Part III - Administrative, Procedural, and Miscellaneous

# Supplemental Notice to Notice 2010-60 Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code

NOTICE 2011-34

## PURPOSE

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 (H.R. 2847) (the Act) was enacted into law. Section 501(a) of the Act added a new chapter 4 (sections 1471 - 1474) to Subtitle A of the Internal Revenue Code (Code). Chapter 4 expands the information reporting requirements imposed on foreign financial institutions (as defined in section 1471(d)(4)) (FFIs) with respect to certain United States accounts (as defined in section 1471(d)(1)) (U.S. accounts), and imposes withholding, documentation, and reporting requirements with respect to certain payments made to certain foreign entities.

On August 27, 2010, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published Notice 2010-60, 2010-37 I.R.B. 329, to provide

preliminary guidance regarding priority issues involving the implementation of chapter 4 and to request comments on the issues addressed in Notice 2010-60 and certain other issues to be addressed in future published guidance. Unless otherwise indicated, all chapter and section references are to the Code and the regulations thereunder. Except as otherwise provided, all terms used in this Notice shall have the same meaning as set forth in sections 1471 through 1474 and Notice 2010-60.

This Notice provides guidance in response to certain priority concerns identified by commentators following the publication of Notice 2010-60 and requests further comments with respect to specific issues. Treasury and the IRS intend to issue regulations incorporating the guidance described in this Notice and addressing other matters necessary to implement chapter 4. In addition, Treasury and the IRS intend to publish draft FFI Agreements and draft information reporting and certification forms.

Section I of this Notice provides updated guidance regarding the procedures to be followed by participating FFIs in identifying U.S. accounts among their preexisting individual accounts. Section II provides guidance regarding the definition of the term "passthru payment" for purposes of chapter 4 and provides guidance with respect to the obligation of participating FFIs to withhold on passthru payments. Section III provides guidance regarding certain categories of FFIs that will be deemed compliant under section 1471(b)(2). Section IV provides further guidance regarding the obligation of participating FFIs to report with respect to U.S. accounts. Section V addresses the treatment under section 1471 of Qualified Intermediaries (as defined in §1.1441-1(e)(5)(ii)) (QIs). Section VI provides guidance regarding the application of section

1471 to expanded affiliated groups of FFIs under section 1471(e). Section VII states the effective date of FFI Agreements.

Section I. Preexisting Individual Accounts

This section modifies the procedures provided in Notice 2010-60 for a participating FFI to identify U.S. accounts among its preexisting individual accounts. It also describes a new procedure for participating FFIs to certify their completion of the requirements for determining the status of their preexisting individual accounts.

Section III.B.2.a of Notice 2010-60 provides procedures for participating FFIs to identify U.S. accounts among their preexisting individual accounts. Treasury and the IRS have received several comments about aspects of these procedures that present compliance challenges to FFIs.

First, comments suggested that many FFIs would be unable as a practical matter to apply the exclusion in Step 1 of Section III.B.2.a of Notice 2010-60 for accounts of $50,000 or less because of legal restrictions on the sharing of account holder information across branches or affiliates located in different jurisdictions and because of certain limitations of many FFIs' information technology systems.

Second, comments raised concerns about treating a non-U.S. P.O. box as an indication of U.S. status because in certain countries a significant percentage of the population uses P.O. boxes as their sole address. Accordingly, treating a non-U.S. P.O. box as an indication of U.S. status could result in a large number of account holders with no connection to the United States potentially being treated as recalcitrant account holders.

Third, comments requested clarification of the terms “electronically searchable information” and “documentary evidence” as used in Section III.B.2.a of Notice 2010-60. Finally, comments raised concerns with the potential costs that participating FFIs would incur if they were required to apply the new individual account identification procedures described in Section III.B.2.b of Notice 2010-60 to preexisting individual accounts (with limited exceptions) within five years after the effective date of the FFI’s FFI Agreement, as set forth in Section III.B.2.a of Notice 2010-60.

After considering these comments, Treasury and the IRS intend to revise the procedures for identifying U.S. accounts among preexisting individual accounts described in Section III.B.2.a of Notice 2010-60. Subsection A, below, sets forth a description of these revised procedures, and replaces Section III.B.2.a of Notice 2010-60 in its entirety.

A. Revised Procedures for Identification of Preexisting Individual Accounts

1. Definitions

The following definitions apply for purposes of this Notice:

(1) A “preexisting individual account” is any financial account held by an individual as of the date that a participating FFI’s FFI Agreement becomes effective.

(2) A “private banking account” is any account maintained or serviced by an FFI’s private banking department or any account maintained or serviced as part of a private banking relationship, including any account held by any entity, nominee,

or other person to the extent the account is associated with the private banking relationship with an individual client.

(3) A “private banking department” is any department, unit, division, or similar part of an FFI:

(A) that is referred to by the FFI as a private banking, wealth management, or similar department;

(B) that focuses on servicing accounts and investments of individual clients (or their families) whose accounts with the FFI or whose income, earnings, or assets exceed certain thresholds, or who are otherwise identified as high-net worth individuals (or families), as determined under an FFI’s own policies and procedures;

(C) that is considered a private banking department under the anti-money laundering or know-your-customer (AML/KYC) requirements to which the FFI is subject; or

(D) in which some or all of its employees, under any of an FFI’s formal or informal procedures or other guidelines for its personnel: (i) ordinarily provide personalized services to individual clients (or their families), such as banking, investment advisory, trust and fiduciary, estate planning, philanthropic, or other services not generally provided to account holders; or (ii) gather information about individual clients’ personal, professional, and financial histories in addition to the information ordinarily gathered with respect to the FFI’s retail customers.

(4) A “private banking relationship” exists when one or more officers or other employees of the FFI are assigned by the FFI to provide services such as those described in clause (D)(i) of the definition of a private banking department or to gather information about a client (or the client’s family) of the type described in clause (D)(ii) of the definition of a private banking department, regardless of whether the assigned individual is employed within the FFI’s private banking department.

(5) A “private banking relationship manager” is an officer or other employee of the FFI who: (i) is assigned responsibility for specific account holders on an ongoing basis; (ii) advises account holders regarding their banking, investment, trust and fiduciary, estate planning, or philanthropic needs; and (iii) recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs.

(6) Except as otherwise provided for purposes of chapter 4, the term “documentary evidence” includes: (i) documentary evidence sufficient to establish the identity of an individual and the status of that person as a non-U.S. person (consistent with the documentary evidence that may be relied upon pursuant to §1.6049-5(c)(1)), which may include, but is not limited to, photo identification described in §1.1441-6(c)(4)); (ii) any valid document issued by an authorized governmental body that includes the individual’s name and address and is typically used for identification purposes; and (iii) with respect to an account maintained in a jurisdiction with AML/KYC rules that have been

approved by the IRS in connection with a QI agreement (as referenced in §1.1441-1(e)(5)(iii)), any of the documents (other than a Form W-8) referenced in the jurisdiction's attachment for identifying natural persons, as shown on the IRS's webpage.

(7) "Documentary evidence establishing non-U.S. status" means documentary evidence that includes the account holder's name and indicates citizenship or residence outside the United States.

