f)(2)(iv) through (f)(2)(iv)(F) published elsewhere in this issue of the **Bulletin**].

(v) [The text of proposed § 1.1471-5(f)(2)(v) is the same as the text of § 1.1471-5T(f)(2)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1471-5(f)(4)(i) is the same as the text of § 1.1471-5T(f)(4)(i) published elsewhere in this issue of the **Bulletin**].

* * * * *

(g) * * *

(3) * * *

(i) * * *

(D) [The text of the proposed amendment to § 1.1471-5(g)(3)(i)(D) is the same as the text of § 1.1471-5T(g)(3)(i)(D) published elsewhere in this issue of the **Bulletin**].

* * * * *

(i) [The text of proposed § 1.1471-5(i) is the same as the text of § 1.1471-5T(i) through (i)(10) published elsewhere in this issue of the **Bulletin**].

(j) [The text of proposed § 1.1471-5(j) is the same as the text of § 1.1471-5T(j) published elsewhere in this issue of the **Bulletin**].

(k) [The text of proposed § 1.1471-5(k) is the same as the text of § 1.1471-5T(k) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 7. Section 1.1471-6 is amending by revising paragraphs (d)(1), (d)(4), (f)(2)(iii)(B) through (C), (f)(3)(ii) through (iii), (f)(5) through (6), (g), and (h)(2) to read as follows:

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

* * * * *

(d) * * *

(1) [The text of the proposed amendment to § 1.1471-6(d)(1) is the same as the text of § 1.1471-6T(d)(1) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) [The text of the proposed amendment to § 1.1471-6(d)(4) is the same as the text of § 1.1471-6T(d)(4) published elsewhere in this issue of the **Bulletin**].

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to § 1.1471-6(f)(2)(iii)(B) is the same as the text of § 1.1471-6T(f)(2)(iii)(B) published elsewhere in this issue of the **Bulletin**].

(C) [The text of the proposed amendment to § 1.1471-6(f)(2)(iii)(C) is the same as the text of § 1.1471-6T(f)(2)(iii)(C) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.1471-6(f)(3)(ii) is the same as the text of § 1.1471-6T(f)(3)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of the proposed amendment to § 1.1471-6(f)(3)(iii) is the same as the text of § 1.1471-6T(f)(3)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(5) [The text of the proposed amendment to § 1.1471-6(f)(5) is the same as the text of § 1.1471-6T(f)(5) published elsewhere in this issue of the **Bulletin**].

(6) [The text of the proposed amendment to § 1.1471-6(f)(6) is the same as the text of § 1.1471-6T(f)(6) published elsewhere in this issue of the **Bulletin**].

* * * * *

(g) [The text of the proposed amendment to § 1.1471-6(g) is the same as the text of § 1.1471-6T(g) published elsewhere in this issue of the **Bulletin**].

(h) * * *

(2) [The text of the proposed amendment to § 1.1471-6(h)(2) is the same as the text of § 1.1471-6T(h)(2) introductory text through (h)(2)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 8. Section 1.1472-1 is amended by:

1. By redesignating paragraph (f) as paragraph (h).

2. By adding paragraphs (c)(1)(vi) through (vii), (c)(3) through (5), (f), and (g).

3. By revising paragraphs (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) through (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v), (c)(2), and (d)(1) through (2).

The additions and revisions read as follows:

§ 1.1472-1 Withholding on NFFE's.

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1472-1(b)(1) is the same as the text of § 1.1472-1T(b)(1) published elsewhere in this issue of the **Bulletin**].

* * * * *

(2) [The text of the proposed amendment to § 1.1472-1(b)(2) is the same as the text of § 1.1472-1T(b)(2) published elsewhere in this issue of the **Bulletin**].

(c) * * *

(1) [The text of the proposed amendment to § 1.1472-1(c)(1) is the same as the text of § 1.1472-1T(c)(1) published elsewhere in this issue of the **Bulletin**].

(i) [The text of the proposed amendment to § 1.1472-1(c)(1)(i) introductory text is the same as the text of § 1.1472-1T(c)(1)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1472-1(c)(1)(ii) is the same as the text of § 1.1472-1T(c)(1)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of the proposed amendment to § 1.1472-1(c)(1)(iii) is the same as the text of § 1.1472-1T(c)(1)(iii) published elsewhere in this issue of the **Bulletin**].

(iv) [The text of the proposed amendment to § 1.1472-1(c)(1)(iv) introductory text is the same as the text of § 1.1472-1T(c)(1)(iv) published elsewhere in this issue of the **Bulletin**].

* * * * *

(C) [The text of the proposed amendment to § 1.1472-1(c)(1)(iv)(C) is the same as the text of § 1.1472-1T(c)(1)(iv)(C) published elsewhere in this issue of the **Bulletin**].

(v) [The text of the proposed amendment to § 1.1472-1(c)(1)(v) is the same as the text of § 1.1472-1T(c)(1)(v) published elsewhere in this issue of the **Bulletin**].

(vi) [The text of proposed § 1.1472-1(c)(1)(vi) is the same as the text of § 1.1472-1T(c)(1)(vi) published elsewhere in this issue of the **Bulletin**].

(vii) [The text of proposed § 1.1472-1(c)(1)(vii) is the same as the text of § 1.1472-1T(c)(1)(vii) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1472-1(c)(2) is the same as the text of § 1.1472-1T(c)(2) published elsewhere in this issue of the **Bulletin**].

(3) [The text of proposed § 1.1472-1(c)(3) is the same as the text of § 1.1472-1T(c)(3) published elsewhere in this issue of the **Bulletin**].

(4) [The text of proposed § 1.1472-1(c)(4) is the same as the text of § 1.1472-1T(c)(4) published elsewhere in this issue of the **Bulletin**].

(5) [The text of proposed § 1.1472-1(c)(5) is the same as the text of § 1.1472-1T(c)(5) published elsewhere in this issue of the **Bulletin**].

(d) * * *

(1) [The text of the proposed amendment to § 1.1472-1(d)(1) is the same as the text of § 1.1472-1T(d)(1) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1472-1(d)(2) is the same as the text of § 1.1472-1T(d)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(f) [The text of proposed § 1.1472-1(f) is the same as the text of § 1.1472-1T(f) published elsewhere in this issue of the **Bulletin**].

(g) [The text of proposed § 1.1472-1(g) is the same as the text of § 1.1472-1T(g) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 9. Section 1.1473-1 is amended by:

1. Adding new paragraph (a)(4)(vii).

2. Revising paragraphs (a)(2)(vi), (a)(3)(iii)(B)(4), (a)(4)(vi), (a)(5)(i) through (vi), and (b)(2)(v).

The addition and revisions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(2) * * *

(vi) [The text of the proposed amendment to § 1.1473–1(a)(2)(vi) is the same as the text of § 1.1473–1T(a)(2)(vi) published elsewhere in this issue of the **Bulletin**].

