

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

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

**Bulletin No. 2016-29**  
**July 18, 2016**

## INCOME TAX

### **Notice 2016-42, page 67.**

Notice 2016-42 sets out a proposed Qualified Intermediary ("QI") agreement revising and updating the current agreement, Rev. Proc. 2014-39, published in July 2014. The revised QI agreement updates the current agreement by providing more detailed procedures regarding how qualified intermediaries satisfy their compliance review obligations and sets out terms and requirements for qualified intermediaries that want to act as qualified derivatives dealers with respect to transactions subject to section 871(m).

### **Notice 2016-43, page 132.**

This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year 2015. The reference price applies in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit under § 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under § 613A.

### **Notice 2016-44, page 132.**

The notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2016 calendar year. The format of the notice is identical to the format of previously published notices on this issue. The notice concludes that because the reference price for the 2015 calendar year (\$44.39) does not exceed \$28 multiplied by the inflation adjustment factor for the 2015 calendar year (\$28 multiplied by 1.6464 = \$46.01), the enhanced oil recovery credit for qualified costs paid or incurred in 2016 is determined without regard to the phase-out for crude oil price increases. The notice contains the previously published figures for taxable years beginning in the 1991 through 2015 calendar years. The enhanced oil recovery credit for qualified costs has been phased out completely for calendar years 2006 through 2015. The enhanced oil recovery credit for qualified costs was last determined without regard to

the phase-out for crude oil price increases in the 2005 calendar year.

### **Notice 2016-45, page 135.**

The notice announces that under § 613A(c)(6)(C) of the Internal Revenue Code, the applicable percentage for purposes of determining percentage depletion on marginal properties for calendar year 2016 is 15 percent. The format of the notice is identical to the format of notices previously published on this issue.

### **T.D. 9773, page 56.**

These final regulations provide guidance on the information required to be reported for country-by-country (CbC) reporting. The final regulations generally require U.S. business entities that are the ultimate parent of a U.S. multinational enterprise (MNE) group earning annual revenues of \$850,000,000 or more in the prior reporting period to report certain financial information on a tax jurisdiction-by-tax jurisdiction basis. The regulations require the U.S. ultimate parent to list the U.S. MNE group's business entities indicating each entity's tax jurisdiction (if any), country of organization, tax identification number (if any), and main business activity, as well as CbC financial information for each tax jurisdiction in which the U.S. MNE does business. The CbC financial information includes income, profits, income taxes, stated capital, accumulated earnings, number of employees, and tangible assets other than cash.

## EMPLOYEE PLANS

### **Rev. Proc. 2016-37, page 136.**

Rev. Proc. 2016-37 sets forth the procedures for the determination letter program for individually designed plans and the six-year remedial amendment cycle system for pre-approved plans. Rev. Proc. 2007-44 is clarified, modified, and superseded. Sections 2.07 and 24.03 of Rev. Proc. 2015-36 are modified. Sections I and III of Notice 2015-84 are modified.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

26 CFR 1.6038-4: Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group.

## T.D. 9773

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Country-by-Country Reporting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that require annual country-by-country reporting by certain United States persons that are the ultimate parent entity of a multinational enterprise group. The final regulations affect United States persons that are the ultimate parent entity of a multinational enterprise group that has annual revenue for the preceding annual accounting period of \$850,000,000 or more.

DATES: *Effective Date:* These regulations are effective June 30, 2016.

*Applicability Date:* For dates of applicability, see § 1.6038-4(k).

FOR FURTHER INFORMATION CONTACT: Melinda E. Harvey, (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The IRS intends that the information collection requirements in these regulations will be satisfied by submitting a new reporting form, Form 8975, *Country-by-Country Report*, with an income tax return. For purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these regulations will be reflected in the OMB Form 83-1, *Paperwork Reduction Act Submission*, associated with Form 8975.

#### Background

This document contains amendments to 26 CFR part 1. On December 23, 2015, a notice of proposed rulemaking (REG-109822-15) relating to the furnishing of country-by-country (CbC) reports by certain United States persons (U.S. persons) was published in the **Federal Register** (80 FR 79795). A public hearing was requested and was held on May 13, 2016. Comments responding to the notice of proposed rulemaking were received. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The public comments and revisions are discussed below.

#### Summary of Comments and Explanation of Revisions

##### 1. *United States Participation in CbC Reporting*

Multiple comments expressed support for the implementation of CbC reporting in the United States. However, one comment recommended that the Treasury Department and the IRS decline to implement CbC reporting because, according to the comment, U.S. multinational enterprise (MNE) groups' direct costs of compliance will exceed the United States Treasury's revenue gains, and there will be high, unanticipated costs from inadvertent disclosures of sensitive information. This recommendation is not adopted. U.S. MNE groups will be subject to CbC filing obligations in other countries in which they do business if the United States does not implement CbC reporting. Thus, a decision by the Treasury Department and the IRS not to implement CbC reporting will result in no compliance cost savings to U.S. MNE groups. In fact, failure to adopt CbC reporting requirements in the United States may increase compliance costs because U.S. MNE groups may be subject to CbC filing obligations in multiple foreign tax jurisdictions. U.S. MNE groups might also be subject to varying CbC filing rules and requirements in different foreign tax jurisdictions, such as requirements to pre-

pare the CbC report using the local currency or language.

In addition, CbC reports filed with the IRS and exchanged pursuant to a competent authority arrangement benefit from the confidentiality requirements, data safeguards, and appropriate use restrictions in the competent authority arrangement. If a foreign tax jurisdiction fails to meet the confidentiality requirements, data safeguards, and appropriate use restrictions set forth in the competent authority arrangement, the United States will pause exchanges of all reports with that tax jurisdiction. Moreover, if such tax jurisdiction has adopted CbC reporting rules that are consistent with the 2015 Final Report for Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) of the Organisation for Economic Co-operation and Development (OECD) and Group of Twenty (G20) Base Erosion and Profit Shifting (BEPS) Project (Final BEPS Report), the tax jurisdiction will not be able to require any constituent entity of the U.S. MNE group in the tax jurisdiction to file a CbC report. The ability of the United States to pause exchange creates an additional incentive for foreign tax jurisdictions to uphold the confidentiality requirements, data safeguards, and appropriate use restrictions in the competent authority arrangement.

##### 2. *Form 8975, Country-by-Country Report*

At the time of publication of the proposed regulations, the country-by-country reporting form described in the proposed regulations had not been officially numbered and was referred to in the proposed regulations as Form XXXX, *Country-by-Country Report*. The country-by-country reporting form remains under development but has been officially numbered. The final regulations amend the proposed regulations to reflect the official number of the form, Form 8975, *Country-by-Country Report*, (Form 8975 or CbCR).

### 3. *Constituent Entities and Persons Required to File Form 8975*

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding whether additional guidance was needed for determining which U.S. persons must file Form 8975 or which entities are considered constituent entities of the filer. Specifically, the Treasury Department and the IRS requested comments on whether additional guidance on the definition of a U.S. MNE group was necessary to address situations where U.S. generally accepted accounting principles (GAAP) or U.S. securities regulations permit or require consolidated financial accounting for reasons other than majority ownership, as well as situations, if any, where U.S. GAAP or U.S. securities regulations permit separate financial accounting with respect to majority-owned enterprises.