(8) "Documentation" includes all information recorded in written or electronic form (including documentary evidence and Forms W-8) that is collected in connection with a financial account (e.g., for purposes of maintaining the account, corresponding with the account holder, or complying with regulatory or AML/KYC requirements).

2. Procedures for Identification by Participating FFIs of Preexisting Individual Accounts

In the case of preexisting individual accounts, the participating FFI is required to determine whether such accounts are to be treated as U.S. accounts, accounts of recalcitrant account holders (recalcitrant accounts), or accounts that are other than U.S. accounts (non-U.S. accounts), according to the steps below. For purposes of applying the procedures of this section, the following rules apply. First, a participating FFI may rely on documentation that is collected pursuant to these procedures or that is otherwise maintained in an account holder's files, unless it knows or has reason to know that such documentation is unreliable. Second, with respect to preexisting individual accounts, a

participating FFI has maintained documentary evidence if the participating FFI retains either: (i) a copy of the documentary evidence; or (ii) a record of the documentary evidence examined, including the type of document and the name of the employee that reviewed the documentary evidence. Third, a participating FFI has maintained a Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) only if it maintains a copy of the form in its files. Fourth, for purposes of determining the balances or values (as relevant) of accounts in each of the below steps, an FFI will be required to treat as a single account all accounts maintained by the FFI or its affiliates that are associated with one another due to partial or complete common ownership of the accounts under the FFI's existing computerized information management, accounting, tax reporting, or other recordkeeping systems. With respect to a jointly held account, each account holder will be attributed the full balance or value of the joint account for purposes of determining the combined balance or value of that account holder's associated accounts.

Step 1: Documented U.S. Accounts

All account holders already documented as U.S. persons for other U.S. tax purposes (e.g., for purposes of chapters 3 and 61) will be treated as specified U.S. persons, and those account holders' financial accounts will be treated as U.S. accounts. Notwithstanding the foregoing, unless the FFI elects otherwise, an account is a non-U.S. account if: (i) the account is a depository account; (ii) each holder of such account is a natural person; and (iii) the balance or value of such account as of the end of the

calendar year preceding the effective date of the FFI's FFI Agreement does not exceed $50,000 (or the equivalent in foreign currency).

Step 2: Accounts of $50,000 or Less

From among the accounts not identified as U.S. accounts in Step 1, the FFI may treat an account as a non-U.S. account if the balance or value of the account as of the end of the calendar year preceding the effective date of the FFI's FFI Agreement does not exceed $50,000 (or the equivalent in foreign currency). An FFI may elect not to apply this Step 2.

Step 3: Private Banking Accounts

With respect to private banking accounts maintained by the FFI that are not addressed in Step 1 or 2, the FFI must perform the steps described below. For purposes of this Step 3, a participating FFI will not be entitled to rely on any documentation received from a client or from an individual holding an account associated with the client if the private banking relationship manager knows or has reason to know that the information contained in such documentation is unreliable or incorrect.

(A) The FFI must ensure that all of the FFI's private banking relationship managers:

(i) identify any client of the private banking relationship manager for which the private banking relationship manager has actual knowledge that the

client is a U.S. person and request that each such client provide a Form W-9 (Request for Taxpayer Identification Number and Certification);

(ii) perform a diligent review of the paper and electronic account files and other records for each client with respect to whom they serve as a private banking relationship manager, and identify each client (including any associated family members) who, to the best of the knowledge of the private banking relationship manager, has:

(a) U.S. citizenship or lawful permanent resident (green card) status;

(b) a U.S. birthplace;

(c) a U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);

(d) standing instructions to transfer funds to an account maintained in the United States, or directions regularly received from a U.S. address;

(e) an “in care of” address or a “hold mail” address that is the sole address with respect to the client; or

(f) a power of attorney or signatory authority granted to a person with a U.S. address.

(iii) with respect to each client identified in Step 3(A)(ii):

(a) request documentation to establish whether the client’s account is a U.S. account. In particular, the private banking relationship manager must request that each client identified as a U.S. citizen or lawful permanent resident in Step 3(A)(ii)(a) provide a Form W-9. In the case

of any client identified as having a U.S. birthplace or address in Step 3(A)(ii)(b) or (c), the private banking relationship manager must request that the client provide either a Form W-9 establishing U.S. status, or a Form W-8BEN (or a substitute certification as may be provided in future guidance) and a non-U.S. passport or other similar government-issued evidence establishing the client's citizenship in a country other than the United States. In addition, to establish non-U.S. status in the case of any client identified as having a U.S. birthplace in Step 3(A)(ii)(b), the private banking relationship manager will be required to obtain from the client a written explanation regarding the client's renunciation of U.S. citizenship or reason that the client did not acquire U.S. citizenship at birth. In the case of any client identified as having standing instructions or directions in Step 3(A)(ii)(d), the private banking relationship manager must request that the client provide a Form W-9 establishing U.S. status, or a Form W-8BEN (or a substitute certification as may be provided in future guidance) and documentary evidence establishing non-U.S. status of the client. In the case of any client identified as having only an "in care of" or "hold mail" address or a power of attorney in Step 3(A)(ii)(e) or (f), the private banking relationship manager must request that the client provide a Form W-9 establishing U.S. status, a Form W-8BEN (or a substitute certification as may be provided in future guidance), or documentary evidence

establishing non-U.S. status.

(b) request that any client providing a Form W-9 establishing U.S. status in response to a request under Step 3(A)(iii)(a) also provide a waiver of applicable restrictions, if any, on reporting of the client's information to the IRS.

(iv) treat all accounts associated with a client as U.S. accounts (or, to the extent applicable, as Documented FFIs under Section II.B.3 of Notice 2010-60) if the client is identified as a U.S. person in Step 3(A)(i), or is identified as having U.S. indicia as described in Step 3(A)(ii) and does not establish non-U.S. status as described in Step 3(A)(iii)(a). Notwithstanding the prior sentence, an account held solely by a family member of the client who provides a Form W-8BEN (or a substitute certification establishing non-U.S. status as may be provided in future guidance) and documentary evidence establishing the non-U.S. status of the family member will not be treated as a U.S. account, unless the private banking relationship manager knows or has reason to know the family member is acting as a nominee or agent for the client; and

(v) create and retain lists of all existing clients whose accounts are U.S. accounts, non-U.S. accounts, or recalcitrant accounts.

(B) The FFI must complete the procedures described in Step 3(A) by the end of the first year in which an FFI's FFI Agreement is in effect. If a private banking relationship manager subsequently becomes aware that an account holder of

a preexisting private banking account has any of the U.S. indicia described in Step 3(A)(ii), the private banking relationship manager must request the documentation described in Step 3(A)(iii) from the account holder, and, if the account holder does not establish non-U.S. status pursuant to Step 3(A)(iii) within one year of the date on which the private banking relationship manager discovers the U.S. indicia, include the account in the FFI's reporting of its U.S. accounts or treat the account as a recalcitrant account.