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(4) [The text of the proposed amendment to § 1.1473–1(a)(3)(iii)(B)(4) is the same as the text of § 1.1473–1T(a)(3)(iii)(B)(4) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(vi) [The text of the proposed amendment to § 1.1473–1(a)(4)(vi) is the same as the text of § 1.1473–1T(a)(4)(vi) published elsewhere in this issue of the **Bulletin**].

(vii) [The text of proposed § 1.1473–1(a)(4)(vii) is the same as the text of § 1.1473–1T(a)(4)(vii) published elsewhere in this issue of the **Bulletin**].

(5) * * *

(i) [The text of the proposed amendment to § 1.1473–1(a)(5)(i) is the same as the text of § 1.1473–1T(a)(5)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1473–1(a)(5)(ii) is the same as the text of § 1.1473–1T(a)(5)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of the proposed amendment to § 1.1473–1(a)(5)(iii) is the same as the text of § 1.1473–1T(a)(5)(iii) published elsewhere in this issue of the **Bulletin**].

(iv) [The text of the proposed amendment to § 1.1473–1(a)(5)(iv) is the same as the text of § 1.1473–1T(a)(5)(iv) published elsewhere in this issue of the **Bulletin**].

(v) [The text of the proposed amendment to § 1.1473–1(a)(5)(v) is the same as the text of § 1.1473–1T(a)(5)(v) published elsewhere in this issue of the **Bulletin**].

(vi) [The text of the proposed amendment to § 1.1473–1(a)(5)(vi) is the same as the text of § 1.1473–1T(a)(5)(vi) pub-

lished elsewhere in this issue of the **Bulletin**].

* * * * *

(b) * * *

(2) * * *

(v) [The text of the proposed amendment to § 1.1473–1(b)(2)(v) is the same as the text of § 1.1473–1T(b)(2)(v) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 10. Section 1.1474–1 is amended:

1. By removing paragraphs (d)(1)(ii)(A)(I)(ix), (d)(3)(iii), and (i)(1)(iv) through (v).

2. By redesignating paragraphs (d)(1)(ii)(A)(I)(x) through (xii) as (d)(1)(ii)(A)(I)(ix) through (xi), and paragraphs (d)(3)(iv) through (x) as (d)(3)(iii) through (ix).

3. By revising paragraphs (d)(1)(i), (d)(1)(ii)(A)(I)(viii) through (ix), (d)(1)(ii)(B)(I)(i), (d)(1)(ii)(B)(I)(vi) through (vii), (d)(1)(ii)(B)(I)(ix), (d)(2)(i), (d)(4)(i)(B), (d)(4)(i)(E), (d)(4)(ii)(B), (d)(4)(iii), (i)(1) introductory text, (i)(1)(i) through (iii), (i)(2) introductory text, and (i)(2)(iii).

The additions and revisions read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1474–1(d)(1)(i) is the same as the text of § 1.1474–1T(d)(1)(i) published elsewhere in this issue of the **Bulletin**].

(ii) * * *

(A) * * *

(J) * * *

(viii) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(A)(I)(viii) is the same as the text of § 1.1474–1T(d)(1)(ii)(A)(I)(viii) published elsewhere in this issue of the **Bulletin**].

(ix) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(A)(I)(ix) is the same as the text of § 1.1474–1T(d)(1)(ii)(A)(I)(ix) published elsewhere in this issue of the **Bulletin**].

* * * * *

(B) * * *

(J) * * *

(i) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(I)(i) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(I)(i) published elsewhere in this issue of the **Bulletin**].

* * * * *

(vi) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(I)(vi) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(I)(vi) published elsewhere in this issue of the **Bulletin**].

(vii) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(I)(vii) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(I)(vii) published elsewhere in this issue of the **Bulletin**].

* * * * *

(ix) [The text of the proposed amendment to § 1.1474–1(d)(1)(ii)(B)(I)(ix) is the same as the text of § 1.1474–1T(d)(1)(ii)(B)(I)(ix) published elsewhere in this issue of the **Bulletin**].

* * * * *

(2) * * *

(i) [The text of the proposed amendment to § 1.1474–1(d)(2)(i) is the same as the text of § 1.1474–1T(d)(2)(i) through (d)(2)(i)(C) published elsewhere in this issue of the **Bulletin**].

* * * * *

(4) * * *

(i) * * *

(B) [The text of the proposed amendment to § 1.1474–1(d)(4)(i)(B) is the same as the text of § 1.1474–1T(d)(4)(i)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

(E) [The text of the proposed amendment to § 1.1474–1(d)(4)(i)(E) is the same as the text of § 1.1474–1T(d)(4)(i)(E) published elsewhere in this issue of the **Bulletin**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1474–1(d)(4)(ii)(B) is the same as the text of § 1.1474–1T(d)(4)(ii)(B) published elsewhere in this issue of the **Bulletin**].

(C) [The text of the proposed amendment to § 1.1474–1(d)(4)(ii)(C) is the same as the text of § 1.1474–1T(d)(4)(ii)(C) published elsewhere in this issue of the **Bulletin**].

(iii) * * *

[The text of the proposed amendment to § 1.1474–1(d)(4)(iii) is the same as the

text of § 1.1474-1T(d)(4)(iii) through (d)(4)(iii)(C) published elsewhere in this issue of the **Bulletin**.

* * * * *

(i) * * *

(1) [The text of the proposed amendment to § 1.1474-1(i)(1) introductory text is the same as the text of § 1.1474-1T(i)(1) published elsewhere in this issue of the **Bulletin**].

(i) [The text of the proposed amendment to § 1.1474-1(i)(1)(i) is the same as the text of § 1.1474-1T(i)(1)(i) published elsewhere in this issue of the **Bulletin**].

(ii) [The text of the proposed amendment to § 1.1474-1(i)(1)(ii) is the same as the text of § 1.1474-1T(i)(1)(ii) published elsewhere in this issue of the **Bulletin**].

(iii) [The text of the proposed amendment to § 1.1474-1(i)(1)(iii) is the same as the text of § 1.1474-1T(i)(1)(iii) published elsewhere in this issue of the **Bulletin**].

(2) [The text of the proposed amendment to § 1.1474-1(i)(2) introductory text is the same as the text of § 1.1474-1T(i)(2) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iii) [The text of the proposed amendment to § 1.1474-1(i)(2)(iii) is the same as the text of § 1.1474-1T(i)(2)(iii) published elsewhere in this issue of the **Bulletin**].

* * * * *

Par. 11. Section 1.1474-6 is amended by:

1. Revising paragraph (b)(1).
2. Redesignating paragraph (f) as paragraph (g).
3. Adding new paragraph (f).

The revision and addition read as follows:

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

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1474-6(b)(1) is the same as the text of § 1.1474-6T(b)(1) published elsewhere in this issue of the **Bulletin**].

* * * * *

(f) [The text of proposed § 1.1474-6(f) is the same as the text of § 1.1474-

6T(f) published elsewhere in this issue of the **Bulletin**].