#### A. *Variable interest entities*

Multiple comments addressed the inclusion of variable interest entities (VIEs) as constituent entities that are part of the U.S. MNE group. In general, a VIE may be consolidated with another entity for financial accounting purposes, even though that other entity may not control the VIE within the meaning of section 6038(e). Some comments recommended against expanding the definition of a U.S. MNE group to include VIEs and further recommended that, if those entities are nonetheless included, an exception should apply in cases in which the U.S. MNE group is unable to obtain the necessary information from a VIE. Other comments expressed concern that entities like VIEs would be part of the MNE group for purposes of foreign law relating to CbC reporting and, for consistency with such law, recommended that U.S. MNE groups be permitted to include such entities. Still other comments recommended that the definition of constituent entity should not be limited to majority-owned entities and should be expanded to include entities in which the ultimate parent entity owns, directly or indirectly, a 20-percent or greater equity interest.

The final regulations do not modify the definition of constituent entity in the pro-

posed regulations. Because the final regulations are promulgated under the authority of section 6038, the definition of control in section 6038(e) limits the foreign business entities for which U.S. persons can be required to furnish information. Thus, the information described in § 1.6038-4(d)(1) and (2) is not required for foreign corporations or foreign partnerships for which the ultimate parent entity is not required to furnish information under section 6038(a) (determined without regard to §§ 1.6038-2(j) and 1.6038-3(c)) or any permanent establishment of such foreign corporation or foreign partnership.

#### B. *Permanent establishments*

Under proposed § 1.6038-4(b)(2), a business entity includes a business establishment in a jurisdiction that is treated as a permanent establishment under an income tax convention to which that jurisdiction is a party, or that would be treated as a permanent establishment under the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention), and that prepares financial statements separate from those of its owner for financial reporting, regulatory, tax reporting, or internal management control purposes. One comment recommended that the reference to the OECD Model Tax Convention be revised to account for changes to the definition of permanent establishment that will be incorporated into the OECD Model Tax Convention as a result of work under Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) of the BEPS Project.

Upon further consideration, and taking into account the comment received, the Treasury Department and the IRS have determined it would be more appropriate for the final regulations to modify the proposed regulations' reference to a permanent establishment in the definition of business entity for greater clarity and consistency with the intended meaning of the Final BEPS Report. Accordingly, the final regulations provide that the term permanent establishment includes (i) a branch or business establishment of a constituent entity in a tax jurisdiction that is treated as a permanent establishment under an in-

come tax convention to which that tax jurisdiction is a party, (ii) a branch or business establishment of a constituent entity that is liable to tax in the tax jurisdiction in which it is located pursuant to the domestic law of such tax jurisdiction, or (iii) a branch or business establishment of a constituent entity that is treated in the same manner for tax purposes as an entity separate from its owner by the owner's tax jurisdiction of residence. This approach is more consistent with the Final BEPS Report and generally would avoid the need for a U.S. MNE group that has already determined under applicable law whether it has a permanent establishment or a taxable business presence in a particular jurisdiction to make another determination under the OECD Model Tax Convention solely for purposes of completing the CbCR.

#### C. *Grantor trusts and decedents' estates*

Proposed § 1.6038-4(b)(2) defines a business entity as a person, as defined in section 7701(a)(1), that is not an individual. Under this definition, a grantor trust with an individual owner or owners would be a business entity that could be subject to CbC reporting, notwithstanding that the individual owner or owners are generally treated as the owner of the grantor trust's property for federal income tax purposes and would not be subject to CbC reporting if they owned the property directly. Similarly, under the proposed regulations, a decedent's estate would be a business entity that could be subject to CbC reporting, notwithstanding that during the decedent's lifetime, he or she was an individual exempt from CbC reporting. Additionally, under the proposed regulations, an individual's bankruptcy estate would be a business entity that could be subject to CbC reporting, notwithstanding that before entering bankruptcy, the individual debtor would not be subject to CbC reporting. In light of the nature of grantor trusts, decedents' estates, and individuals' bankruptcy estates and their close connection to individual grantors, decedents, and individual debtors, the Treasury Department and the IRS have determined that it is not appropriate to include grantor trusts with only individual owners, decedents' estates, and individuals' bankruptcy es-

tates in the definition of business entity. Accordingly, the final regulations exclude decedents' estates, individuals' bankruptcy estates, and grantor trusts within the meaning of section 671, all the owners of which are individuals, from the definition of business entity.

#### *D. Deemed domestic corporations*

The proposed regulations define a U.S. business entity as a business entity that is organized, or has its tax jurisdiction of residence, in the United States. One comment requested that the final regulations clarify whether companies that elect to be treated as domestic corporations under section 953(d) will be treated as U.S. business entities resident in the United States. In response to this comment, the final regulations expressly provide that foreign insurance companies that elect to be treated as domestic corporations under section 953(d) are U.S. business entities that have their tax jurisdiction of residence in the United States.

#### *4. National Security Exception*

The preamble to the proposed regulations requested comments on the need for a national security exception for reporting CbC information and on procedures for a taxpayer to demonstrate that such an exception is warranted. Multiple comments stated that the information provided on a CbCR does not present a national security concern. Other comments recommended that the final regulations include a national security exception but did not recommend an appropriate scope of the exception or procedures to demonstrate that an exception is warranted in a particular case. One comment recommended that no information should appear on a CbCR with respect to activities performed by a constituent entity of a U.S. MNE group under a U.S. government contract with certain agencies. Other comments recommended a bright-line test whereby U.S. MNE groups that conduct a majority of their business with the U.S. Department of Defense or U.S. government intelligence or security agencies could claim an automatic exception from reporting any information other than identifying information, such as company names, jurisdictions of

incorporation, tax identification numbers, and addresses. These comments also recommended that U.S. MNE groups that conduct a significant amount (for example, more than 25 percent) of their business with the U.S. Department of Defense or U.S. government intelligence or security agencies should be allowed, with the approval of the IRS, to claim a similar exemption from reporting.

The Treasury Department and the IRS have consulted with the Department of Defense regarding the information collected on the CbCR. The Department of Defense concluded that such information reporting generally does not pose a national security concern. Accordingly, the final regulations do not provide a general exception for information that may relate to national security. Nonetheless, the Department of Defense continues to consider the national security implications of the CbCR in particular fact patterns, and future guidance may be issued to provide procedures for taxpayers to consult with the Department of Defense regarding the appropriate presentation of CbC information in such fact patterns.

#### *5. Partnerships and Stateless Entities*

A business entity that is treated as a partnership in the tax jurisdiction in which it is organized and that does not own or create a permanent establishment in that or another tax jurisdiction generally will have no tax jurisdiction of residence under the definition in proposed § 1.6038-4(b)(6) other than for purposes of determining the ultimate parent entity of a U.S. MNE group. Under the proposed regulations, tax jurisdiction information with respect to constituent entities that do not have a tax jurisdiction of residence, or "stateless entities," would be aggregated and reported in a separate row of the CbCR. The preamble to the proposed regulations indicates that partners of a partnership that is a stateless entity would report their respective shares of the partnership's items in their respective tax jurisdiction(s) of residence.