(C) The FFI must ensure that all accounts identified in Step 3(A) for which the account holder has provided a Form W-9 and agreed to waive any applicable restrictions on reporting of their information to the IRS are included in the FFI's reporting of its U.S. accounts. Further, the FFI must ensure that all accounts for which the account holders either have not provided the documentation required in Step 3(A) above or, in the case of U.S. persons, have not agreed to waive any applicable restrictions on reporting of their information to the IRS, are treated as recalcitrant account holders after the end of the first year in which the FFI's FFI Agreement is in effect and are included in the FFI's reporting with respect to such accounts. An FFI's due date for reporting U.S. accounts and information regarding recalcitrant account holders will be the designated reporting dates (to be prescribed) following the close of the first full year covered by the FFI's FFI Agreement.

(D) The FFI must ensure that all of the written requests and responses related to the search are retained by the FFI for ten years.

Step 4: Accounts with U.S. Indicia

(A) From among the accounts that are not identified as U.S. accounts in Step 1, as non-U.S. accounts in Step 2, or as private banking accounts under Step 3, the FFI shall determine whether the electronically searchable information maintained by the FFI and associated with those accounts or account holders (e.g., customer information kept for purposes of maintaining the account, corresponding with the account holder, or complying with regulatory requirements) includes any of the following U.S. indicia:

(i) identification of an account holder as a U.S. resident or U.S. citizen;

(ii) a U.S. place of birth for an account holder;

(iii) a U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);

(iv) standing instructions to transfer funds to an account maintained in the United States;

(v) an “in care of” address or a “hold mail” address that is the sole address shown in the FFI’s electronically searchable information for the account holder; or

(vi) a power of attorney or signatory authority granted to a person with a U.S. address.

For this purpose, “electronically searchable information” refers to information that an FFI maintains in its tax reporting files, or customer master files or

similar files, that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Customer master files include an FFI's primary files for maintaining account holder information, such as information used for contacting account holders and for satisfying AML/KYC requirements. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as .pdf files or scanned documents).

(B) For all accounts identified as containing U.S. indicia described in Step 4(A), the FFI will be required within one year of the effective date of the FFI's FFI Agreement to request certain documentation to establish whether the account is a U.S. account. In particular, if an account holder is identified as a U.S. resident or citizen in Step 4(A)(i), the FFI shall request a Form W-9 from such individual. If the account information includes a U.S. birthplace or address identified in Steps 4(A)(ii) or (iii), the FFI shall request either a Form W-9 establishing U.S. status, or a Form W-8BEN (or a substitute certification as may be provided in future guidance) and a non-U.S. passport or other government-issued evidence of citizenship in a country other than the United States. In addition, to establish non-U.S. status in the case of any account holder identified as having a U.S. birthplace, the account holder will be required to provide a written explanation regarding the account holder's renunciation of U.S. citizenship or reason that the account holder did not

acquire U.S. citizenship at birth. In the case of any account identified as having standing instructions in Step 4(A)(iv), the FFI shall request either a Form W-9 establishing U.S. status, or a Form W-8BEN (or a substitute certification as may be provided in future guidance) and documentary evidence establishing non-U.S. status. If the account is identified as containing only an "in care of" or "hold mail" address or a power of attorney described in Steps 4(A)(v) or (vi), the FFI shall request a Form W-9 establishing U.S. status, a Form W-8BEN (or a substitute certification as may be provided in future guidance), or documentary evidence establishing non-U.S. status. Account holders that have not provided appropriate documentation within two years of the effective date of the FFI's FFI Agreement will be classified as recalcitrant account holders from that date until the date on which appropriate documentation is received from the account holder by the participating FFI.

Step 5: Accounts of $500,000 or More

For all preexisting individual accounts that are not identified as U.S. accounts in Step 1, as non-U.S. accounts in Step 2, as private banking accounts in Step 3, or as accounts with U.S. indicia in Step 4, and that had a balance or value of $500,000 or more at the end of the year preceding the effective date of the FFI's FFI Agreement (high value accounts), the FFI must perform a diligent review of the account files associated with the account. To the extent that the account files contain any of the U.S.

indicia described in Step 4(A)(i)-(vi), the FFI must obtain the appropriate documentation as indicated in Step 4(B) within two years of the effective date of the FFI's FFI Agreement. Account holders that do not provide appropriate documentation by the required date will be classified as recalcitrant account holders until the date on which appropriate documentation is received from the account holder by the participating FFI.

Step 6: Annual Retesting

Beginning in the third year following the effective date of the FFI Agreement, the FFI will be required to apply Step 5 annually to all preexisting individual accounts that did not previously satisfy the account balance or value threshold and other requirements to be treated as high value accounts, but that would be high value accounts under Step 5 if the account balance or value of the account were tested on the last day of the preceding year. From among the accounts identified each year under this test, the FFI will be required to treat as recalcitrant any account for which the required documentation has not been provided by the end of the year.

3. Certifying Completion of Customer Identification Procedures

The chief compliance officer or another equivalent-level officer of the FFI (responsible officer) must certify to the IRS when the FFI has completed the above procedures (other than the annual retesting described in Step 6) for its preexisting individual accounts. The responsible officer will certify to the FFI's completion of Steps 1 through 3 within one year after the effective date of the FFI's FFI Agreement, and will

certify to the FFI's completion of Step 4 and Step 5 within two years after the effective date of the FFI's FFI Agreement. As part of these certifications, the responsible officer will be required to certify that, between the publication date of this Notice and the effective date of the FFI's FFI Agreement, FFI management personnel did not engage in any activity, or have any formal or informal policies and procedures in place, directing, encouraging, or assisting account holders with respect to strategies for avoiding identification of their accounts as U.S. accounts under the procedures described above. The responsible officer will further be required to certify that the FFI had written policies and procedures in place as of the effective date of the FFI's FFI Agreement prohibiting its employees from advising U.S. account holders on how to avoid having their U.S. accounts identified. Treasury and the IRS intend to provide in future guidance the due dates and associated requirements for the certifications described in this Section I.A.3.

B. Future Guidance and Request for Public Comment

Treasury and the IRS solicit comments on appropriate ways to modify the application of the private banking test described in Step 3 in order to ensure that the test will apply, whenever practical, to the accounts of high-net-worth individuals and individuals who receive from FFIs services of the type described in Section I.A.1(3)(D)(i) in the definition of a private banking department and thereby reduce the number of accounts that will be subject to Step 5.

Treasury and the IRS recognize that the procedures described in Step 3 are most relevant to those FFIs that engage in banking, brokerage, and similar businesses. Treasury and the IRS are considering whether other FFIs should apply analogous

procedures to certain classes of accounts they maintain. Accordingly, Treasury and the IRS seek comments concerning whether other FFIs, and in particular insurance companies, should perform procedures similar to those described above with respect to holders of preexisting individual accounts, including private placement life insurance.

Treasury and the IRS intend to require FFIs to adopt the procedures described in this section with regard to private banking accounts for any preexisting individual accounts that become private banking accounts after the procedures in Step 3 above are performed, including requiring the responsible officer to provide a certification regarding the completion of Step 3 with regard to such accounts. Treasury and the IRS are considering adopting the private banking test described in Step 3 for new accounts that are or become private banking accounts.

