



COMMISSIONER
LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL LB&I EMPLOYEES

FROM: Douglas W. O'Donnell /s/ *Douglas W. O'Donnell*
Commissioner, Large Business and International Division

SUBJECT: Procedures for FATCA Certification Event of Default Notices

Scope

The Foreign Payments Practice (FPP) has developed procedures for identifying noncompliance with the Foreign Account Tax Compliance Act (FATCA) certification requirement. These procedures generally describe the process through which the FPP establishes the occurrence of an event of default (EOD) in connection with a Responsible Officer's (RO's) required FATCA certification. FPP analysts will follow these procedures when issuing or responding to any notices of an EOD related to an entity's FATCA certification requirement.

I. FATCA Certifications

A FATCA certification consists of questions that the ROs of certain entities must answer and submit to the IRS to confirm the entities' compliance with FATCA requirements. There are two general types of certifications: one that relates to an entity's preexisting accounts (Certification of Preexisting Accounts) and another that relates to the entity's compliance with various ongoing FATCA requirements (Periodic Certification). The list of FATCA entities and their required certifications is listed in Appendix A: Certification Requirements by Entity Type.¹

¹ Additional information about FATCA certification requirements can be found at IRS.gov on the "FATCA - FAQs General" page under the heading "FATCA Certifications".

Certification of Preexisting Accounts (COPA): Certain entities are required to certify to the IRS that they have complied with their applicable due diligence procedures for preexisting accounts within the applicable timeframe. COPAs are required to be submitted to the IRS at the same time that the entities have to submit their first Periodic Certification.

Periodic Certification: Certain entities are also required to periodically certify to the IRS that they have complied with their ongoing FATCA requirements. A periodic certification of compliance must be submitted to the IRS no later than July 1 of the year following the entity's applicable certification period. For a participating Foreign Financial Institution (FFI), the first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is every three calendar years following the previous certification period.

II. Administrative Requirement and Certification Process

FATCA Certifications must be completed and submitted online through the FATCA Registration system. A link for each applicable certification will be available on the entity's home page.

If the RO contact information in the FATCA Registration system is accurate, the RO should receive an email each time the entity has a new message. The RO can read the message on the entity's FATCA Registration system homepage. For example, a message may alert the RO that an applicable FATCA certification is available for completion. Regardless, the RO is responsible for completing the applicable FATCA certification(s) by the submission deadline.

The entity's home page will show the status of the certification(s) (*i.e.*, Due, Not Required², Overdue, and Submitted) separately for both the COPA and Periodic Certification, as well as the due date and submitted date.

To complete a certification, the RO must click on the appropriate link on the homepage, confirm the FATCA classification and the type of certification to be completed, and follow the instructions in the system to complete all required parts, including answering all questions in the applicable certification(s).

The system will display three options for the RO to indicate whether the certification will be completed: (1) if they are going to complete the certification, (2) if they are unable to complete the certification, or (3) if they are not required to complete the certification. If

² The FATCA Online Registration system will make an initial determination of an entity's certification requirements based on the entity's FATCA classification and country/jurisdiction of tax residence, and if the entity has any branches or sponsored entities for which it needs to certify. However, it is ultimately the responsibility of the RO to determine the entity's FATCA certification requirements, including correcting the type of certification required if the system's initial determination is incorrect.

the RO selects the option for unable to complete a certification or not required to complete a certification, an explanation must be provided.

Note: There is no exemption or waiver from the certification requirement. Therefore, when the “unable to complete certification” option is selected, the RO is indicating that the entity is not compliant with its FATCA obligations (see Event of Default, below). In addition, indicating that the entity is not required to complete a certification is expected to apply only in limited circumstances, and the IRS may follow up with additional inquiries based on the explanation provided in support of the RO’s claim that no certification is required.

The responses to the questions will determine the overall result of the certification, and the system will display a certification result upon completion of all required parts. A description of the COPA and Periodic Certification results is included in Appendix B: Certification Results. Finally, the FATCA certification status on the entity’s home page will be updated to “submitted”.

Note: A FATCA certification status of “submitted” means the IRS has received your certification. The system does not update the status to indicate whether the certification was accepted or rejected, and ROs should anticipate follow-up from the IRS based on information provided (or not provided) in the certification(s), particularly if the certification (or lack thereof) indicates a material failure or event of default.