A comment requested clarification as to whether the partnership or its partners, or both, should report the partnership's CbC information. In response, the final regulations provide that the tax jurisdic-

tion of residence information with respect to stateless entities is provided on an aggregate basis for all stateless entities in a U.S. MNE group and that each stateless entity-owner's share of the revenue and profit of its stateless entity is also included in the information for the tax jurisdiction of residence of the stateless entity-owner. This rule applies irrespective of whether the stateless entity-owner is liable to tax on its share of the stateless entity's income in the owner's tax jurisdiction of residence. In other words, the stateless entity-owner reports its share of the stateless entity's revenues and profits in the owner's tax jurisdiction of residence even if that jurisdiction treats the stateless entity as a separate entity for tax purposes. In the case in which a partnership creates a permanent establishment for itself or its partners, the CbC information with respect to the permanent establishment is not reported as stateless, but instead is reported as part of the information on the CbCR for the permanent establishment's tax jurisdiction of residence.

A comment requested clarification regarding whether distributions from partnerships and other fiscally transparent entities should be excluded from owners'/partners' reported revenue. In response, the final regulations clarify that distributions from a partnership to a partner are not included in the partner's revenue. Additionally, the final regulations provide that remittances from a permanent establishment to its constituent entity-owner are not included in the constituent entity-owner's revenue.

#### *6. Clarification of Terms*

The preamble to the proposed regulations requested comments on the manner in which the proposed regulations require the reporting of information on taxes paid or accrued by U.S. MNE groups and their constituent entities on taxable income earned in the relevant accounting period. One comment requested that "total accrued tax expense" in proposed § 1.6038-4(d)(2)(v) be revised to read "accrued current tax expense" in order to reflect only operations in the current year and not deferred taxes or provisions for uncertain tax liabilities. The proposed regulations clearly state that the relevant taxes to be

reported relate only to the annual accounting period for which the CbCR is provided and exclude deferred taxes and provisions for uncertain tax liabilities. Therefore, the comment is not adopted.

The preamble to the proposed regulations also requested comments on whether the descriptions of any of the other items in § 1.6038-4(d)(2)(i) through (ix) regarding tax jurisdiction of residence information should be further refined or whether additional guidance is needed with respect to how to determine any of these items. One comment requested that the definition for tangible assets be revised to clarify that intangibles and financial assets are excluded consistent with the Final BEPS Report. In response, the final regulations expressly provide that tangible assets do not include intangibles or financial assets.

A comment noted that the term revenue excludes dividends from other constituent entities and recommended that this exclusion be extended to all forms of imputed earnings or deemed dividends. The Treasury Department and the IRS agree that imputed earnings and deemed dividends that are taken into account solely for tax purposes should be treated the same as dividends for purposes of the CbCR. Accordingly, the final regulations incorporate this recommendation.

Multiple comments recommended that the wording “total income tax paid on a cash basis to all jurisdictions” in proposed § 1.6038-4(d)(2)(iv) should be modified to read “total income tax paid on a cash basis to each tax jurisdiction” to avoid misinterpretation of the “all tax jurisdictions” language to require taxes paid by entities that are tax residents of different tax jurisdictions to be aggregated rather than reported on a country-by-country basis as intended. The Treasury Department and the IRS interpret the language of the proposed regulation to require the total income tax paid on a cash basis to any tax jurisdiction by constituent entities that have a tax residence in a particular tax jurisdiction to be reported on an aggregated basis for that particular tax jurisdiction of residence but not the aggregation of taxes paid by constituent entities that have different tax residences. For instance, if a constituent entity pays income tax in its tax jurisdiction of residence on

its earnings from operations in that country and is subject to withholding taxes on royalties received from licensees in another country, taxes paid with respect to the income and the taxes withheld with respect to the royalties should be reflected on an aggregated basis on the CbCR in the row for the constituent entity’s tax jurisdiction of residence. The Treasury Department and the IRS are concerned that the alternative language proposed in the comments could be misinterpreted to require amounts paid to different tax jurisdictions by constituent entities resident in a single tax jurisdiction to be reported on a disaggregated basis. Accordingly, this comment is not adopted.

Multiple comments also recommended the inclusion of two additional items, deferred taxes and provisions for uncertain tax positions, in the information required to be reported on a tax jurisdiction-by-tax jurisdiction basis. This recommendation has not been adopted in the final regulations because it would impose an additional reporting burden beyond the information described in the Final BEPS Report.

Multiple comments recommended that the final regulations clarify that the information listed in proposed § 1.6038-4(d)(2)(i) through (ix) is reported in the aggregate for all constituent entities resident in each separate tax jurisdiction. Although the language in the proposed regulations does indicate that the information is to be provided with respect to each tax jurisdiction in which one or more constituent entities of the U.S. MNE group are resident and in the form and manner that Form 8975 prescribes, the final regulations provide additional language to clarify that the information is to be presented for each tax jurisdiction as an aggregate of the information for all constituent entities resident in that tax jurisdiction. Multiple comments requested that the final regulations clarify whether the information must be provided for only the constituent entities in each tax jurisdiction or whether the information must also be provided for U.S. MNE group members that are not constituent entities, for instance VIEs. The Treasury Department and the IRS have determined that additional language is unnecessary because § 1.6038-4(d)(1) of the proposed regulations expressly re-

quires reporting of information only with respect to constituent entities of the U.S. MNE group.

The final regulations provide that, for a constituent entity that is an organization exempt from taxation under section 501(a) because it is an organization described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), a qualified tuition program described in section 529, a qualified ABLE program described in section 529A, or a Coverdell education savings account described in section 530, the term revenue includes only revenue that is included in unrelated business taxable income as defined in section 512.

## *7. Other Form or Information Modifications*

Multiple comments recommended that additional information be included on the CbCR, such as identification of constituent entities as “pass-through” and a legal entity identifier for each constituent entity using a standard international system for identifying individual business entities. The final regulations do not adopt these recommendations because they would impose an additional reporting burden beyond the information described in the Final BEPS Report.

## *8. Voluntary Filing Before the Applicability Date*

Other countries have adopted CbC reporting requirements for annual accounting periods beginning on or after January 1, 2016, that would require reporting of CbC information by constituent entities of MNE groups with an ultimate parent entity resident in a tax jurisdiction that does not have a CbC reporting requirement for the same annual accounting period. The proposed regulations generally require U.S. MNE groups to file a CbCR for taxable years beginning on or after the date the final regulations are published. Consequently, U.S. MNE groups that use a calendar year as their taxable year generally will not be required to file a CbCR for their taxable year beginning January 1,

2016, and constituent entities of such U.S. MNE groups may be subject to CbC reporting requirements in foreign jurisdictions. Comments expressed concern about this possibility and recommended various approaches for dealing with this issue. Most comments requested that the IRS accept and exchange CbCRs voluntarily filed for taxable years beginning on or after January 1, 2016.

Consistent with the proposed regulations, the final regulations are not applicable for taxable years of ultimate parent entities beginning before June 30, 2016, the date of publication of the final regulations in the **Federal Register**. Specifically, the final regulations apply to reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after June 30, 2016. The Treasury Department and the IRS intend to allow ultimate parent entities of U.S. MNE groups and U.S. business entities designated by a U.S. territory ultimate parent entity to file CbCRs for reporting periods that begin on or after January 1, 2016, but before the applicability date of the final regulations, under a procedure to be provided in separate, forthcoming guidance. The Treasury Department is working to ensure that foreign jurisdictions implementing CbC reporting requirements will not require constituent entities of U.S. MNE groups to file a CbC report with the foreign jurisdiction if the U.S. MNE group files a CbCR with the IRS pursuant to this procedure and the CbCR is exchanged with such foreign jurisdiction pursuant to a competent authority arrangement.