C. Long Term Recalcitrant Account Holders

As noted in Notice 2010-60, withholding with respect to recalcitrant account holders is intended to provide relief for participating FFIs that would not otherwise be able to collect the information required to comply with their obligations under their FFI Agreements. It should not, however, become a permanent substitute for collecting and reporting information with respect to U.S. accounts. Treasury and the IRS continue to consider what measures should be taken to address long-term recalcitrant accounts, including whether, and in what circumstances, FFI Agreements should be terminated due to the number of recalcitrant account holders remaining after a reasonable period of time.

Section II. Passthru Payments

This section provides guidance regarding the definition of the term “passthru payment” for purposes of chapter 4 and regarding the obligation of a participating FFI to withhold on a passthru payment. This section also provides an exemption from passthru payment withholding for obligations that are grandfathered under section 501(d)(2) of the Act. See Section I of Notice 2010-60.

Section 1471(b)(1)(D) requires a participating FFI to deduct and withhold a tax equal to 30 percent of any passthru payment made to a recalcitrant account holder or non-participating FFI. A passthru payment is defined under section 1471(d)(7) as any withholdable payment or other payment to the extent attributable to a withholdable payment.

In Notice 2010-60, Treasury and the IRS requested comments on methods that a participating FFI could use to determine whether payments it makes are attributable to withholdable payments, including any associated information reporting that may be necessary. In response, Treasury and the IRS have received several comments proposing that a payment attributable to a withholdable payment should include only payments that are either withholdable payments or directly traceable to withholdable payments. These approaches would not, however, be consistent with the purposes underlying the passthru payment concept. As described in Notice 2010-60, one purpose of the passthru payment rule is to encourage FFIs to enter into FFI Agreements if they hold investments that produce payments that are attributable to withholdable payments, even if they do not directly hold assets that produce withholdable payments. Without such a rule, participating FFIs could be used as “blockers” through which non-

participating FFIs might benefit from indirect investment in U.S. assets (as defined below) without being subject to withholding or entering into an FFI Agreement. The approach suggested by the comments described above would largely limit the definition of passthru payments to payments that would constitute withholdable payments and thus would fail to address account holders who invest in U.S. assets indirectly. Moreover, given the diversity of capital structures and payment arrangements of FFIs, a rule that defined passthru payments based on whether a payment was "directly traceable" to a withholdable payment would be difficult for FFIs to apply and the IRS to administer. Accordingly, Treasury and the IRS have not adopted the limited definition of a passthru payment proposed in such comments.

Other comments suggested broader definitions of passthru payments, including approaches focusing on the FFI's ratio of assets giving rise to withholdable payments or passthru payments to total assets as a means to make the passthru payment rules administrable. This approach would more effectively accomplish the purposes of the passthru payment provision of chapter 4 and avoid the complications presented by implementing a tracing approach.

A. General Rule

Treasury and the IRS intend to issue regulations providing that, subject to the exceptions described below or in future guidance, a payment made by an FFI (the payor FFI) will be a passthru payment to the extent of: (i) the amount of the payment that is a withholdable payment; plus (ii) the amount of the payment that is not a withholdable payment multiplied by (A) in the case of a custodial payment (as defined in Section II.C

below), the passthru payment percentage of the entity that issued the interest or instrument, or (B) in the case of any other payment, the passthru payment percentage of the payor FFI.

B. Calculation of Passthru Payment Percentage

1. In General

In order to calculate its passthru payment percentage, an FFI must determine its total assets and U.S. assets, as defined below in Sections II.B.3 and II.B.4, respectively, as of its quarterly testing dates. The FFI's passthru payment percentage will be determined by dividing the sum of the FFI's U.S. assets (as defined in Section II.B.4) held on each of the last four quarterly testing dates, by the sum of the FFI's total assets (as defined in Section II.B.3) held on those dates. FFIs will determine their passthru payment percentages as of each quarterly testing date.

The quarterly testing date for an FFI will be either the last redemption date of the quarter (for entities that conduct redemptions at least quarterly) or the last business day of the quarter (for all other entities). A quarter will be determined in accordance with the FFI's fiscal year. Any participating FFI which does not calculate and publish its passthru payment percentage, as set forth in Section II.B.5 will be deemed to have a passthru payment percentage of 100 percent.

Treasury and the IRS request comments as to whether alternative methods for determining passthru payment percentages (such as permitting reliance upon representations in investor solicitation or proxy materials regarding target percentage holdings of U.S. assets) may be appropriate and administrable under certain

circumstances.

2. Alternative Transition Method for Computing Passthru Payment Percentage

In lieu of the general rule described in Section II.B.1, above, an FFI may elect to compute its passthru payment percentage in the first year of its FFI Agreement under the following alternative method. An FFI may calculate its passthru payment percentage to be used for the first quarter of the first year of its FFI Agreement based on the FFI's assets on a single testing date (Initial Testing Date). The Initial Testing Date may be any date in the six months preceding the effective date of the FFI's FFI Agreement. For the quarterly testing dates falling in each of the first three complete quarters after the effective date of the FFI's FFI Agreement, the FFI will determine its passthru payment percentage by dividing the sum of the FFI's U.S. assets held on the Initial Testing Date and each of the quarterly testing dates by the sum of the FFI's total assets held on the Initial Testing Date and each of the quarterly testing dates.

3. Determination of Assets

For purposes of calculating an FFI's passthru payment percentage, an asset generally includes any asset includible on a balance sheet of an FFI prepared under the FFI's method of accounting for reporting to its interest holders. An asset will also include off-balance sheet transactions or positions to the extent provided in future guidance. Assets held in a custodial account of an FFI will not be considered assets of the FFI for purposes of computing its passthru payment percentage. A custodial account is an account with respect to which a financial institution acts as a custodian,

broker, nominee, or agent for the benefit of the account holder. All assets are includable for purposes of an FFI's passthru payment percentage calculations at their gross values, unreduced by liabilities or other associated obligations.

The value of an asset is the amount shown on the quarterly financial statements issued by the FFI for purposes of reporting to its interest holders. If no such financial statements are issued for a quarterly testing date, then the value of an asset shall be determined consistent with the method used on the most recently issued financial statements to interest holders. An FFI's assets must be translated into a single currency (which need not be the U.S. dollar) for purposes of computing its passthru payment percentage.

4. Definition of "U.S. Asset"

For purposes of determining an FFI's passthru payment percentage, Treasury and the IRS intend to publish regulations defining a U.S. asset to include any asset to the extent that it is of a type that could give rise to a passthru payment. Notwithstanding the previous sentence, an FFI's debt or equity interest in a domestic corporation will be treated solely as a U.S. asset and an FFI's debt or equity interest in a non-financial foreign entity (NFFE) shall be treated solely as a non-U.S. asset, regardless of whether the interest would otherwise be an asset of a type that could give rise to a passthru payment.