* * * * *

John Dalrymple

Deputy Commissioner for Services and Enforcement

(Filed by the Office of the Federal Register on February 28, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 6, 2014, 79 F.R. 12812)

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

Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revision of Information Reporting and Backup Withholding Regulations

REG-134361-12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the **Bulletin**, the IRS is issuing temporary regulations (TD 9658) that provide revise certain provisions of the final regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, portfolio interest treatment for nonresident alien individuals and foreign corporations, and requirements for certain claims for refund or credit of income tax made by foreign persons. The text of the temporary regulations published of the **Bulletin** also serves as the text of these proposed regulations. This document also provides notice of public hearing on these proposed regulations.

DATES: Written and/or electronic comments must be received by May 5, 2014. Outlines of topics to be discussed at the

public hearing scheduled for June 24, 2014 at 10 a.m. must be received by May 5, 2014.

ADDRESS: Send submissions to: CC:PA:LPD:PR (REG-134361-12), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-134361-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-134361-12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR part 1) relating to sections 871, 1441, 1461, 6041, 6042, 6045, and 6049 of the Internal Revenue Code (Code), the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 6402 of the Code. The temporary regulations set forth rules relating to the coordination of withholding and reporting requirements under chapter 4 of the Code with withholding and reporting requirements under chapter 3, reporting requirements under chapter 61, and backup withholding requirements under section 3406. The temporary regulations also provide guidance regarding claims for credit or refund of chapter 4 withholding under § 301.6402-3(e). The temporary regulations also amend § 1.871-14 to reflect certain changes to the procedures for interest to qualify as portfolio interest. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in this notice of proposed rulemaking 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).

The domestic small business entities that are subject to the collections of information in this notice of proposed rulemaking are those domestic business entities that are payors of certain U.S. source income to foreign persons. These domestic small business entities are subject to comprehensive rules under chapter 3 to identify the proper treatment of payee for purposes of that chapter's information reporting and tax withholding purposes. The domestic small business entities subject to the collections of information in this notice of proposed rulemaking are also subject to comprehensive information reporting and tax withholding rules under chapters 4 and 61 with respect to payments of certain U.S. source income subject to information reporting and tax reporting under chapter 3. These payors are also subject to information and reporting rules under section 3406.

Payors of payments that are subject to the information reporting and withholding regimes under chapters 3, 4, and 61, and section 3406 play an important role in U.S. tax compliance by providing information about payments made to, and income earned by, U.S. and foreign taxpayers. This notice of proposed rulemaking coordinates the information collection and reporting requirements of chapters 3 and 61 and section 3406 applicable to domestic small business entities that are payors of certain U.S. source income with the information collection and reporting requirements of chapter 4 that are applicable to those same domestic small business

entities. This notice of proposed rulemaking establishes a more integrated set of information reporting and tax withholding rules applicable to a domestic small business entity making a payment of U.S. source income that is otherwise the case.

The integrated set of information reporting and withholding rules set out in this notice of proposed rulemaking that will apply to domestic small business entities paying U.S. source income to foreign persons reduce burdens otherwise placed on these entities, including removing duplicative reporting obligations that would otherwise apply. In addition, this notice of proposed rulemaking conforms the due diligence, withholding, and reporting rules under chapters 3, 4, and 61, and section 3406 to the extent appropriate in light of the separate objectives of each chapter or section, thereby reducing burdens that would otherwise apply to domestic small business entities making payments of U.S. source income to foreign persons.

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 this notice of proposed rulemaking, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The Internal Revenue Service invites the public to comment on this certification.

Comments and Public Hearing

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

A public hearing has been scheduled for June 24, 2014, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, an outline of the topics to be discussed, and the time to be devoted to each topic. Submit a signed original and eight (8) copies or an electronic copy of the topics outline by May 5, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are John Sweeney, Joshua Rabon, Subin Seth, and Nancy Lee of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.871-14 is amended by revising paragraphs (b), (c)(2) introductory text, (c)(2)(i) through (iv), (c)(3)(i), (c)(4), (e)(1), and (i) to read as follows:

§ 1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(b) [The text of the proposed amendment to § 1.871-14(b) is the same as the text of § 1.871-14T(b) published elsewhere in this issue of the **Bulletin**.]

(c) * * *

(2) [The text of the proposed amendment to § 1.871-14(c)(2) is the same as the text of § 1.871-14T(c)(2) published elsewhere in this issue of the **Bulletin**.]

(i) through (iv) [The text of the proposed amendment to § 1.871-14(c)(2)(i) through (iv) is the same as the text of § 1.871-14T(c)(2)(i) through (iv) published elsewhere in this issue of the **Bulletin**.]

(3) * * *

(i) [The text of the proposed amendment to § 1.871-14(c)(3)(i) is the same as the text of § 1.871-14T(c)(3)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(4) [The text of the proposed amendment to § 1.871-14(c)(4) is the same as the text of § 1.871-14T(c)(4) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(e) * * *

(1) [The text of the proposed amendment to § 1.871-14(e)(1) is the same as the text of § 1.871-14T(e)(1) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(i) [The text of the proposed amendment to § 1.871-14(i) is the same as the text of § 1.871-14T(i) published elsewhere in this issue of the **Bulletin**.]

Par. 3. Section 1.1441-1 is amended by:

1. Revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), and (b)(2)(iv)(B)(2) and (3).

2. Adding paragraph (b)(2)(iv)(B)(4).

3. Revising paragraphs (b)(2)(iv)(C) and (E), (b)(2)(vi), (b)(2)(vii)(B)(1) and (2), (b)(2)(vii)(C)(1) and (2),

(b)(2)(vii)(D)(1) and (2), (b)(2)(vii)(E)(1) and (2), (b)(2)(vii)(F), (b)(3)(i), (b)(3)(ii)(A) through (C), (b)(3)(iii) introductory text, (b)(3)(iii)(A), (b)(3)(iii)(D), (b)(3)(iv) introductory text, (B)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, and (b)(4)(i).

4. Adding paragraph (b)(5)(ix).

5. Revising paragraphs (b)(6), (b)(7)(i) introductory text, (b)(7)(i)(A) through (C), (b)(7)(ii), (b)(7)(iv), (b)(7)(v), (c) introductory text, (c)(2), (c)(5), (c)(10), (c)(12), (c)(16), (c)(17), (c)(25), and (c)(28) through (30).

6. Adding paragraphs (c)(31) through (56).

7. Revising paragraphs (d)(4), (e)(1)(ii)(A)(2) and (3), (e)(2)(ii), (e)(3)(ii) introductory text, (e)(3)(ii)(A), and (e)(3)(ii)(C) and (D).

8. Adding paragraph (e)(3)(ii)(E).

9. Revising paragraphs (e)(3)(iii) introductory text, (e)(3)(iii)(A), and (e)(3)(iii)(C) and (D).

10. Adding paragraph (e)(3)(iii)(E).

11. Revising paragraphs (e)(3)(iv)(A) through (C), (e)(3)(iv)(D)(1) through (6), (e)(3)(iv)(E), (e)(3)(v), (e)(4) introductory text, (e)(4)(i), (e)(4)(ii)(A), (e)(4)(ii)(B)(1) through (6), and (e)(4)(ii)(B)(8).