#### 9. *Time and Manner of Filing*

The proposed regulations provide that the CbCR for a taxable year must be filed with the ultimate parent entity's income tax return for the taxable year on or before the due date, including extensions, for filing that person's income tax return. Multiple comments requested that taxpayers be permitted to file a CbCR up to one year from the end of the ultimate parent entity's taxable year or annual accounting period to facilitate the taxpayer's ability to use statutory accounts or tax records of constituent entities to complete the CbCR.

After considering the flexibility allowed for sources of information for completing the CbCR, the IRS information technology resources necessary to facilitate a filing separate from the income tax return, and the IRS's concern that CbCRs be linked to an income tax return, the Treasury Department and the IRS have not adopted this recommendation. However, the final regulations do provide that Form 8975 may prescribe an alternative time and manner for filing.

#### 10. *Employees*

The proposed regulations provide that the CbCR must reflect the number of employees for each tax jurisdiction of residence of the U.S. MNE group. The proposed regulations also provide that independent contractors participating in the ordinary course of business of a constituent entity may be included in the number of full-time equivalent employees. Multiple comments asked for further clarification with respect to the determination of the number of full-time equivalent employees and the treatment of independent contractors, including some recommending that independent contractors not be included as employees. The final regulations do not provide additional guidance with respect to the meaning of full-time equivalent employee or with respect to independent contractor situations and continue to allow for independent contractors that participate in the ordinary operating activities of a constituent entity to be included in the number of full-time equivalent employees. U.S. MNE groups may determine the number of employees of constituent entities on a full-time equivalent basis using any reasonable approach that is consistently applied. The Treasury Department and the IRS believe permitting this flexibility in determining the number of full-time equivalent employees of each constituent entity appropriately balances the burden of completing the CbCR with the anticipated benefits to tax administration and is consistent with the Final BEPS Report.

The proposed regulations specify that employees should be reflected on the CbCR in the tax jurisdictions in which the employees performed work for the U.S. MNE group. Comments indicated that this

methodology is inconsistent with the Final BEPS Report, which provides that employees of a constituent entity should be reflected in the tax jurisdiction of residence of such constituent entity, and that determining the work location of employees would be burdensome for U.S. MNE groups and would present issues regarding certain employment situations with traveling employees. The comments recommended that the final regulations follow the approach of the Final BEPS Report. In response to these comments, the final regulations do not include the phrase "in the relevant tax jurisdiction" from proposed § 1.6038-4(d)(2)(viii). Accordingly, under the final regulations, employees of a constituent entity are reflected in the tax jurisdiction of residence of such constituent entity.

A comment requested clarification about the tax jurisdiction in which employees of partnerships should be reflected on the CbCR. As discussed in section 5 of this preamble, a partnership may be considered a stateless entity. If the partnership creates a permanent establishment for itself or its partners, then the permanent establishment itself may be a constituent entity of the U.S. MNE group. Employees of the permanent establishment-constituent entity should be reflected in the tax jurisdiction of residence of the permanent establishment. Any other employees of the partnership should be reported on the stateless jurisdiction row under the tax jurisdiction of residence information portion of the CbCR.

#### 11. *Source of Data and Reconciliation*

The proposed regulations provide that the amounts furnished in the CbCR should be furnished for the annual accounting period with respect to which the ultimate parent entity prepares its applicable financial statements ending with or within the ultimate parent entity's taxable year, or, if the ultimate parent entity does not prepare applicable financial statements, then the information may be based on the applicable financial statements of constituent entities for their accounting period that ends with or within the ultimate parent entity's taxable year. Multiple comments expressed concern that the description of the period covered by the CbCR in the pro-

posed regulations may limit the flexibility of U.S. MNE groups to choose to use consolidated financial statements or separate accounting, regulatory, or tax records prepared for the constituent entities. To mitigate this concern, the final regulations remove the restrictions imposed by the proposed regulations with respect to providing information for the applicable accounting period of the ultimate parent entity or for the applicable accounting period of each constituent entity. The final regulations provide that the reporting period covered by Form 9875 is the period of the ultimate parent entity's annual applicable financial statement that ends with or within the ultimate parent entity's taxable year, or, if the ultimate parent entity does not prepare an annual applicable financial statement, then the ultimate parent entity's taxable year. The final regulations do not limit the constituent entity information to applicable financial statements of the constituent entity but, rather, provide that the source of the tax jurisdiction of residence information on the CbCR must be based on applicable financial statements, books and records, regulatory financial statements, or records used for tax reporting or internal management control purposes for an annual period of each constituent entity ending with or within the reporting period.

The proposed regulations provide that the amounts provided in the CbCR should be based on applicable financial statements, books and records maintained with respect to the constituent entity, or records used for tax reporting purposes. The term "books and records" was intended to be broad enough to include all sources of information that the Final BEPS Report allows. In order to clarify this intent, the final regulations provide that the source of data may also include regulatory financial statements and records used for internal management control purposes.

The proposed regulations state that it is not necessary to have or maintain records that reconcile the amounts provided on the CbCR to the consolidated financial statements of the U.S. MNE group or to the tax returns filed in any particular tax jurisdiction or to make adjustments for differences in accounting principles applied from tax jurisdiction to tax jurisdiction. Multiple comments recommended that

reconciliation to tax accounts be required and that ultimate parent entities maintain records of the reconciliation, while other comments supported the approach in the proposed regulations, which does not require reconciliation. The Treasury Department and the IRS considered these comments, and, consistent with the proposed regulations, the final regulations do not require the ultimate parent entity to create and maintain records to reconcile the information reported in the CbCR to consolidated financial statements or to tax returns. This approach provides flexibility for U.S. MNE groups to use the available data for each constituent entity without imposing the potential burden of a need to reconcile information on the CbCR with accounts that may not even be finalized when the CbCR is compiled, and it is consistent with the Final BEPS Report. The affirmative statement in the final regulations that an ultimate parent entity is not required to create and maintain information to support a reconciliation does not, however, affect the requirement to maintain records to support the information provided in the CbCR.

#### *12. Expanding Scope and Surrogate Parent Entity Filing*

The proposed regulations generally require a U.S. business entity that is an ultimate parent entity of a U.S. MNE group to file a CbCR with respect to business entities that are or would be consolidated with the ultimate parent entity. A CbCR is not required for an MNE group that does not have a U.S. business entity as its ultimate parent entity. Multiple comments requested that reporting be required for any U.S. entity that exercises the "mind and management function" of an MNE group, the foreign parent entity of which is tax resident in a jurisdiction that does not require a report similar to the CbCR, despite the fact that the foreign entities of such MNE group are not controlled foreign corporations. This recommendation, which is not adopted, is beyond the scope of the Final BEPS Report and could not be implemented under the authority provided in section 6038 to collect information on foreign business entities owned by U.S. persons.