The above definition of U.S. asset also includes certain interests in or other financial accounts that are not custodial accounts (non-custodial accounts) held with another FFI. An interest in, or other non-custodial account held with, another FFI

(Lower Tier FFI) constitutes a U.S. asset in an amount equal to the value of the interest in, or account with, the Lower Tier FFI multiplied by the Lower Tier FFI's passthru payment percentage. An FFI may rely on the passthru payment percentage of a Lower Tier FFI that is a participating or deemed-compliant FFI, if such FFI publishes its passthru percentage as provided in Section II.B.5, below. If a participating FFI or deemed-compliant FFI does not calculate or publish its passthru payment percentage as set forth in Section II.B.5, it will be deemed to have a passthru payment percentage of 100 percent. An FFI that is not a participating or deemed-compliant FFI will be presumed to have a passthru payment percentage of zero percent. An FFI will be required to confirm that a Lower Tier FFI is not a participating or deemed-compliant FFI prior to presuming that the Lower Tier FFI has a passthru payment percentage of zero percent. The IRS intends to maintain a database that will permit FFIs and other withholding agents to confirm whether an FFI is a participating or deemed-compliant FFI.

Example of Calculation of Passthru Payment Percentage. Fund A is a participating FFI that operates as a fund of funds and that elects the book value (BV) method for determining the value of its assets. As of the relevant testing date, Fund A's assets consist of: (a) an interest in Fund B, a non-participating FFI (BV of $20 million); (b) an interest in Fund C, a participating FFI with a passthru payment percentage (PP%) of 50 percent (BV of $30 million); (c) an interest in Fund D, an FFI that does not calculate its PP% (BV of $10 million); (d) an interest in Fund E, a domestic corporation (BV of $40 million). Fund A's total assets are $100 million. Fund A's U.S. assets are

$65 million (($20 million x Fund B's PP% of 0%) + ($30 million x Fund C's PP% of 50%) + ($10 million x Fund D's PP% of 100%) + ($40 million x 100% because Fund E is a U.S. entity)). Therefore, Fund A's passthru payment percentage for the relevant testing date is equal to $65 million (U.S. assets) / $100 million (total assets), or 65 percent.

Treasury and the IRS intend to issue guidance providing that an FFI that has engaged in a pattern of selling or transferring any of its U.S. assets immediately prior to its quarterly testing date and reacquiring the same or similar assets following the quarterly testing date, or otherwise engaging in transactions with the intent of manipulating its passthru payment percentage, will be treated as having its passthru payment percentage determined without regard to those transactions, regardless of how such transactions would be characterized under the FFI's financial accounting standards for purposes of reporting to its interest holders. Comments are requested regarding any further anti-abuse rules which may be necessary to prevent the manipulation of an FFI's passthru payment percentage.

Comments are also requested regarding the above approach to defining a U.S. asset. Additionally, Treasury and the IRS are seeking comments regarding the use of the passthru payment percentage with respect to domestic and foreign partnerships and other flow-through entities, as well as how a partnership or other flow-through entity may determine whether a payment it makes to an interest holder is a withholdable payment or a passthru payment. Comments are also requested regarding whether it is appropriate to permit a U.S. financial institution that is a partnership or other flow-through entity under U.S. tax principles to calculate and make available a passthru

payment percentage that may be used by participating FFIs in determining their own passthru payment percentages with respect to non-custodial accounts held with such U.S. institutions.

5. Timing and Publishing of Passthru Payment Percentages

Each participating FFI will be required within three months after its quarterly testing date to make available its passthru payment percentage information calculated for that testing date, for example, on a website or database readily searchable by the public. Treasury and the IRS request comments on the most efficient mechanism for ensuring that accurate passthru payment percentage information is readily available to FFIs for purposes of administering their obligations under chapter 4. Treasury and the IRS intend that a participating or deemed-compliant FFI that fails to make available updated passthru payment percentage information will be treated as having a passthru payment percentage of 100 percent. Treasury and the IRS further intend that an FFI that holds an interest in one or more Lower Tier FFIs may rely on such FFI's most recently published passthru payment percentage in determining its own passthru payment percentage. The determination of when a passthru payment percentage is out-of-date and how frequently an FFI must check for more recently published passthru payment percentages of other FFIs shall be set forth in future guidance.

If deemed-compliant FFIs publish their passthru payment percentages, they must certify to the IRS every three years that the passthru payment percentages they publish are accurate. See also Section III of this Notice concerning other proposed rules applicable to deemed-compliant FFIs.

C. Custodial Payments

A custodial payment is a payment with respect to which an FFI acts as a custodian, broker, nominee, or otherwise as an agent for another person. A custodial payment that is a withholdable payment will be treated as a withholdable payment (and thus as a passthru payment), and the FFI must apply the appropriate withholding unless the withholding obligation has been satisfied by another withholding agent. As described above, if the custodial payment is made with respect to an interest or instrument issued by another FFI (issuer FFI), then the custodial payment is a passthru payment in an amount equal to the amount of the payment multiplied by the passthru payment percentage of the issuer FFI.

For example, consider an FFI that holds stock of a domestic corporation in a custodial account for a recalcitrant account holder. Upon receiving a dividend from the domestic corporation, the FFI must treat the dividend as a passthru payment when credited to the account of the recalcitrant account holder because the dividend constitutes a withholdable payment.

Similarly, when a broker that is a participating FFI holds an interest in another FFI on behalf of a recalcitrant account holder and collects a distribution from that other FFI on behalf of the account holder, the portion of that distribution constituting a passthru payment is equal to the amount of the distribution multiplied by that other FFI's passthru payment percentage. Since the broker is acting in a custodial capacity with respect to the distribution paid or credited to the account of the recalcitrant account holder, the broker's own passthru payment percentage does not affect the application of

the passthru payment rules to the distribution.

D. Grandfathered Obligations

An obligation that gives rise to payments that are exempt from withholding under section 501(d)(2) of the Act (grandfathered obligation), including any accrual of income with respect to such obligation, will not be treated as a U.S. asset for purposes of determining an entity's passthru payment percentage. A grandfathered obligation also will not give rise to a passthru payment under the rules for custodial payments described in Section II.C above.

E. Request for Comments Regarding Potential Exceptions to Passthru Payments

Treasury and the IRS request comments regarding possible exemptions from the definition of passthru payments that would, to the extent possible, be consistent with the policy goals of the passthru payment rule and reasonable in light of the potential burden on participating FFIs.

Section III. Deemed-Compliant Status for Certain FFIs

This section describes certain categories of FFIs that will be deemed compliant pursuant to section 1471(b)(2). Unless provided otherwise, a deemed-compliant FFI will be required to: (1) apply for deemed-compliant status with the IRS; (2) obtain an FFI identification number (FFI-EIN) from the IRS identifying it as a deemed-compliant FFI; and (3) certify every three years to the IRS that it meets the requirements for such treatment.

A. Certain Local Banks

Treasury and the IRS intend to issue regulations under which each FFI in an expanded affiliated group (as defined in section 1471(e) and discussed below in Section VI) will be treated as a deemed-compliant FFI under section 1471(b)(2)(A) if: (1) each FFI in the expanded affiliated group is, under the laws of its country of organization, licensed and regulated as a bank or similar organization authorized to accept deposits in the ordinary course of its business and is not described in section 1471(d)(5)(C); (2) all of the FFIs in the expanded affiliated group are organized in the same country; (3) no FFI in the expanded affiliated group maintains operations outside the country of organization; (4) no FFI in the expanded affiliated group solicits account holders outside its country of organization; and (5) each FFI in the expanded affiliated group implements policies and procedures to ensure that it does not open or maintain accounts for non-residents, non-participating FFIs, or NFFEs (other than excepted NFFEs as defined in Notice 2010-60 that are organized and operating in the jurisdiction where all members of the expanded affiliated group are organized). Treasury and the IRS solicit comments on how an expanded affiliated group would demonstrate to the IRS that it meets the requirements described above.