12. Adding paragraphs (e)(4)(ii)(B)(9) through (12).

13. Revising paragraphs (e)(4)(ii)(C), (e)(4)(ii)(D), (e)(4)(iii), (e)(4)(iv)(A), (e)(4)(iv)(C), (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), and (e)(4)(vii)(H).

14. Adding paragraph (e)(4)(vii)(I).

15. Revising paragraph (e)(4)(viii)(B).

16. Adding paragraph (e)(4)(viii)(C).

17. Revising paragraphs (e)(4)(ix) and (e)(5).

18. Adding paragraph (f)(3).

The revisions and additions read as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) [The text of the proposed amendment to § 1.1441-1(a) is the same as the text of § 1.1441-1T(a) published elsewhere in this issue of the **Bulletin**.]

(b) * * *

(1) [The text of the proposed amendment to § 1.1441-1(b)(1) is the same as the text of § 1.1441-1T(b)(1) published elsewhere in this issue of the **Bulletin**.]

(2) * * *

(i) [The text of the proposed amendment to § 1.1441-1(b)(2)(i) is the same as the text of § 1.1441-1T(b)(2)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441-1(b)(2)(iii)(A) is the same as the text of § 1.1441-1T(b)(2)(iii)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(iv) * * *

(A) [The text of the proposed amendment to § 1.1441-1(b)(2)(iv)(A) is the same as the text of § 1.1441-1T(b)(2)(iv)(A) published elsewhere in this issue of the **Bulletin**.]

(B) * * *

(2) through (4) [The text of the proposed amendment to § 1.1441-1(b)(2)(iv)(B)(2) through (4) is the same as the text of § 1.1441-1T(b)(2)(iv)(B)(2) through (4) published elsewhere in this issue of the **Bulletin**.]

(C) [The text of the proposed amendment to § 1.1441-1(b)(2)(iv)(C) is the same as the text of § 1.1441-1T(b)(2)(iv)(C) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1441-1(b)(2)(iv)(E) is the same as the text of § 1.1441-1T(b)(2)(iv)(E) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.1441-1(b)(2)(vi) is the same as the text of § 1.1441-1T(b)(2)(vi) published elsewhere in this issue of the **Bulletin**.]

(vii) * * *

(B) * * *

(1) and (2) [The text of the proposed amendment to § 1.1441-1(b)(2)(vii)(B)(2) is the same as the text of § 1.1441-1T(b)(2)(vii)(B)(2) published elsewhere in this issue of the **Bulletin**.]

(C) * * *

(1) and (2) [The text of the proposed amendment to § 1.1441-1(b)(2)(vii)(C)(1)

(12) [The text of the proposed amendment to § 1.1441-1(c)(12) is the same as the text of § 1.1441-1T(c)(12) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(16) and (17) [The text of the proposed amendment to § 1.1441-1(c)(16) and (17) is the same as the text of § 1.1441-1T(c)(16) and (17) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(25) [The text of the proposed amendment to § 1.1441-1(c)(25) is the same as the text of § 1.1441-1T(c)(25) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(28) through (56) [The text of the proposed amendment to § 1.1441-1(c)(28) through (56) is the same as the text of § 1.1441-1T(c)(28) through (56) published elsewhere in this issue of the **Bulletin**.]

(d) * * *

(4) [The text of the proposed amendment to § 1.1441-1(d)(4) is the same as the text of § 1.1441-1T(d)(4) published elsewhere in this issue of the **Bulletin**.]

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(2) and (3) [The text of the proposed amendment to § 1.1441-1(e)(1)(ii)(A)(2) and (3) is the same as the text of § 1.1441-1T(e)(1)(ii)(A)(2) and (3) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441-1(e)(2)(ii) is the same as the text of § 1.1441-1T(e)(2)(ii) published elsewhere in this issue of the **Bulletin**.]

(3) * * *

(ii) [The text of the proposed amendment to § 1.1441-1(e)(3)(ii) is the same as the text of § 1.1441-1T(e)(3)(ii) published elsewhere in this issue of the **Bulletin**.]

(A) [The text of the proposed amendment to § 1.1441-1(e)(3)(ii)(A) is the same as the text of § 1.1441-1T(e)(3)(ii)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(C) through (E) [The text of the proposed amendment to § 1.1441-

1(e)(3)(ii)(C)) is the same as the text of § 1.1441-1T(e)(3)(ii)(C)) published elsewhere in this issue of the **Bulletin**.]

(iii) [The text of the proposed amendment to § 1.1441-1(e)(3)(iii) is the same as the text of § 1.1441-1T(e)(3)(iii) published elsewhere in this issue of the **Bulletin**.]

(A) [The text of the proposed amendment to § 1.1441-1(e)(3)(iii)(A) is the same as the text of § 1.1441-1T(e)(3)(iii)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(C) through (E) [The text of the proposed amendment to § 1.1441-1(e)(3)(iii)(C) through (E) is the same as the text of § 1.1441-1T(e)(3)(iii)(C) through (E) published elsewhere in this issue of the **Bulletin**.]

(iv) * * *

(A) through (C) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(A) through (C) is the same as the text of § 1.1441-1T(e)(3)(iv)(A) through (C) published elsewhere in this issue of the **Bulletin**.]

(D) * * *

(I) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(D)(I) is the same as the text of § 1.1441-1T(e)(3)(iv)(D)(I) published elsewhere in this issue of the **Bulletin**.]

(2) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(D)(2) is the same as the text of § 1.1441-1T(e)(3)(iv)(D)(2) published elsewhere in this issue of the **Bulletin**.]

(i) and (ii) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(D)(2)(i) and (ii) is the same as the text of § 1.1441-1T(e)(3)(iv)(D)(2)(i) and (ii) published elsewhere in this issue of the **Bulletin**.]

(3) through (6) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(D)(3) through (6) is the same as the text of § 1.1441-1T(e)(3)(iv)(D)(3) through (6) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(E) is the same as the text of § 1.1441-1T(e)(3)(iv)(E) published elsewhere in this issue of the **Bulletin**.]

(v) [The text of the proposed amendment to § 1.1441-1(e)(3)(v) is the same as the text of § 1.1441-1T(e)(3)(v) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(4) [The text of the proposed amendment to § 1.1441-1(e)(4) is the same as the text of § 1.1441-1T(e)(4) published elsewhere in this issue of the **Bulletin**.]

(i) [The text of the proposed amendment to § 1.1441-1(e)(4)(i) is the same as the text of § 1.1441-1T(e)(4)(i) published elsewhere in this issue of the **Bulletin**.]

(ii) * * *

(A) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(A) is the same as the text of § 1.1441-1T(e)(4)(ii)(A) published elsewhere in this issue of the **Bulletin**.]