Material Failure. In general, a material failure is a failure of the entity to fulfill the requirements of the FFI agreement, Treasury regulations, or Intergovernmental Agreement (IGA), as applicable (“FATCA Requirements”) if the failure was the result of a deliberate action on the part of one or more employees of the entity (or its agent, sponsor, or compliance FI) to avoid the entity’s FATCA requirements or was an error attributable to a failure of the entity to implement internal controls sufficient for the entity to meet its FATCA requirements. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when an entity has not substantially complied with its FATCA requirements.

Event of Default. In general, an event of default occurs if an entity fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting FATCA Requirements or if the IRS determines that the entity has failed to substantially comply with its FATCA requirements.

III. Administrative Process for Review of FATCA Certifications

After the deadline for submitting the FATCA certification(s), the IRS will review the list of entities that have been identified as requiring a FATCA certification for the certification period. This review will include identifying events of default for which a notice of default (or notice of termination) will be issued. The IRS will post separate notices, where applicable, for the COPA and Periodic Certification. As such, if an entity fails to submit

both of the required certifications for the certification period, two separate notices will be posted to the entity's message board.

All notices will be sent to the entity's FATCA registration system message board.

Events of default for which a notice of default will be issued include when the entity:

1. Failed to complete and submit a required FATCA certification by the due date;
2. Indicated they were unable to complete and submit a required certification;
3. Indicated they were not required to submit a certification, contrary to the requirement indicated by their FATCA classification, country/jurisdiction of tax residence, or registration of any branches or sponsored entities for which the Financial Institution (FI) needs to certify; or
4. Completed and submitted a certification that had a "failure to certify" result.

For entities that are identified as having an event of default, the IRS will issue a notice of default. In the notice of default, the IRS will specify the event of default (for example, failing to submit a required certification) and request that the entity remediate the event of default within 60 days (for example, by submitting the required certification). The notice of default will include the means by which the RO may contact the IRS with any questions about the notice or the entity's remediation options (that is, by e-mail, phone, or mail). See [Reconsideration/Appeal](#), below.

If there is a failure to respond to the notice of default (and taking into account any particular terms of an applicable IGA for an FI in a jurisdiction that has executed a Model 2 IGA), the IRS may deliver either a second notice of default or a notice of termination to the entity (if the entity does not respond to the second notice). A second notice of default will notify the RO that the entity has not remediated the event of default or no response to the first notice has been received by the IRS. If a second notice of default is issued, the entity will have an additional 30 days to remediate the event of default before a notice of termination is issued. See [Reconsideration/Appeal](#), below.

In the notice of termination, the IRS will notify the RO that, due to a lack of response or action to remediate the failure to comply with the entity's FATCA requirements, the IRS is terminating the entity's FATCA status, which will result in removal of the entity's Global Intermediary Identification Number (GIIN) from the FFI list. Upon issuance of a notice of termination, the entity must remediate the event(s) of default within 90 days of the notice to avoid termination of its FATCA status and removal of its GIIN from the FFI list. See [Reconsideration/Appeal](#), below.

Reconsideration. An entity may request reconsideration of a notice of default by responding to the applicable notice, in writing, to the email or mail address provided in the notice. A request for reconsideration must be submitted to the IRS before a notice of termination is issued.

Appeal. An entity may appeal a notice of termination by responding to the applicable notice, in writing, to the email or mail address provided in the notice. An appeal of a notice of termination must be submitted to the IRS within 90 days of issuance of the notice of termination.

Note: Failure to submit a notice of reconsideration or notice of termination within the time provided constitutes a waiver of the entity's ability to request reconsideration of or to appeal the IRS's determination.

IV. Termination Process

If the entity fails to remediate its event of default and does not appeal the IRS' decision to terminate, FPP will initiate the process of terminating the entity's FATCA status in the FATCA registration system. The entity's registration will be terminated and its GIIN will be removed from the FFI List.

Note: This process does not apply to Reporting FIs under an applicable IGA.

V. Registration Status: Agreement Terminated

An entity that has its registration terminated and GIIN removed from the FFI List due to non-compliance with the FATCA certification requirement should not re-register for a new GIIN in the FATCA Registration System.

If the entity requires the GIIN to be reinstated, it must contact FPP by mail or email (information provided in the EOD notice on the FATCA registration message board) to make the request.

If the entity cannot access their FATCA registration account, the entity should reset their access code by clicking on the "Forgot FATCA ID or Access Code?" link from the FATCA registration log on page. If the entity is unable to reset the access code online, they may contact IRS telephone support. Telephone support is available 6:30 a.m. to 6:30 p.m. (U.S. Central Time), Monday through Friday at 866-255-0654 (toll free, within the United States of America), or 512-416-7750 (outside the United States of America, not toll free).