B. Local FFI Members of Participating FFI Groups

Treasury and the IRS also intend to issue regulations under which any FFI that is a member of an expanded affiliated group that includes one participating FFI (each an "FFI member" of a "Participating FFI Group") may be treated as a deemed-compliant FFI under section 1471(b)(2)(A) if: (1) the FFI member maintains no operations outside its country of organization; (2) the FFI member does not solicit account holders outside

its country of organization; (3) the FFI member implements the pre-existing account and customer identification procedures required of participating FFIs to identify the following types of accounts: (a) U.S. accounts; (b) accounts of non-participating FFIs; and (c) accounts of NFFEs (other than excepted NFFEs as defined in Notice 2010-60 that are organized and operating in the jurisdiction where the FFI member maintains the account); and (4) the FFI agrees that, if any of the types of accounts described in clause (3) above are found, it will enter into an FFI Agreement, transfer such accounts to an affiliate that is a participating FFI within a reasonable period of time to be provided in future guidance, or close such accounts. Treasury and the IRS solicit comments on how an FFI would demonstrate to the IRS that it meets the requirements described above. In addition, Treasury and the IRS request comments as to whether there are policies and procedures other than the customer identification procedures required of participating FFIs that an FFI member of a Participating FFI Group could apply to effectively ensure that it identifies any U.S. accounts that it opens or maintains.

C. Certain Investment Vehicles

In addition, Notice 2010-60 stated that Treasury and the IRS were considering whether, under the standard set forth in section 1471(b)(2)(A), certain investment vehicles could be deemed to meet the requirements of section 1471(b). Treasury and the IRS intend to issue guidance under which certain collective investment vehicles and other investment funds would be treated as deemed-compliant under section 1471(b)(2)(A). Under this guidance, a fund will be deemed-compliant if it meets the following three requirements: (1) all holders of record of direct interests in the fund

(e.g., the holders of its units or global certificates) are participating FFIs or deemed-compliant FFIs holding on behalf of other investors, or entities described in section 1471(f); (2) the fund prohibits the subscription for or acquisition of any interests in the fund by any person that is not a participating FFI, a deemed-compliant FFI, or an entity described in section 1471(f); and (3) the fund certifies that any passthru payment percentages that it calculates and publishes will be done in accordance with Section II of this Notice.

Treasury and the IRS are also considering under what circumstances certain foreign entities, all the interests in which are regularly traded on an established securities market (e.g., exchange-traded funds (ETFs)), could be deemed compliant under section 1471(b)(2)(A). FFIs that issue only debt or equity interests that are regularly traded on an established securities market do not maintain "financial accounts" under section 1471(d)(2)(C). Although such FFIs maintain no U.S. accounts, they are FFIs and are subject to certain obligations under chapter 4 to the extent they receive passthru payments. In particular, such FFIs would be required to enter into an FFI Agreement, withhold on passthru payments made to non-participating FFIs, and certify that any passthru payment percentage that they publish will be published in accordance with Section II.B.5.

Treasury and the IRS continue to consider comments received regarding whether there may be a category of funds that may be treated as deemed-compliant because: (i) all direct interest holders in the fund are participating FFIs, USFIs, deemed-compliant FFIs, entities described in section 1471(f), or non-participating FFIs

acting as distributors; (ii) distribution or similar agreements prohibit sales of interests to specified U.S. persons, NFFEs other than excepted NFFEs, and non-participating FFIs holding for their own account; (iii) each distributor agrees to enforce the sales prohibitions described in (ii) above, and (iv) the fund satisfies other requirements and meets other criteria relevant to the purposes of chapter 4.

Many FFIs employ paying agents or transfer agents to act on their behalf in making payments to direct interest holders or maintaining a register of direct interest holders in the fund. Treasury and the IRS intend to issue guidance clarifying that, while a deemed-compliant FFI is responsible for ensuring that the requirements for being deemed compliant are met, it may use an agent to perform the necessary due diligence and take any required action associated with maintaining deemed-compliant status on its behalf. Similarly, a participating FFI is liable for the performance of its obligations under its FFI Agreement, but may use an agent to perform those obligations on its behalf.

D. Other Categories of Deemed-Compliant FFIs

As discussed in Notice 2010-60, Treasury and the IRS intend to issue guidance providing that certain foreign retirement plans pose a low risk of tax evasion under section 1471(f), and therefore payments beneficially owned by such retirement plans will be exempt from withholding under section 1471(a). Treasury and the IRS are still considering the many comments received regarding the types of foreign retirement plans that should be treated as posing a low risk of tax evasion under section 1471(f), and intend to provide further guidance on the types of foreign retirement plans that may

qualify for such treatment. In addition, Treasury and the IRS intend to provide further guidance on foreign retirement plans or retirement accounts that may be deemed compliant under section 1471(b)(2).

Treasury and the IRS request comments regarding other categories of entities that should be treated as deemed-compliant FFIs under section 1471(b)(2)(A) because they possess certain characteristics, or have implemented appropriate policies and procedures, that are consistent with the purpose of the passthru payment rule of section 1471 to prevent these entities from being used by non-participating FFIs to avoid compliance with chapter 4.

Section IV. Reporting on U.S. Accounts

A. Account Balance or Value

This section modifies certain of the proposed U.S. account reporting requirements for FFIs outlined in Section IV of Notice 2010-60.

Section 1471(c)(1)(C) requires a participating FFI to report the account balance or value of each U.S. account unless the FFI elects to report in accordance with section 1471(c)(2). Section IV of Notice 2010-60 provides preliminary guidance regarding the manner and type of information FFIs would be required to report with respect to their U.S. accounts. Notice 2010-60 requires reporting of the highest of the month-end balances during the year (or, if the balance is determined less frequently than monthly (e.g., quarterly) for the purposes of reporting to the account holder, the highest of the balances as determined for purposes of reporting to the account holder during the year) for deposit and custodial accounts. In addition, the FFI would be

required to provide additional account-related information (e.g., copies of account statements, including monthly or quarterly balances and daily receipts and withdrawals) to the IRS upon request. In the case of a U.S. account that is an interest in an entity described in section 1471(d)(5)(C), Notice 2010-60 requires a participating FFI to report the highest value of such account during the year, as determined for the purpose that requires the most frequent determination of value by the participating FFI.

A number of commentators indicated that some FFIs do not retain records of their periodic (month-end, quarterly, or otherwise) account balance determinations. As a result, such FFIs would incur significant costs to comply with this requirement.

In light of these comments and the revised reporting requirements described in Section IV.B of this Notice, Treasury and the IRS intend to issue regulations limiting FFIs' account balance reporting obligations to year-end account balances or values, as determined for purposes of reporting to the account holder or, in the case of a U.S. account that is an interest in an entity described in section 1471(d)(5)(C), as determined for the purpose that requires the most frequent determination of value.