(B) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(B) is the same as the text of § 1.1441-1T(e)(4)(ii)(B) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(8) through (12) [The text of the proposed amendment to § 1.1441-1() is the same as the text of § 1.1441-1T() published elsewhere in this issue of the **Bulletin**.]

(C) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(C) is the same as the text of § 1.1441-1T(e)(4)(ii)(C) published elsewhere in this issue of the **Bulletin**.]

(D) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(D) is the same as the text of § 1.1441-1T(e)(4)(ii)(D) published elsewhere in this issue of the **Bulletin**.]

(I) through (3) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(D)(I) through (3) is the same as the text of § 1.1441-1T(e)(4)(ii)(D)(I) through (3) published elsewhere in this issue of the **Bulletin**.]

(iii) [The text of the proposed amendment to § 1.1441-1(e)(4)(iii) is the same as the text of § 1.1441-1T(e)(4)(iii) published elsewhere in this issue of the **Bulletin**.]

(iv) * * *

(A) [The text of the proposed amendment to § 1.1441-1(e)(4)(iv)(A) is the same as the text of § 1.1441-1T(e)(4)(iv)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(C) [The text of the proposed amendment to § 1.1441-1(e)(4)(iv)(C) is the same as the text of § 1.1441-1T(e)(4)(iv)(C) published elsewhere in this issue of the **Bulletin**.]

(v) through (vii) [The text of the proposed amendment to § 1.1441-1(e)(4)(v) through (vii) is the same as the text of § 1.1441-1T(e)(4)(v) through (vii) published elsewhere in this issue of the **Bulletin**.]

(A) [The text of the proposed amendment to § 1.1441-1(e)(4)(vii)(A) is the same as the text of § 1.1441-1T(e)(4)(vii)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(F) [The text of the proposed amendment to § 1.1441-1(e)(4)(vii)(F) is the same as the text of § 1.1441-1T(e)(4)(vii)(F) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(H) through (I) [The text of the proposed amendment to § 1.1441-1(e)(4)(vii)(H) through (I) is the same as the text of § 1.1441-1T(e)(4)(vii)(H) through (I) published elsewhere in this issue of the **Bulletin**.]

(viii) * * *

(B) and (C) [The text of the proposed amendment to § 1.1441-1(e)(4)(viii)(B) and (C) is the same as the text of § 1.1441-1T(e)(4)(viii)(B) and (C) published elsewhere in this issue of the **Bulletin**.]

(ix) [The text of the proposed amendment to § 1.1441-1(e)(4)(ix) is the same as the text of § 1.1441-1T(e)(4)(ix) published elsewhere in this issue of the **Bulletin**.]

(5) [The text of the proposed amendment to § 1.1441-1(e)(4)(5) is the same as the text of § 1.1441-1T(e)(5) published elsewhere in this issue of the **Bulletin**.]

(f) [The text of the proposed amendment to § 1.1441-1(f) is the same as the text of § 1.1441-1T(f) published elsewhere in this issue of the **Bulletin**.]

Par. 4. Section 1.1441-3 is amended by revising paragraphs (a), (c)(4)(i), and (d), and adding paragraph (j) to read as follows:

§ 1.1441-3 Determination of amounts to be withheld.

(a) [The text of the proposed amendment to § 1.1441-3(a) is the same as the text of § 1.1441-3T(a) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(c) * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1441-3(c)(4)(i) is the same as the text of § 1.1441-3T(c)(4)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(d) * * *

* * * * *

(j) [The text of the proposed amendment to § 1.1441-3(j) is the same as the text of § 1.1441-3T(j) published elsewhere in this issue of the **Bulletin**.]

Par. 5. Section 1.1441-4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), and (b)(3), and adding paragraphs (g)(3) and (h) to read as follows:

§ 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441-4(a)(2)(ii) is the same as the text of § 1.1441-4T(a)(2)(ii)(A) through (B) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(b) * * *

(2) * * *

(i) [The text of the proposed amendment to § 1.1441-4(b)(2)(i) is the same as the text of § 1.1441-4T(b)(2)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(iii) [The text of the proposed amendment to § 1.1441-4(b)(2)(iii) is the same as the text of § 1.1441-4T(b)(2)(iii) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(v) [The text of the proposed amendment to § 1.1441-4(b)(2)(iv) is the same as the text of § 1.1441-4T(b)(2)(iv) published elsewhere in this issue of the **Bulletin**.]

(3) [The text of the proposed amendment to § 1.1441-4(b)(3) is the same as the text of § 1.1441-4T(b)(3) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(g) * * *

(3) [The text of the proposed amendment to § 1.1441-4(g)(3) is the same as the text of § 1.1441-4T(g)(3) published elsewhere in this issue of the **Bulletin**.]

(h) [The text of the proposed amendment to § 1.1441-4(h) is the same as the text of § 1.1441-4T(g)(3) published elsewhere in this issue of the **Bulletin**.]

Par. 6. Section 1.1441-5 is amended by:

1. Revising paragraph (b)(2)(iii).
2. Adding paragraph (b)(2)(vi).
3. Revising (c)(1)(i) introductory text, (c)(1)(i)(C), and (c)(1)(iv).
4. Adding paragraph (c)(1)(v).
5. Revising paragraphs (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i) and (ii), (c)(3)(iii)(A), (c)(3)(iv) and (v), and (d)(2) through (4).
6. Adding paragraph (e)(3)(iii).
7. Revising paragraphs (e)(5)(i) and (ii), (e)(5)(iii)(A), (e)(5)(iv) and (v), (e)(6)(ii), and (f).
8. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(b) * * *

(2) * * *

(iii) [The text of the proposed amendment to § 1.1441-5(b)(2)(iii) is the same as the text of § 1.1441-5T(b)(2)(iii) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.1441-5(b)(2)(vi) is the same as the text of § 1.1441-5T(b)(2)(vi) published elsewhere in this issue of the **Bulletin**.]

(c) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1441-5(c)(1)(i) is the same as the text of § 1.1441-5T(c)(1)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(C) [The text of the proposed amendment to § 1.1441-5(c)(1)(i)(C) is the same as the text of § 1.1441-5T(c)(1)(i)(C) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441-5(c)(1)(iv) and (v) is the same as the text of § 1.1441-5T(c)(1)(iv) and (v) published elsewhere in this issue of the **Bulletin.**]

(2) * * *

(i) through (iii) [The text of the proposed amendment to § 1.1441-5(c)(2)(i) through (iii) is the same as the text of § 1.1441-5T(c)(2)(i) through (iii) published elsewhere in this issue of the **Bulletin.**]

(iv) * * *

(A) and (B) [The text of the proposed amendment to § 1.1441-5(c)(2)(iv)(A) and (B) is the same as the text of § 1.1441-5T(c)(2)(iv)(A) and (B) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(3) * * *

(i) and (ii) [The text of the proposed amendment to § 1.1441-5(c)(3)(i) and (ii) is the same as the text of § 1.1441-5T(c)(3)(i) and (ii) published elsewhere in this issue of the **Bulletin.**]