The entity must:

- (1) Make a written request for the GIIN to be reinstated.
- (2) Submit the applicable qualified certification(s) through the online registration system.
- (3) Provide detailed explanation why it was not compliant with its FATCA certification obligations within the certification submission.
 - a. If the entity is submitting a qualified certification and the only event of default is the failure to submit the required FATCA certification in a timely manner, respond to the statement "There were other event(s) of default that occurred during the certification period." by selecting "yes" and

providing an explanation why the certification was submitted late and the actions taken to remediate the event of default and prevent the event from reoccurring.

- b. If additional space is needed, the entity can provide a supplemental statement by email or mail to the address provided in the notice.
- (4) Provide a remediation plan.
- a. The remediation plan is to include an explanation of the event(s) of default, reason for the event(s) of default, steps that have or will be taken to remediate the event(s) of default and steps that have or will be taken to prevent such event(s) of defaults from occurring in the future.
 - b. In reviewing a remediation plan, the IRS will take into account an entity's good faith efforts to comply with all of the rules, regulations and requirements for Chapter 4 compliance. In general, repeated compliance failures are not indicative of good faith efforts and may lead to a reinstatement request being denied.
- (5) Respond to IRS inquires in a comprehensive and timely manner, no later than 30 calendar days.
- a. IRS inquires may include but are not limited to questions pertaining to the entity's governance, due diligence and reporting processes and procedures if not already provided with the remediation plan.

After the above has been submitted by the entity and reviewed by the IRS, a decision will be made regarding reinstatement. The IRS may request additional information as part of the certification review process.

The entity will not appear on the FFI list until the information above is received, reviewed by the IRS, and a decision is made to approve reinstatement. The minimum review time will be one month upon receipt of the information, including any request for additional information by the IRS.

A decision on the reinstatement of the GIIN will be communicated to the entity. If the GIIN reinstatement request is approved by the IRS, the entity will receive a message on its message board. Once approved, the entity should appear on the next month's FFI list. Although prior FFI lists will not be amended, the entity can be considered to have had a valid GIIN retroactively from time of removal following a reinstatement.

Appendix A: Certification requirements by Entity Type

Financial Institution's FATCA Classification in its Country/Jurisdiction of Tax Residence	Certification Required?	
	COPA	Periodic
Participating FFI, including a Reporting Financial Institution under a Model 2 IGA *, **	Yes	Yes
Registered Deemed-Compliant FFI that is a Local FFI	Yes	Yes
Registered Deemed-Compliant FFI that is a Non-Reporting Member of a PFFI Group	No	Yes
Registered Deemed-Compliant FFI that is a Qualified Collective Investment Vehicle	No	Yes
Registered Deemed-Compliant FFI that is a Qualified Credit Card Issuer or Servicer	No	Yes
Registered Deemed-Compliant FFI that is a Restricted Fund	Yes	Yes
Reporting Financial Institution under a Model 1 IGA *	No, except on behalf of branches operating outside of Model 1 jurisdictions (other than	No, except on behalf of branches operating outside of Model 1 jurisdictions (other than

	related branches)	related branches
Financial Institution's FATCA Classification in its Country/Jurisdiction of Tax Residence	Certification Required?	
	COPA	Periodic
Direct Reporting Non-Financial Foreign Entity (NFFE)	No	Yes
Sponsoring Entity of Sponsored Direct Reporting NFFEs	No	Yes
Sponsoring Entity of Sponsored FFIs	Yes	Yes
Sponsoring Entity of Sponsored FFIs and Sponsored Direct Reporting NFFEs	Yes, on behalf of Sponsored FFIs only	Yes
Trustee of a Trustee-Documented Trust	No	Yes ***
U.S. Financial Institution *	No	No

* Compliance FIs may make the COPA and periodic certifications on behalf of electing FFIs that are part of the compliance FI's consolidated compliance program. A compliance FI may have one of the following three FATCA classifications: (1) Participating FFI, including a Reporting Financial Institution under a Model 2 IGA; (2) Reporting Financial Institution under a Model 1 IGA; or (3) U.S. Financial Institution.

** A participating FFI that is an electing FFI of a consolidated compliance group will be included in the certification of the compliance FI.

*** A periodic certification of compliance is required only for a Trustee-Documented Trust that is subject to a Model 2 IGA.