B. Gross Receipts and Withdrawals

Section 1471(c)(1)(D) also requires the reporting of gross receipts and gross withdrawals or payments made to and from U.S. accounts, except to the extent otherwise provided by the Secretary. Notice 2010-60 requested comments as to how to minimize burdens on participating FFIs with respect to their section 1471(c)(1)(D) reporting. Commentators indicated that many FFIs do not currently maintain gross receipt and withdrawal data. These FFIs would have to incur significant costs in order

to comply with the section 1471(c)(1)(D) reporting requirement. Commentators also indicated that it would be difficult for FFIs to apply U.S. federal income tax principles when satisfying their section 1471(c)(1)(D) reporting responsibilities.

In light of these comments, Treasury and the IRS intend to issue regulations providing that under section 1471(c)(1)(D) an FFI must annually report the following information with respect to a U.S. account that is described in section 1471(d)(2)(A) or (B):

(i) the gross amount of dividends paid or credited to the account;

(ii) the gross amount of interest paid or credited to the account;

(iii) other income paid or credited to the account; and

(iv) gross proceeds from the sale or redemption of property paid or credited to the account with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder.

For purposes of the preceding sentence, the amount and character of dividends, interest, other income, and gross proceeds need not be determined in accordance with U.S. federal income tax principles (though the FFI may rely on such principles). The amount and character of dividends, interest, other income, and gross proceeds may be determined under the same principles that the FFI uses to report information on its resident account holders to the jurisdiction in which the FFI (or branch thereof) is located. If any of these amounts are not reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located, such amounts must be determined in the same manner as is used for purposes of reporting to the account

holder. If the amount of dividends, interest, gross proceeds, or other income is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder, such amounts must be determined either in accordance with U.S. federal tax principles or in accordance with any reasonable method of reporting consistent with the accounting principles generally applied by the FFI. Once an FFI has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. federal income tax principles to determine such amounts.

In the case of a U.S. account that is described in section 1471(d)(2)(C), the FFI will be required to report with respect to such interest, the gross amount of: (i) all distributions, interest, and similar amounts credited during the year; and (ii) each redemption payment made during the year.

In the case of a U.S. account closed or transferred in its entirety by an account holder during the year, the FFI will be required to report the income paid or credited to the account for the year until the date of transfer or closure, and will also be required to report the amount or value withdrawn or transferred from the U.S. account as a gross withdrawal. The FFI will also be required to report the U.S. account as closed or transferred.

In addition, the FFI Agreement will provide that if the FFI retains copies of statements sent to holders of U.S. accounts in the ordinary course of its business, such

statements must be retained for a period of five years and must be provided to the IRS upon request.

C. Basis Reporting

Treasury and the IRS intend to issue guidance providing that FFIs that are not U.S. payors (as defined in §1.6049-5(c)(5)) and that report the information required under section 1471(c)(1)(D) with respect to a U.S. account will not be required to report tax basis information required under section 6045(g) with respect to the account.

D. Branch and Affiliate Reporting

1. Mandatory Identification of FFI Branches

Section 1471(b) provides that a participating FFI must report certain information pursuant to an FFI Agreement with respect to each U.S. account. Treasury and the IRS intend to publish draft FFI Agreements that require FFIs, including FFIs that do not elect branch-by-branch reporting under Section IV.E.2, below, to identify the branch that maintains the U.S. account being reported.

2. Branch Reporting Election and Reporting by Affiliates

Treasury and the IRS received comments asserting that some FFIs may face constraints under local law that would prevent consolidating account holder information across branches or affiliates located in different jurisdictions generally, including for purposes of reporting under chapter 4. These commentators noted that those constraints may not prevent branches from reporting separately in order to satisfy the requirements of section 1471(b).

In light of these comments, Treasury and the IRS intend to issue guidance

allowing FFIs to elect to have each branch report information regarding the U.S. accounts it maintains and to make the section 1471(c)(2) election with respect to each of their branches. Treasury and the IRS intend to require that such an election be made as part of the application process for an FFI to obtain status as a participating FFI, as further described in Section VI of this Notice.

Section V. Chapter 4 Requirements for Qualified Intermediaries

This section addresses the treatment of QIs under section 1471. QIs currently agree to perform certain withholding and reporting responsibilities with regard to their non-U.S. account holders for purposes of chapter 3. They further agree to perform certain reporting responsibilities under chapter 61 with respect to reportable payments made to their U.S. non-exempt recipient account holders and to apply backup withholding under section 3406 on such payments when applicable.

Under section 1471(c)(3), a QI that is an FFI is subject to the requirements of section 1471 in addition to the reporting or other requirements imposed on QIs. Treasury and the IRS intend to issue guidance requiring all FFIs currently acting as QIs to consent to include in their QI agreements the requirement to become participating FFIs unless they qualify as deemed-compliant FFIs under section 1471. This requirement will apply to all such QIs as of January 1, 2013, the effective date of chapter 4. Treasury and the IRS intend to provide transition rules under both chapters 3 and 4 to accommodate this change. FFIs applying for QI status after the effective date of chapter 4 will be required to satisfy the requirements of section 1471.

Treasury and the IRS also intend to issue guidance that will require FFIs

currently acting as Foreign Withholding Partnerships (FWPs) or Foreign Withholding Trusts (FWTs) under §1.1441-5(c) or (e) to consent to include in their agreements the requirement to become participating FFIs unless they qualify as deemed-compliant FFIs under section 1471. FFIs applying for FWP or FWT status after the effective date of chapter 4 will also be required to satisfy the requirements of section 1471.

Treasury and the IRS intend to coordinate the section 1471 reporting and withholding requirements for QIs, FWPs, and FWTs with the requirements that presently apply to QIs, FWPs, and FWTs under chapter 3 and guidance thereunder, and request comments on how the chapter 3 rules and agreements for these entities may be appropriately modified for that purpose.

Section VI. Application of Section 1471(e) Regarding Expanded Affiliated Groups of FFIs

Section 1471(e) provides that the withholding, reporting, and other requirements imposed on an FFI under section 1471(b) and section 1471(c)(1) shall apply with respect to U.S. accounts maintained by the FFI and, except as otherwise provided by the Secretary, with respect to U.S. accounts maintained by each other FFI (other than any FFI that otherwise meets the requirements of section 1471(b)) which is a member of the same expanded affiliated group that includes the FFI (each an "FFI affiliate" of an "FFI Group"). Under section 1471(e)(2), an expanded affiliated group is an "affiliated group" as defined in section 1504(a), determined by substituting "more than 50 percent" for "at least 80 percent" in each place it appears in section 1504(a) and without regard to paragraphs (2) and (3) of section 1504(b) (which would otherwise exclude insurance

companies subject to tax under section 801 and foreign corporations). Section 1471(e)(2) further provides that a partnership or any other entity (other than a corporation) is treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this rule).