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441-5(c)(3)(iii)(A) is the same as the text of § 1.1441-5T(c)(3)(iii)(A) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441-5(c)(3)(iv) and (v) is the same as the text of § 1.1441-5T(c)(3)(iv) and (v) published elsewhere in this issue of the **Bulletin.**]

(d) * * *

(2) through (4) [The text of the proposed amendment to § 1.1441-5(d)(2) through (4) is the same as the text of § 1.1441-5T(d)(2) through (4) published elsewhere in this issue of the **Bulletin.**]

(e) * * *

(3) * * *

(iii) [The text of the proposed amendment to § 1.1441-5(e)(3)(iii) is the same as the text of § 1.1441-5T(e)(3)(iii) pub-

lished elsewhere in this issue of the **Bulletin.**]

* * * * *

(5) * * *

(i) and (ii) [The text of the proposed amendment to § 1.1441-5(e)(5)(i) and (ii) is the same as the text of § 1.1441-5T(e)(5)(i) and (ii) published elsewhere in this issue of the **Bulletin.**]

(iii) * * *

(A) [The text of the proposed amendment to § 1.1441-5(e)(5)(iii)(A) is the same as the text of § 1.1441-5T(e)(5)(iii)(A) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(iv) and (v) [The text of the proposed amendment to § 1.1441-5(e)(5)(iv) and (v) is the same as the text of § 1.1441-5T(e)(5)(iv) and (v) published elsewhere in this issue of the **Bulletin.**]

(6) * * *

(ii) [The text of the proposed amendment to § 1.1441-5(e)(6)(ii) is the same as the text of § 1.1441-5T(e)(6)(ii) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(f) [The text of the proposed amendment to § 1.1441-5(f) is the same as the text of § 1.1441-5T(f) published elsewhere in this issue of the **Bulletin.**]

(g) * * *

(3) [The text of the proposed amendment to § 1.1441-5(g)(3) is the same as the text of § 1.1441-5T(g) published elsewhere in this issue of the **Bulletin.**]

Par. 7. Section 1.1441-6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iv), and (c)(1), and adding paragraph (i)(3) to read as follows:

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

(a) [The text of the proposed amendment to § 1.1441-6(a) is the same as the text of § 1.1441-6T(a) published elsewhere in this issue of the **Bulletin.**]

(b) * * *

(1) [The text of the proposed amendment to § 1.1441-6(b)(1) is the same as the text of § 1.1441-6T(b)(1) published elsewhere in this issue of the **Bulletin.**]

(2) * * *

(i) [The text of the proposed amendment to § 1.1441-6(b)(2)(i) is the same as

the text of § 1.1441-6T(b)(2)(i) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(iv) [The text of the proposed amendment to § 1.1441-6(b)(2)(iv) is the same as the text of § 1.1441-6T(b)(2)(iv) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(c) * * *

(1) [The text of the proposed amendment to § 1.1441-6(c)(1) is the same as the text of § 1.1441-5T(c)(1) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(i) * * *

(3) [The text of the proposed amendment to § 1.1441-6(h) is the same as the text of § 1.1441-6T(h) published elsewhere in this issue of the **Bulletin.**]

Par. 8. Section 1.1441-7 is amended by revising paragraphs (b), (c), and (f)(2)(ii), and adding paragraph (h) to read as follows:

§ 1.1441-7 General provisions relating to withholding agents.

* * * * *

(b) [The text of the proposed amendment to § 1.1441-7(b) is the same as the text of § 1.1441-7T(b) published elsewhere in this issue of the **Bulletin.**]

(c) [The text of the proposed amendment to § 1.1441-7(c) is the same as the text of § 1.1441-7T(c) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(f) * * *

(2) * * *

(ii) [The text of the proposed amendment to § 1.1441-7(f)(2)(ii) is the same as the text of § 1.1441-7T(f)(2)(ii) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(h) [The text of the proposed amendment to § 1.1441-7(g) is the same as the text of § 1.1441-7T(h) published elsewhere in this issue of the **Bulletin.**]

Par. 9. Section 1.1461-1 is amended by revising paragraphs (b)(1), (c)(1)(i), (c)(1)(ii), (c)(2)(ii)(E), (c)(2)(ii)(H), (c)(2)(ii)(I), (c)(3)(i), (c)(3)(iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv) and (v), (c)(5), and (i) to read as follows:

§ 1.1461-1 Payments and returns of tax withheld.

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.1461-1(b)(1) is the same as the text of § 1.1461-1T(b)(1) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(c) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.1461-1(c)(1)(i) is the same as the text of § 1.1461-1T(c)(1)(i) published elsewhere in this issue of the **Bulletin**.]

(ii) [The text of the proposed amendment to § 1.1461-1(c)(1)(ii) is the same as the text of § 1.1461-1T(c)(1)(ii) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(E) [The text of the proposed amendment to § 1.1461-1(c)(2)(ii)(E) is the same as the text of § 1.1461-1T(c)(2)(ii)(E) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(H) and (I) [The text of the proposed amendment to § 1.1461-1(c)(2)(ii)(H) and (I) is the same as the text of § 1.1461-1T(c)(2)(ii)(H) and (I) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(3) * * *

(i) [The text of the proposed amendment to § 1.1461-1(c)(3)(i) is the same as the text of § 1.1461-1T(c)(3)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(iii) [The text of the proposed amendment to § 1.1461-1(c)(3)(iii) is the same as the text of § 1.1461-1T(c)(3)(iii) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(4) * * *

(i) [The text of the proposed amendment to § 1.1461-1(c)(4)(i) is the same as the text of § 1.1461-1T(c)(4)(i) published elsewhere in this issue of the **Bulletin**.]

(ii) * * *

(A) [The text of the proposed amendment to § 1.1461-1(c)(4)(ii)(A) is the same as the text of § 1.1461-

1T(c)(4)(ii)(A) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(iv) [The text of the proposed amendment to § 1.1461-1(c)(4)(iv) through (v) is the same as the text of § 1.1461-1T(c)(4)(iv) through (v) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(5) [The text of the proposed amendment to § 1.1461-1(c)(5) is the same as the text of § 1.1461-1T(c)(5) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(i) [The text of the proposed amendment to § 1.1461-1(i) is the same as the text of § 1.1461-1T(i) published elsewhere in this issue of the **Bulletin**.]

Par. 10. Section 1.1461-2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

§ 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(2) * * *

(i) * * *

* * * * *

(4) [The text of the proposed amendment to § 1.1461-2(a)(4) is the same as the text of § 1.1461-2T(a)(4) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(d) [The text of the proposed amendment to § 1.1461-2(d) is the same as the text of § 1.1461-2T(a)(4) published elsewhere in this issue of the **Bulletin**.]

Par. 11. Section 1.6041-1 is amended by revising paragraphs (d)(5)(i) and (ii) and (j) to read as follows:

§ 1.6041-1 Return of information as to payments of \$600 or more.