One comment recommended that the final regulations allow a foreign-parented MNE group with a U.S. business entity to designate that U.S. business entity as a surrogate parent entity and allow that entity to file a CbCR with the IRS for purposes of satisfying the MNE group's country-by-country reporting obligations in other tax jurisdictions. In light of the IRS resources that would be required to adopt this recommendation, the final regulations do not permit surrogate parent entity filing in the United States by foreign corporations as a general matter. However, the final regulations provide that a U.S. territory ultimate parent entity may designate a U.S. business entity that it controls (as defined in section 6038(e)) to file on the U.S. territory ultimate parent entity's behalf the CbCR that the U.S. territory ultimate parent entity would be required to file if it were a U.S. business entity. A U.S. territory ultimate parent entity is a business entity organized in a U.S. territory or possession of the United States that controls (as defined in section 6038(e)) a U.S. business entity and that is not owned directly or indirectly by another business entity that consolidates the accounts of the U.S. territory ultimate parent entity with its accounts under GAAP in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

#### *13. Tax Jurisdiction of Residence and Fiscal Autonomy*

The proposed regulations provide rules for determining the tax jurisdiction of residence of a constituent entity. Under those rules, a business entity is considered a resident in a tax jurisdiction if, under the laws of that tax jurisdiction, the business entity is liable to tax therein based on place of management, place of organization, or another similar criterion. The proposed regulations further provide that "a business entity will not be considered a resident in a tax jurisdiction if such business entity is liable to tax in such tax jurisdiction solely with respect to income from sources in such tax jurisdiction, or capital situated in such tax jurisdiction."

Multiple comments requested that the final regulations clarify that this language in the proposed regulations is not intended to exclude the possibility of a country with a purely territorial tax regime being a tax jurisdiction of residence. The Treasury Department and the IRS did not intend for the proposed regulations to be interpreted to treat all entities in tax jurisdictions with territorial tax regimes as stateless entities. The language in question was intended to indicate that a business entity will not have a tax jurisdiction of residence in a jurisdiction solely by reason of being liable to tax in the jurisdiction on fixed, determinable, annual or periodical income from sources or capital situated in the jurisdiction. For greater clarity, the final regulations provide that “[a] business entity will not be considered a resident in a tax jurisdiction if the business entity is only liable to tax in such tax jurisdiction by reason of a tax imposed by reference to gross amounts of income without any reduction for expenses, provided such tax applies only with respect to income from sources in such tax jurisdiction or capital situated in such tax jurisdiction.”

The proposed regulations provide that a tax jurisdiction is a country or a jurisdiction that is not a country but that has fiscal autonomy. Multiple comments requested that the final regulations address the meaning of fiscal autonomy. In light of the need for consistency of CbC reporting requirements across tax jurisdictions, the Treasury Department and the IRS do not believe it would be helpful to provide a general definition of fiscal autonomy in the final regulations absent international consensus on the meaning of the term. However, the final regulations clarify that a U.S. territory or possession of the United States, defined as American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands, is considered to have fiscal autonomy for purposes of CbC reporting.

Under the proposed regulations, if a business entity is resident in more than one tax jurisdiction and there is no applicable income tax treaty, the business entity’s tax jurisdiction of residence is the tax jurisdiction of the business entity’s place of effective management determined in accordance with Article 4 of the OECD Model Tax Convention. One com-

ment noted that the “effective place of management” test under the OECD Model Tax Convention can be uncertain and “subject to second guessing.” The comment recommended that an alternative, bright-line tie-breaker rule be considered to address such situations. The determination of tax jurisdiction of residence in the proposed regulations is based on the Final BEPS Report, and the final regulations do not create a new tie-breaker rule but add that, in addition to the OECD Model Tax Convention, Form 9975 may provide guidance.

Although certain entities may not have a tax jurisdiction of residence, the Treasury Department and the IRS have determined that an entity regarded as a corporation should not be considered stateless merely because it is organized or managed in a jurisdiction that does not impose an income tax on corporations. Accordingly, the final regulations provide that in the case of a tax jurisdiction that does not impose an income tax on corporations, a corporation that is organized or managed in that tax jurisdiction will be treated as resident in that tax jurisdiction, unless such corporation is treated as resident in another tax jurisdiction under another provision of the final regulations.

#### 14. Reporting Threshold

The revenue threshold at or above which a U.S. MNE group is required to file the CbCR (reporting threshold) is expressed in United States dollars (USD) in proposed § 1.6038–4(h). Foreign jurisdictions that are enacting CbC reporting requirements based on the Final BEPS Report may express the reporting threshold in a foreign currency. Multiple commenters expressed concern that U.S. MNE groups may be required to file a CbC report in a foreign country, even if the USD reporting threshold in § 1.6038–4(h) is not exceeded, because the U.S. MNE group’s revenues exceed the local law reporting threshold as expressed in the foreign currency. The comments recommended various approaches to address the possibility of a reporting threshold in the final regulations that is inconsistent with local law reporting thresholds. The reporting threshold of \$850,000,000 in the proposed regulation was determined by

reference to the USD equivalent of €750,000,000 on January 1, 2015, as provided in the Final BEPS Report. The Treasury Department and the IRS anticipate that other countries will acknowledge that it would be inconsistent with the Final BEPS Report for a country to require local filing by a constituent entity of a U.S. MNE group that has revenue of less than \$850,000,000.

Multiple comments requested that the reporting threshold be reduced to the USD equivalent of €40,000,000 in order to subject a greater number of U.S. MNE groups to CbC reporting requirements. Because the reporting threshold in the proposed regulations is based on the Final BEPS Report, it is consistent with the agreed international standard with respect to CbC reporting. The Treasury Department and IRS weighed the potential benefit of obtaining CbC information on a larger number of U.S. MNE groups against the additional administrative burden that would be imposed on the IRS and the burden that would be imposed on U.S. MNE groups that would not otherwise be required to file the CbCR. Based on these considerations, the final regulations maintain the reporting threshold in the proposed regulations.

#### 15. Confidentiality and Use of the CbCR

Multiple comments expressed concerns regarding the confidentiality of the CbCR. Some comments recommended public disclosure of CbCRs. These comments requested that the CbCR be treated as a Treasury report, referencing as an example the Treasury Department’s Financial Crimes Enforcement Network Report of Foreign Bank and Financial Assets, rather than tax return information, so that the CbCR would not be subject to the confidentiality protections under section 6103. Other comments supported the decision to treat CbCR as return information.

The Treasury Department and the IRS have determined that the information provided on the CbCR is return information subject to the confidentiality protections of section 6103. This approach is consistent with the purpose of CbC reporting as well as the confidentiality standards reflected in the Final BEPS Report. CbC reporting was designed and established as part of an international effort to standard-

ize transfer pricing documentation. This standardized documentation is intended to provide an efficient and effective means for tax administrations to conduct high-level transfer pricing risk assessment. Accordingly, the Treasury Department and the IRS are collecting the CbCR under the authority of sections 6001, 6011, 6012, 6031, and 6038 to assist in the better enforcement of income tax laws. The CbCR is a return, and the information furnished to the Treasury Department and the IRS on the CbCR is return information subject to the confidentiality protections provided under section 6103. In addition, the Final BEPS Report provides that tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information in CbC reports and that they be used for tax risk assessment purposes.

The preamble of the proposed regulations indicates that the information reported on the CbCR will be used for high-level transfer pricing risk identification and assessment, and that transfer pricing adjustments will not be made solely on the basis of a CbCR, but that the CbCR may be the basis for further inquiries into transfer pricing practices or other tax matters which may lead to adjustments. Some comments supported the limitations on use of the CbCR information, while other comments expressed concern that a prohibition on disclosure of the CbCR for non-tax law purposes is too restrictive. Consistent with the proposed regulations, the final regulations do not contain specific limitations on the use of CbCR information. However, consistent with the Final BEPS Report, the Treasury Department and the IRS intend to limit the use of the CbCR information and intend to incorporate this limitation into the competent authority arrangements pursuant to which CbCRs are exchanged.