A. Requirements for FFI Affiliates

Treasury and the IRS intend to issue regulations under section 1471(e) requiring that each FFI affiliate in an FFI Group must be a participating FFI or a deemed-compliant FFI. Each FFI affiliate in the FFI Group that is to become a participating FFI will be required to execute, under the coordinated execution procedures described below, an FFI Agreement that will apply to all of its worldwide branches and offices. Each participating FFI affiliate will be responsible for its own due diligence, withholding and reporting obligations, and return filing requirements under its FFI Agreement with respect to its account holders. Each FFI affiliate will be issued its own FFI-EIN. Treasury and the IRS continue to study whether and under what conditions it may be possible to allow an FFI Group to include one or more non-participating FFI affiliates.

B. Execution of Agreements for FFI Affiliates

The IRS intends to require FFI affiliates of FFI Groups to apply for participating FFI or deemed-compliant FFI status through a coordinated application process. For this purpose, the IRS intends to require each FFI Group to designate a “lead FFI.” A lead FFI will be required to complete an application and execute either an agreement with the IRS to become a participating FFI or a certification for deemed-compliant FFI

status, and also will be required to complete an application on behalf of each FFI affiliate. The lead FFI will be required to provide the IRS with documentation, in a format to be prescribed, evidencing that each FFI affiliate has agreed to the provisions of an FFI Agreement or certification, depending on whether the FFI affiliate seeks participating or deemed-compliant FFI status. Such documents will include a legally binding authorization from each such FFI affiliate for the lead FFI to act on its behalf in signing the application for participating FFI or deemed-compliant FFI status (as applicable) and in submitting a Form SS-4 (Application for Employer Identification Number) to apply for and obtain an FFI-EIN for the FFI affiliate. The lead FFI also will be required to represent in the application that it has identified to the IRS each affiliate in the FFI Group and that it has completed the application in accordance with the instructions provided to it by each affiliate. It will further be required to represent that it is authorized to act as agent for the FFI Group for purposes of an ongoing requirement to notify the IRS of any new FFI affiliate or of any FFI affiliate that ceases to be an FFI affiliate.

The IRS further intends to require that the lead FFI provide certain information in the application about both itself and each affiliate in the FFI Group. The lead FFI will in all cases be required to identify itself as the lead FFI and identify each affiliate of the FFI Group. The lead FFI will be required to provide the following information about each FFI affiliate in the FFI Group: (1) its name, address, and country of organization; (2) whether the FFI affiliate is described in section 1471(d)(5)(A), (B), and/or (C); (3) whether the FFI affiliate is applying as a participating FFI or a deemed-compliant FFI;

(4) the types of accounts the FFI affiliate maintains among those specified in section 1471(d)(2); (5) whether the FFI affiliate maintains private banking accounts (as defined in Section I.A.1(2) of this Notice); and (6) whether the affiliate is a QI, FWP, or FWT. The lead FFI also will be required to provide the name, address, and country of organization of each member of the FFI Group that is not an FFI. The lead FFI also will be required to identify each FFI affiliate that maintains a branch that elects to separately report its U.S. accounts under Section IV.D.2 of this Notice and will be required to identify the jurisdiction of each such branch. Lead FFIs may be required to provide additional information as part of the application process to the extent provided in future guidance.

Once the FFI Agreement has been executed, the IRS intends to require the lead FFI to continue to act as a central contact point with the IRS for issues concerning the application and execution of the agreements and certifications with respect to each FFI affiliate, and concerning any affiliate that is not an FFI. Alternatively, the lead FFI may designate other FFI affiliates to serve as ongoing points of contact (POC FFIs) on behalf of particular members of the FFI Group. For example, a lead FFI may choose to establish a POC FFI for members of the group that share a common line of business or that operate in the same jurisdiction. POC FFIs would also be responsible for addressing issues with the IRS concerning the certifications provided by their associated FFI affiliates in order to maintain deemed-compliant status, or concerning ongoing issues pertaining to any NFFEs in the FFI Group.

C. Centralized Compliance Option for FFI Groups

Treasury and the IRS also intend to provide FFI Groups with an option under which a designated FFI could be appointed by some or all of the FFI affiliates in the FFI Group to assume an oversight role with respect to the compliance by the FFI Group with the section 1471 requirements (Compliance FFIs). For example, a Compliance FFI could assume the responsibility to: (1) establish applicable policies and procedures with respect to the section 1471 requirements for all or a subset of the FFI affiliates in the FFI Group; (2) ensure that all such FFI affiliates have adopted and implemented these policies and procedures; and (3) account to the IRS with respect to each such affiliate's compliance with such policies and procedures and the section 1471 requirements. Treasury and the IRS anticipate that a centralized compliance approach of this type may result in certain efficiencies for both FFIs and the IRS and seek comments about this approach, including the time that Compliance FFIs would need to establish policies and procedures for assuming these additional responsibilities and other suggestions to facilitate a Compliance FFI's role in enforcing its affiliates' compliance with the section 1471 requirements.

Comments are also requested concerning the utility of an option to allow U.S. shareholders of controlled foreign corporations that are FFIs to function as lead FFIs and/or Compliance FFIs (although the U.S. shareholder will not be an FFI).

D. Centralized Option for Funds

Treasury and the IRS are also considering whether a centralized compliance option should be provided for certain collective investment entities (funds) that are associated with a common asset manager or other agent. Under this approach, an

asset manager or other agent would execute a single FFI Agreement on behalf of each member of a group of funds that contracts with the asset manager or other agent to perform the functions required under the FFI Agreement with respect to the fund. This option would be restricted to those cases in which the asset manager or other agent is able to monitor each fund's compliance with its FFI Agreement based on its legal agreements and other arrangements with each fund. An asset manager or other agent executing an agreement of this type would be required to act as a point of contact for the IRS with respect to all issues concerning the FFIs in its group, or designate an agent to assume this responsibility. It would further be required to implement policies and procedures covering the section 1471(b) and (c)(1) requirements for each participating FFI fund included in the single agreement, and would also be required to account to the IRS with respect to each such fund's compliance with these procedures and their section 1471 requirements. Each fund participating in an agreement under this option would remain liable for the performance of its obligations under its FFI Agreement. See also Section III.C of this Notice concerning the proposed requirements for certain investment funds to obtain deemed-compliant treatment.

Section VII. Effective Date of FFI Agreements

FFI Agreements will become effective on the later of: (i) the date they are executed; or (ii) the effective date of section 501 of the Act.

REQUEST FOR PUBLIC COMMENT

This Notice requests public comment regarding the issues described in this Notice and regarding other priority issues in connection with forthcoming guidance on

the application of chapter 4.

Written comments should be sent to: CC:PA:LPD:PR (NOT-121556-10), 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 a.m. and 4 p.m. to: CC:PA:LPD:PR (NOT-121556-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at Notice.Comments@irscounsel.treas.gov (NOT-121556-10). Please insert “Notice 2011-34” in the subject line of any electronic communications.

All comments will be available for public inspection and copying. The deadline for written comments on this Notice is June 7, 2011.

EFFECT ON OTHER DOCUMENTS

This Notice supplements and supersedes Notice 2010-60 to the extent indicated herein.

DRAFTING INFORMATION

The principal authors of this notice are Danielle Nishida and Ana Guzman of the Office of Associate Chief Counsel (International). For further information regarding this notice contact John Sweeney at (202) 622-3840 (not a toll-free call).