* * * * *

(d) * * *

(5) * * *

(i) [The text of the proposed amendment to § 1.6041-1(d)(5)(i) is the same as the text of § 1.6041-1T(d)(5)(i) published elsewhere in this issue of the **Bulletin**.]

(ii) [The text of the proposed amendment to § 1.6041-1(d)(5)(ii) is the same as the text of § 1.6041-1T(d)(5)(ii) pub-

lished elsewhere in this issue of the **Bulletin**.]

* * * * *

(j) [The text of the proposed amendment to § 1.6041-1(j) is the same as the text of § 1.6041-1T(j) published elsewhere in this issue of the **Bulletin**.]

Par. 12. Section 1.6041-4 is amended by revising paragraphs (a)(1) through (3), adding paragraph (a)(7), and revising paragraphs (b) and (d) to read as follows:

§ 1.6041-4 Foreign-related items and other exceptions.

(a) * * *

(1) through (3) [The text of the proposed amendment to § 1.6041-4(a)(1) through (3) is the same as the text of § 1.6041-4T(a)(1) through (3) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(7) [The text of the proposed amendment to § 1.6041-4(a)(7) is the same as the text of § 1.6041-4T(a)(7) published elsewhere in this issue of the **Bulletin**.]

(b) [The text of the proposed amendment to § 1.6041-4(b) is the same as the text of § 1.6041-4T(b) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(d) [The text of the proposed amendment to § 1.6041-4(d) is the same as the text of § 1.6041-4T(d) published elsewhere in this issue of the **Bulletin**.]

Par. 13. Section 1.6042-2 is amended by revising paragraph (a)(1)(i) and adding paragraph (f) to read as follows:

§ 1.6042-2 Returns of information as to dividends paid.

(a) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.6042-2(a)(1)(i) is the same as the text of § 1.6042-2T(a)(1)(i) through (a)(1)(i)(B)(4) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(f) [The text of the proposed amendment to § 1.6042-2(f) is the same as the text of § 1.6042-2T(f) published elsewhere in this issue of the **Bulletin**.]

Par. 14. Section 1.6042-3 is amended by revising paragraphs b)(1)(iii),

(b)(1)(iv), (b)(1)(vi), (b)(3), and (b)(5) to read as follows:

§ 1.6042-3 Dividends subject to reporting.

* * * * *

(b) * * *

(1) * * *

(iii) [The text of the proposed amendment to § 1.6042-3(b)(1)(iii) is the same as the text of § 1.6042-3T(b)(1)(iii) published elsewhere in this issue of the **Bulletin**.]

(iv) [The text of the proposed amendment to § 1.6042-3(b)(1)(iv) is the same as the text of § 1.6042-3T(b)(1)(iv) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(vi) [The text of the proposed amendment to § 1.6042-3(b)(1)(vi) is the same as the text of § 1.6042-3T(b)(1)(vi) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(3) [The text of the proposed amendment to § 1.6042-3(b)(3) is the same as the text of § 1.6042-3T(b)(3) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(5) [The text of the proposed amendment to § 1.6042-3(b)(5) is the same as the text of § 1.6042-3T(b)(5) published elsewhere in this issue of the **Bulletin**.]

* * * * *

Par. 15. Section 1.6045-1 is amended by revising paragraph (c)(3)(ii), adding paragraphs (c)(3)(xiv) and (xv), and revising paragraphs (g)(1)(i), (g)(3)(iv), (g)(4), and (g)(5)(ii) to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) * * *

(ii) [The text of the proposed amendment to § 1.6045-1(c)(3)(ii) is the same as the text of § 1.6045-1T(c)(3)(ii) through (c)(3)(ii)(B) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(xiv) [The text of the proposed amendment to § 1.6045-1(c)(3)(xiv) is the same as the text of § 1.6045-1T(c)(3)(xiv)

through (c)(3)(xiv)(D) published elsewhere in this issue of the **Bulletin**.]

(xv) [The text of the proposed amendment to § 1.6045-1(c)(3)(xv) is the same as the text of § 1.6045-1T(c)(3)(xv) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(g) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.6045-1(g)(1)(i) is the same as the text of § 1.6045-1T(g)(1)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(3) * * *

(iv) [The text of the proposed amendment to § 1.6045-1(g)(3)(iv) is the same as the text of § 1.6045-1T(g)(3)(iv) published elsewhere in this issue of the **Bulletin**.]

(4) [The text of the proposed amendment to § 1.6045-1(g)(4) is the same as the text of § 1.6045-1T(g)(4) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(5) * * *

(ii) [The text of the proposed amendment to § 1.6045-1(g)(5)(ii) is the same as the text of § 1.6045-1T(g)(5)(ii) published elsewhere in this issue of the **Bulletin**.]

* * * * *

Par. 16. Section 1.6049-4 is amended by:

1. Revising paragraph (b)(1)
2. Adding paragraph (c)(4).
3. Revising paragraphs (f)(3) and (f)(4)(ii).
4. Adding paragraphs (f)(5) through (16), and (h).

The revisions and additions read as follows:

§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) * * *

(1) [The text of the proposed amendment to § 1.6049-4(b)(1) is the same as the text of § 1.6049-4T(b)(1) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(c) * * *

(4) [The text of the proposed amendment to § 1.6049-4(c)(4) is the same as the text of § 1.6049-4T(c)(4) through (c)(4)(iv) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(f) * * *

(3) [The text of the proposed amendment to § 1.6049-4(f)(3) is the same as the text of § 1.6049-4T(f)(3) published elsewhere in this issue of the **Bulletin**.]

(4) * * *

(ii) [The text of the proposed amendment to § 1.6049-4(f)(4)(ii) is the same as the text of § 1.6049-4T(f)(4)(ii) published elsewhere in this issue of the **Bulletin**.]

(5) through (16) [The text of the proposed amendment to § 1.6049-4(f)(5) through (16) is the same as the text of § 1.6049-4T(f)(5) through (f)(16)(iv) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(h) [The text of the proposed amendment to § 1.6049-4(h) is the same as the text of § 1.6049-4T(h) published elsewhere in this issue of the **Bulletin**.]

Par. 17. Section 1.6049-5 is amended by revising paragraphs b)(6) through (b)(8), (b)(10)(i) through (b)(11)(ii)(A), (b)(12), (b)(14) and (15), (c)(1) through (4), (c)(5)(i)(F), (c)(6), (d)(1), (d)(2) (d)(3)(i) through (d)(3)(iii)(A), and (d)(4), (e), and (g) to read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) * * *

(6) [The text of the proposed amendment to § 1.6049-5(b)(6) is the same as the text of § 1.6049-5T(b)(6) published elsewhere in this issue of the **Bulletin**.]

(7) [The text of the proposed amendment to § 1.6049-5(b)(7) is the same as the text of § 1.6049-5T(b)(7) published elsewhere in this issue of the **Bulletin**.]

(8) [The text of the proposed amendment to § 1.6049-5(b)(8) is the same as the text of § 1.6049-5T(b)(8) published elsewhere in this issue of the **Bulletin**.]