One comment recommended that CbCR information not be provided to state or local jurisdictions and that a statement to that effect be provided in the final regulations. Under section 6103(d), return information may be provided to state agencies, but only for the purposes of, and only to the extent necessary in, the administration of such state's tax laws. The Treasury Department and the IRS believe the circumstances under which this standard would be met for the CbCR are rare, but the final regulations do not preclude the disclosure of CbCRs to

state agencies, subject to the restrictions of section 6103 that apply to other returns and return information.

#### 16. *Exchange of Information with Foreign Jurisdictions*

The United States intends to enter into competent authority arrangements for the automatic exchange of CbCRs with jurisdictions with which the United States has an income tax treaty or tax information exchange agreement. Multiple comments expressed concern that review of the confidentiality safeguards and framework of the other jurisdictions would prevent the Treasury Department and IRS from concluding such arrangements on a timely basis. Comments also requested that the Treasury Department and IRS publish a list of jurisdictions with which the United States exchanges CbCRs. The Treasury Department is committed to entering into bilateral competent authority arrangements with respect to CbCRs in a timely manner, taking into consideration the need for appropriate review of systems and confidentiality safeguards in the other jurisdictions. The Treasury Department and the IRS anticipate that information about the existence of competent authority arrangements for CbCRs will be made publicly available, but the manner in which such information would be made publicly available has not yet been determined.

A comment recommended that the final regulations provide a mechanism for reporting suspected violations of the limitations on the use of information by foreign jurisdictions. While the final regulations do not provide procedures for reporting suspected violations, the Treasury Department and the IRS are aware of the concern and intend to establish a procedure to report suspected violations of confidentiality and other misuses of CbCR information.

A comment requested that information transmitted under the competent authority arrangements include the "Additional Information" table in the model CbC report template provided in the Final BEPS Report. It is expected that such information will be collected on Form 8975 and transmitted; however, there may be limits to the amount of information that can be transmitted in any field. Such constraints,

if any, will be noted in the Instructions to Form 8975.

#### 17. *Penalties*

One comment requested that penalties with respect to the CbCR be waived for reports filed for the 2016 tax year and that the Treasury Department should advocate that other countries also waive penalties for the 2016 tax year. The final regulations apply to reporting periods of ultimate parent entities that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after publication of the final regulations in the **Federal Register**. U.S. MNE groups whose ultimate parent entity's taxable year begins before the applicability date will not have a CbCR filing requirement for their tax year beginning in 2016. The final regulations do not provide a specific waiver of penalties for U.S. MNE groups whose ultimate parent entity's taxable year begins on or after the applicability date. The penalty rules under section 6038 generally apply, including reasonable cause relief for failure to file.

#### **Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will only affect U.S. corporations, partnerships, and business trusts that have foreign operations with respect to a taxable year when the combined annual revenue of the business entities owned by the U.S. person meets or exceeds \$850,000,000 for the previous reporting period. Pursuant to section 7805(f) of the Internal Revenue Code, the notice

of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Melinda E. Harvey of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

Section 1.6038-4 also issued under 26 U.S.C. 6001, 6011, 6012, 6031, and 6038.  
\*\*\*\*\*

Par. 2. Section 1.6038-4 is added to read as follows:

*§ 1.6038-4 Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group.*

(a) *Requirement of return.* Except as provided in paragraph (h) of this section, every ultimate parent entity of a U.S. multinational enterprise (MNE) group must make an annual return on Form 8975, *Country-by-Country Report*, setting forth the information described in paragraph (d) of this section, and any other information required by Form 8975, with respect to the reporting period described in paragraph (c) of this section.

(b) *Definitions*—(1) *Ultimate parent entity of a U.S. MNE group.* An ultimate parent entity of a U.S. MNE group is a U.S. business entity that:

(i) Owns directly or indirectly a sufficient interest in one or more other business entities, at least one of which

is organized or tax resident in a tax jurisdiction other than the United States, such that the U.S. business entity is required to consolidate the accounts of the other business entities with its own accounts under U.S. generally accepted accounting principles, or would be so required if equity interests in the U.S. business entity were publicly traded on a U.S. securities exchange; and

(ii) Is not owned directly or indirectly by another business entity that consolidates the accounts of such U.S. business entity with its own accounts under generally accepted accounting principles in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

(2) *Business entity.* For purposes of this section, a business entity generally is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 of this chapter. However, any grantor trust within the meaning of section 671, all or a portion of which is owned by a person other than an individual, is a business entity for purposes of this section. Additionally, the term business entity includes any entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3 of this chapter and a permanent establishment, as defined in paragraph (b)(3) of this section, that prepares financial statements separate from those of its owner for financial reporting, regulatory, tax reporting, or internal management control purposes. A business entity does not include a decedent's estate or a bankruptcy estate described in section 1398.

(3) *Permanent establishment.* For purposes of this section, the term permanent establishment includes:

- (i) A branch or business establishment of a constituent entity in a tax jurisdiction that is treated as a permanent establishment under an income tax convention to which that tax jurisdiction is a party;
- (ii) A branch or business establishment of a constituent entity that is liable to tax in the tax jurisdiction in which it is located pursuant to the domestic law of such tax jurisdiction; or
- (iii) A branch or business establishment of a constituent entity that is treated in

the same manner for tax purposes as an entity separate from its owner by the owner's tax jurisdiction of residence.

(4) *U.S. business entity.* A U.S. business entity is a business entity that is organized or has its tax jurisdiction of residence in the United States. For purposes of this section, foreign insurance companies that elect to be treated as domestic corporations under section 953(d) are U.S. business entities that have their tax jurisdiction of residence in the United States.

(5) *U.S. MNE group.* A U.S. MNE group comprises the ultimate parent entity of a U.S. MNE group as defined in paragraph (b)(1) of this section and all of the business entities required to consolidate their accounts with the ultimate parent entity's accounts under U.S. generally accepted accounting principles, or that would be so required if equity interests in the ultimate parent entity were publicly traded on a U.S. securities exchange, regardless of whether any such business entities could be excluded from consolidation solely on size or materiality grounds.

(6) *Constituent entity.* With respect to a U.S. MNE group, a constituent entity is any separate business entity of such U.S. MNE group, except that the term constituent entity does not include a foreign corporation or foreign partnership for which the ultimate parent entity is not required to furnish information under section 6038(a) (determined without regard to §§ 1.6038-2(j) and 1.6038-3(c)) or any permanent establishment of such foreign corporation or foreign partnership.

(7) *Tax jurisdiction.* For purposes of this section, a tax jurisdiction is a country or a jurisdiction that is not a country but that has fiscal autonomy. For purposes of this section, a U.S. territory or possession of the United States is considered to have fiscal autonomy.