Note: The registration system will suggest the certification(s) for an entity based on its FATCA classification in question 4 of the registration system. Therefore, even entities that do not have a certification requirement should update their FATCA classification to avoid inapplicable certification-related notices in the future.

Appendix B: Certification Results Description

COPA Results Description

COPA Results	Description
Due Diligence	<p>This result will be displayed when the Responsible Officer (RO) completes the certification of preexisting accounts and the responses provided as part of the certification do not indicate any failure by the FI to comply with any of the requirements with respect to its preexisting accounts that has not been corrected prior to the date of the certification.</p>
Failure to Certify	<p>This result will be displayed when the RO selects the option indicating that it is “unable to complete the certification of compliance with the due diligence requirements for preexisting accounts at this time”.</p> <p>This will also be the result if the responses provided as part of the certification indicate a failure by a Participating Foreign Financial Institution (PFFI), Compliance FI (or any of the members of the Consolidated Compliance Group (CCG), or Sponsoring Entity (or any of the sponsored FFIs or sponsored direct reporting NFFEs) to comply with all of the requirements with respect to its preexisting accounts, or a failure by a Registered Deemed-Compliant Local FI or Restricted Funds to comply with any of the requirements with respect to their preexisting accounts.</p> <p>An overall result of “Failure to Certify” will result in an event of default that could cause termination of the entity’s FATCA status.</p>
Not Required	<p>This result will be displayed when the RO selects the option indicating that it is “not required to complete the certification of compliance with the due diligence requirements for pre-existing accounts”. When this option is selected, the user will be required to provide a brief explanation. The IRS may follow up with additional inquiries based on the explanation provided.</p> <p><u>Note:</u> There is no exemption or waiver from the certification requirement. It is expected that those indicating they are not required to complete a certification of pre-existing accounts do so in very specific and limited circumstances.</p>
Qualified Certification	<p>This result will be displayed when the RO of a PFFI, Compliance FI, or Sponsoring Entity completes the certification of preexisting accounts and the responses provided as part of the certification indicate a failure by the FI to comply with any of the requirements with respect to its preexisting accounts that has not been corrected prior to the date of the certification, but that the FI indicates that it will take corrective actions to remediate the failure.</p> <p>An overall result of “Qualified Certification” indicates that the FI failed to comply with one (or more) of its requirements but that is working on correcting such failure(s).</p>

Periodic Certification Results Description

Periodic Certification Results	Description
Compliance	<p>This result will be displayed when a RO completes the Periodic Certification and the responses provided as part of the certification do not indicate any material failure that has not been corrected prior to the date of the certification; or a failure by a Registered Deemed-Compliant FFI or Trustee-Documented Trust to comply with any of the requirements with respect to their FATCA classification.</p>
Qualified Certification	<p>This result will be displayed when the RO of a PFFI, Compliance FI, or Sponsoring Entity indicates that there were events of default during the certification period and/or there were material failures during the certification period that were not corrected prior to the certification date, but that the FI indicates that it will take corrective actions to remediate the failure.</p> <p>An overall result of “Qualified Certification” indicates that the FI did fail to comply with one (or more) of its requirement but that is working on correcting such failure(s).</p>
Failure to Certify	<p>This result will be displayed when a RO selects the option indicating that it is “unable to complete a periodic certification at this time”.</p> <p>This will also be the result if the responses provided as part of the certification indicate any material failures or events of default for which the FI indicates that it will not take any corrective actions to remediate the failure or event of default; or a failure by a Registered Deemed-Compliant FFI or Trustee-Documented Trust to comply with any of the requirements with respect to their FATCA classification.</p> <p>An overall result of “Failure to Certify” will result in an event of default that could cause termination of the entity’s FATCA status.</p>
Not Required	<p>This result will be displayed when a RO selects the option indicating that it is “not required to complete a Periodic Certification for this certification period”. When this option is selected, the user will be required to provide a brief explanation. The IRS may follow up with additional inquiries based on the explanation provided.</p> <p><u>Note:</u> There is no exemption or waiver from the certification requirement when one is required to be submitted. It is expected that those indicating they are not required to complete a Periodic Certification for the certification period do so in very specific and limited circumstances.</p> <p>With respect to the Periodic Certification for Trustee-Documented Trusts, this will be the result if the Trustee of a Trustee-Documented Trust indicates that it did not have any Trustee-Documented Trusts that are subject to a Model 2 IGA during the certification period.</p>