* * * * *

(10)(i) [The text of the proposed amendment to § 1.6049-5(b)(10)(i) is the

same as the text of § 1.6049–5T(b)(10)(i) published elsewhere in this issue of the **Bulletin.**]

(ii) [The text of the proposed amendment to § 1.6049–5(b)(10)(ii) is the same as the text of § 1.6049–5T(b)(10)(ii) published elsewhere in this issue of the **Bulletin.**]

(11) [The text of the proposed amendment to § 1.6049–5(b)(11) is the same as the text of § 1.6049–5T(b)(11) published elsewhere in this issue of the **Bulletin.**]

(i) [The text of the proposed amendment to § 1.6049–5(b)(11)(i) is the same as the text of § 1.6049–5T(b)(11)(i) published elsewhere in this issue of the **Bulletin.**]

(ii)(A) [The text of the proposed amendment to § 1.6049–5(b)(11)(ii)(A) is the same as the text of § 1.6049–5T(b)(11)(ii)(A) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(12) [The text of the proposed amendment to § 1.6049–5(b)(12) is the same as the text of § 1.6049–5T(b)(12) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(14) [The text of the proposed amendment to § 1.6049–5(b)(14) is the same as the text of § 1.6049–5T(b)(14) published elsewhere in this issue of the **Bulletin.**]

(15) [The text of the proposed amendment to § 1.6049–5(b)(15) is the same as the text of § 1.6049–5T(b)(15) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(c) * * *

(1) [The text of the proposed amendment to § 1.6049–5(c)(1) is the same as the text of § 1.6049–5T(c)(1) through (c)(1)(iv) published elsewhere in this issue of the **Bulletin.**]

(2) [The text of the proposed amendment to § 1.6049–5(c)(2) is the same as the text of § 1.6049–5T(c)(2) published elsewhere in this issue of the **Bulletin.**]

(3) [The text of the proposed amendment to § 1.6049–5(c)(3) is the same as the text of § 1.6049–5T(c)(3) published elsewhere in this issue of the **Bulletin.**]

(4) [The text of the proposed amendment to § 1.6049–5(c)(4) is the same as the text of § 1.6049–5T(c)(4) through (c)(4)(iv) published elsewhere in this issue of the **Bulletin.**]

(5) * * *

(i) * * *

(F) [The text of the proposed amendment to § 1.6049–5(c)(5)(i)(F) is the same as the text of § 1.6049–5T(c)(5)(i)(F) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(6) [The text of the proposed amendment to § 1.6049–5(c)(6) is the same as the text of § 1.6049–5T(c)(6) published elsewhere in this issue of the **Bulletin.**]

(d) * * *

(1) [The text of the proposed amendment to § 1.6049–5(d)(1) is the same as the text of § 1.6049–5T(d)(1) published elsewhere in this issue of the **Bulletin.**]

(2) * * *

(i) [The text of the proposed amendment to § 1.6049–5(d)(2)(i) is the same as the text of § 1.6049–5T(d)(2)(i) published elsewhere in this issue of the **Bulletin.**]

(ii) [The text of the proposed amendment to § 1.6049–5(d)(2)(ii) is the same as the text of § 1.6049–5T(d)(2)(ii) published elsewhere in this issue of the **Bulletin.**]

(iii) [The text of the proposed amendment to § 1.6049–5(d)(2)(iii) is the same as the text of § 1.6049–5T(d)(2)(iii) published elsewhere in this issue of the **Bulletin.**]

(3) * * *

(i) [The text of the proposed amendment to § 1.6049–5(d)(3)(i) is the same as the text of § 1.6049–5T(d)(3)(i) published elsewhere in this issue of the **Bulletin.**]

(ii) [The text of the proposed amendment to § 1.6049–5(d)(3)(ii) is the same as the text of § 1.6049–5T(d)(3)(ii) published elsewhere in this issue of the **Bulletin.**]

(iii) [The text of the proposed amendment to § 1.6049–5(d)(3)(iii) is the same as the text of § 1.6049–5T(d)(3)(iii) published elsewhere in this issue of the **Bulletin.**]

(A) [The text of the proposed amendment to § 1.6049–5(d)(3)(iii)(A) is the same as the text of § 1.6049–5T(d)(3)(iii)(A) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(4) [The text of the proposed amendment to § 1.6049–5(d)(4) is the same as the text of § 1.6049–5T(d)(4) published elsewhere in this issue of the **Bulletin.**]

(e) * * *

(1) [The text of the proposed amendment to § 1.6049–5(e)(1) is the same as the text of § 1.6049–5T(e)(1) published elsewhere in this issue of the **Bulletin.**]

(2) [The text of the proposed amendment to § 1.6049–5(e)(2) is the same as the text of § 1.6049–5T(e)(2) published elsewhere in this issue of the **Bulletin.**]

(3) [The text of the proposed amendment to § 1.6049–5(e)(3) is the same as the text of § 1.6049–5T(e)(3) published elsewhere in this issue of the **Bulletin.**]

(4) [The text of the proposed amendment to § 1.6049–5(e)(4) is the same as the text of § 1.6049–5T(e)(4) published elsewhere in this issue of the **Bulletin.**]

(5) [The text of the proposed amendment to § 1.6049–5(e)(5) is the same as the text of § 1.6049–5T(e)(5) published elsewhere in this issue of the **Bulletin.**]

* * * * *

(g) * * *

(2) [The text of the proposed amendment to § 1.6049–5(g)(2) is the same as the text of § 1.6049–5T(g)(2) published elsewhere in this issue of the **Bulletin.**]

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 18. The authority citation for part 31 continues to read in part as follows:

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

Par. 19. Section 31.3406(g)–1 is amended by revising paragraph (e) to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) [The text of the proposed amendment to § 31.3406(g)–1(e) is the same as the text of § 31.3406(g)–1T(e) published elsewhere in this issue of the **Bulletin.**]

* * * * *

Par. 20. Section 31.3406(h)–2 is amended by revising paragraph (a)(3)(i) and adding paragraph (i) to read as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) * * *

(i) [The text of the proposed amendment to § 31.3406(h)-2(a)(3)(i) is the same as the text of § 31.3406(h)-2T(a)(3)(i) published elsewhere in this issue of the **Bulletin**.]

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 21. 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 * * *

Par. 22. Section 301.6402-3 is amended by revising paragraphs (e) and (f) to read as follows:

§ 301.6402-3 Special rules applicable to income tax.

* * * * *

(e) [The text of the proposed amendment to § 301.6402-3(e) is the same as the text of § 301.6402-3T(e) published elsewhere in this issue of the **Bulletin**.]

(f) [The text of the proposed amendment to § 301.6402-3(f) is the same as the

text of § 301.6402-3T(f) published elsewhere in this issue of the **Bulletin**.]

* * * * *

John Dalrymple
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on February 28, 2014, 4:15 p.m., and published in the issue of the Federal Register for March 6, 2014, 79 F.R. 12726)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
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SPR	Statement of Procedural Rules
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