(8) *Tax jurisdiction of residence.* A business entity is considered a resident in a tax jurisdiction if, under the laws of that tax jurisdiction, the business entity is liable to tax therein based on place of management, place of organization, or another similar criterion. A business entity will not be considered a resident in a tax jurisdiction if the business entity is liable to tax in such tax jurisdiction only by reason of a tax imposed by reference to gross amounts of income without any reduction

for expenses, provided such tax applies only with respect to income from sources in such tax jurisdiction or capital situated in such tax jurisdiction. If a business entity is resident in more than one tax jurisdiction, then the applicable income tax convention rules, if any, should be applied to determine the business entity's tax jurisdiction of residence. If a business entity is resident in more than one tax jurisdiction and no applicable income tax convention exists between those tax jurisdictions, or if the applicable income tax convention provides that the determination of residence is based on a determination by the competent authorities of the relevant tax jurisdictions and no such determination has been made, the business entity's tax jurisdiction of residence is the tax jurisdiction of the business entity's place of effective management determined in accordance with Article 4 of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital 2014, or as provided by Form 8975. A corporation that is organized or managed in a tax jurisdiction that does not impose an income tax on corporations will be treated as resident in that tax jurisdiction, unless such corporation is treated as resident in another tax jurisdiction under another provision of this section. The tax jurisdiction of residence of a permanent establishment is the jurisdiction in which the permanent establishment is located. If a business entity does not have a tax jurisdiction of residence, then solely for purposes of paragraph (b)(1) of this section, the tax jurisdiction of residence is the business entity's country of organization.

(9) *Applicable financial statements.* An applicable financial statement is a certified audited financial statement that is accompanied by a report of an independent certified public accountant or similarly qualified independent professional that is used for purposes of reporting to shareholders, partners, or similar persons; for purposes of reporting to creditors in connection with securing or maintaining financing; or for any other substantial non-tax purpose.

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

(11) *U.S. territory ultimate parent entity.* A U.S. territory ultimate parent entity is a business entity organized in a U.S. territory or possession of the United States that controls (as defined in section 6038(e)) a U.S. business entity and that is not owned directly or indirectly by another business entity that consolidates the accounts of the U.S. territory ultimate parent entity with its accounts under generally accepted accounting principles in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

(c) *Reporting period.* The reporting period covered by Form 8975 is the period of the ultimate parent entity's applicable financial statement prepared for the 12-month period (or a 52–53 week period described in section 441(f)) that ends with or within the ultimate parent entity's taxable year. If the ultimate parent entity does not prepare an annual applicable financial statement, then the reporting period covered by Form 8975 is the 12-month period (or a 52–53 week period described in section 441(f)) that ends on the last day of the ultimate parent entity's taxable year.

(d) *Contents of return*—(1) *Constituent entity information.* The return on Form 8975 must contain so much of the following information with respect to each constituent entity of the U.S. MNE group, and in such form or manner, as Form 8975 prescribes:

- (i) The complete legal name of the constituent entity;
- (ii) The tax jurisdiction, if any, in which the constituent entity is resident for tax purposes;
- (iii) The tax jurisdiction in which the constituent entity is organized or incorporated (if different from the tax jurisdiction of residence);
- (iv) The tax identification number, if any, used for the constituent entity by the tax administration of the constituent entity's tax jurisdiction of residence; and
- (v) The main business activity or activities of the constituent entity.

(2) *Tax jurisdiction of residence information.* The return on Form 8975 must contain so much of the following information with respect to each tax jurisdiction in

which one or more constituent entities of a U.S. MNE group is resident, presented as an aggregate of the information for the constituent entities resident in each tax jurisdiction, and in such form or manner, as Form 8975 prescribes:

- (i) Revenues generated from transactions with other constituent entities;
- (ii) Revenues not generated from transactions with other constituent entities;
- (iii) Profit or loss before income tax;
- (iv) Total income tax paid on a cash basis to all tax jurisdictions, and any taxes withheld on payments received by the constituent entities;
- (v) Total accrued tax expense recorded on taxable profits or losses, reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities;
- (vi) Stated capital, except that the stated capital of a permanent establishment must be reported in the tax jurisdiction of residence of the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes;
- (vii) Total accumulated earnings, except that accumulated earnings of a permanent establishment must be reported by the legal entity of which it is a permanent establishment;
- (viii) Total number of employees on a full-time equivalent basis; and
- (ix) Net book value of tangible assets, which, for purposes of this section, does not include cash or cash equivalents, intangibles, or financial assets.

(3) *Special rules*—(i) *Constituent entity with no tax jurisdiction of residence.* The information listed in paragraph (d)(2) of this section also must be provided, in the aggregate, for any constituent entity or entities that have no tax jurisdiction of residence. In addition, if a constituent entity is an owner of a constituent entity that does not have a jurisdiction of tax residence, then the owner's share of such entity's revenues and profits will be aggregated with the information for the owner's tax jurisdiction of residence.

(ii) *Definition of revenue.* For purposes of this section, the term revenue includes all amounts of revenue, including revenue from sales of inventory and property, services,

royalties, interest, and premiums. The term revenue does not include payments received from other constituent entities that are treated as dividends in the payor's tax jurisdiction of residence. Distributions and remittances from partnerships and other fiscally transparent entities and permanent establishments that are constituent entities are not considered revenue of the recipient-owner. The term revenue also does not include imputed earnings or deemed dividends received from other constituent entities that are taken into account solely for tax purposes and that otherwise would be included as revenue by a constituent entity. With respect to a constituent entity that is an organization exempt from taxation under section 501(a) because it is an organization described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), a qualified tuition program described in section 529, a qualified ABLE program described in section 529A, or a Coverdell education savings account described in section 530, the term revenue includes only revenue that is reflected in unrelated business taxable income as defined in section 512.

(iii) *Number of employees.* For purposes of this section, the number of employees on a full-time equivalent basis may be reported as of the end of the accounting period, on the basis of average employment levels for the annual accounting period, or on any other reasonable basis consistently applied across tax jurisdictions and from year to year. Independent contractors participating in the ordinary operating activities of a constituent entity may be reported as employees of such constituent entity. Reasonable rounding or approximation of the number of employees is permissible, provided that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

(iv) *Income tax paid and accrued tax expense of permanent establishment.* In the case of a constituent entity that is a permanent establishment, the amount of income tax paid and the amount of accrued tax expense referred to in paragraphs (d)(2)(iv) and (v) of this section

should not include the income tax paid or tax expense accrued by the business entity of which the permanent establishment would be a part, but for the second sentence of paragraph (b)(2) of this section, in that business entity's tax jurisdiction of residence on the income derived by the permanent establishment.

(v) *Certain transportation income.* If a constituent entity of a U.S. MNE group derives income from international transportation or transportation in inland waterways that is covered by income tax convention provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one tax jurisdiction, then the U.S. MNE group should report the information required under paragraph (d)(2) of this section with respect to such income for the tax jurisdiction to which the relevant income tax convention provisions allocate these taxing rights.

(e) *Reporting of financial amounts—*  
(1) *Reporting in U.S. dollars required.* All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, must be expressed in U.S. dollars. If an exchange rate is used other than in accordance with U.S. generally accepted accounting principles for conversion to U.S. dollars, the exchange rate must be indicated.

(2) *Sources of financial amounts.* All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, should be based on applicable financial statements, books and records maintained with respect to the constituent entity, regulatory financial statements, or records used for tax reporting or internal management control purposes for an annual period of each constituent entity ending with or within the period described in paragraph (c) of this section.

(f) *Time and manner for filing.* Returns on Form 8975 required under paragraph (a) of this section for a reporting period must be filed with the ultimate parent entity's income tax return for the taxable year, in or with which the reporting period ends, on or before the due date (including extensions) for filing that person's income tax return or as otherwise prescribed by Form 8975.

(g) *Maintenance of records.* The U.S. person filing Form 8975 as an ultimate parent entity of a U.S. MNE group must

maintain records to support the information provided on Form 8975. However, the U.S. person is not required to create and maintain records that reconcile the amounts provided on Form 8975 with the tax returns of any tax jurisdiction or applicable financial statements.

(h) *Exceptions to furnishing information.* An ultimate parent entity of a U.S. MNE group is not required to report information under this section for the reporting period described in paragraph (c) of this section if the annual revenue of the U.S. MNE group for the immediately preceding reporting period was less than \$850,000,000.

(i) [Reserved]

(j) *U.S. territories and possessions of the United States.* A U.S. territory ultimate parent entity may designate a U.S. business entity that it controls (as defined in section 6038(e)) to file Form 8975 on the U.S. territory ultimate parent entity's behalf with respect to such U.S. territory ultimate parent entity and the business entities that would be required to consolidate their accounts with such U.S. territory ultimate parent entity under U.S. generally accepted accounting principles, or would be so required if equity interests in the U.S. territory ultimate parent entity were publicly traded on a U.S. securities exchange.

(k) *Applicability dates.* The rules of this section apply to reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after June 30, 2016.

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved: June 20, 2016.

Mark J. Mazur,  
*Assistant Secretary of the  
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on June 29, 2016, 8:45 a.m., and published in the issue of the Federal Register for June 30, 2016, 81 F.R. 42482.)

# Part III. Administrative, Procedural, and Miscellaneous

## Proposed Qualified Intermediary Agreement

### Notice 2016-42

#### SECTION 1. PURPOSE

This Notice sets forth the proposed qualified intermediary (QI) withholding agreement (QI agreement) entered into under § 1.1441-1(e)(5).<sup>1</sup> In general, the QI agreement allows foreign persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify their obligations as a withholding agent under chapters 3 and 4 and as a payor under chapter 61 and section 3406 for amounts paid to their account holders.

The QI agreement currently in effect, as provided in Rev. Proc. 2014-39, 2014-29 I.R.B. 150, (the 2014 QI agreement), expires on December 31, 2016. The proposed changes to the QI agreement described in this Notice, subject to any modifications included in a revenue procedure containing the final QI agreement (to be issued later in 2016), will apply to QI agreements that are in effect on or after January 1, 2017, as provided in section 5 of this Notice. Section 2 of this Notice describes the highlights of the proposed changes to the 2014 QI agreement and provides a general description of corresponding changes that will be made to the withholding foreign partnership agreement (WP agreement) and withholding foreign trust agreement (WT agreement), the current versions of which were published in Rev. Proc. 2014-47, 2014-35 I.R.B. 393. Section 3 of this Notice provides the application procedures for becoming a QI and renewing a QI agreement. Section 4 of this Notice provides the proposed QI agreement. Comments with respect to the proposed QI agreement are requested by August 31, 2016.

#### SECTION 2. HIGHLIGHTS OF CHANGES TO THE 2014 QI AGREEMENT

.01 *Qualified Derivatives Dealers and Section 871(m)*. On September 18, 2015,

final and temporary regulations under section 871(m) and sections 1441, 1461, and 1473 (collectively, the 871(m) regulations) were published in T.D. 9734 addressing the treatment of dividend equivalents from U.S. sources. Section 871(m) treats “dividend equivalent” payments as U.S. source dividends for purposes of chapters 3 and 4 and sections 871(a), 881, and 4948(a). As a result, dividend equivalent payments are amounts subject to withholding (as defined in § 1.1441-2(a)) for purposes of sections 1441 through 1443 and withholdable payments (as defined in § 1.1473-1(a)) for purposes of sections 1471 and 1472. Accordingly, a withholding agent generally is required to deduct and withhold a tax equal to 30 percent on any dividend equivalent payment unless an exception from, or lower rate of, withholding applies.

(A) *In general*. This Notice proposes new provisions to the QI agreement that will permit a QI that is an eligible entity to act as a qualified derivatives dealer (QDD) and provides the requirements and obligations that will apply to a QDD. When a QDD provides a valid withholding certificate to a withholding agent, the withholding agent will not be required to withhold on certain payments made to the QDD when the QDD is acting as a principal (that is, not as an intermediary). Under the proposed QI agreement, these payments are payments with respect to potential section 871(m) transactions (as defined in § 1.871-15(a)(12)) and payments with respect to underlying securities (as defined in § 1.871-15(a)(15)). The requirements and obligations applicable to QDDs will be effective for QDDs when they enter into QI agreements after the proposed QI agreement in this Notice is finalized (with effective dates on or after January 1, 2017).

(B) *Requirements and scope of QDD status*. To be a QDD, an entity must enter into a QI agreement and be an eligible entity. Pursuant to § 1.1441-1T(e)(6)(ii), a QI is an “eligible entity” if it is one of the three following types of entities: (1) a dealer in securities that is subject to reg-

ulatory supervision as a dealer by a governmental authority in the jurisdiction in which it is organized or operates; (2) a bank subject to regulatory supervision as a bank by a governmental authority in the jurisdiction in which it is organized or operates and that issues potential section 871(m) transactions to customers and receives dividends or dividend equivalent payments pursuant to potential section 871(m) transactions to hedge those transactions issued to customers; or (3) an entity that is wholly-owned by a bank subject to regulatory supervision as a bank by a governmental authority in the jurisdiction in which it is organized or operates and that issues potential section 871(m) transactions to customers and receives dividends or dividend equivalent payments pursuant to potential section 871(m) transactions to hedge those transactions issued to customers.

If a foreign branch of a U.S. financial institution meets the requirements of an eligible entity, the foreign branch may enter into a QI agreement to act as a QDD. That foreign branch will be permitted to document and report recipients of those payments in reporting pools consistent with the provisions of sections 5 and 8 of the proposed QI agreement and to use the collective refund procedure, if otherwise permitted under section 9.04 of the proposed QI agreement.

Under the proposed QI agreement, a QI may only act as a QDD for payments with respect to potential section 871(m) transactions or underlying securities that it receives and payments with respect to potential section 871(m) transactions that it makes as a principal, whether or not the payments are received or made in its dealer capacity. A QI that acts as a QDD generally will be required to act as a QDD for (a) all payments with respect to potential section 871(m) transactions and underlying securities that it receives as a principal, and (b) all payments with respect to potential section 871(m) transactions that it makes as a principal. However, to the extent the payment received by a QI as a principal is treated as income

<sup>1</sup>Unless otherwise provided, all citations in this Notice and the QI agreement included in this Notice are to the Internal Revenue Code of 1986, as amended (Code) and to the Income Tax Regulations thereunder.

effectively connected with QI's trade or business in the United States, then the QI is not allowed to act as a QDD for such payment. Similarly, when a QI makes a payment with respect to a potential section 871(m) transaction that is a deduction properly allocated to the QI's gross income that is effectively connected with the conduct of such trade or business within the United States, that payment may not be included in the QDD's offsetting payments (as described below) for purposes of determining its "section 871(m) amount" (as defined in section 2.79 of the proposed QI Agreement and described in section 2.01(D), below).

A QI, however, may not act as a QDD when it receives or makes a payment with respect to a potential section 871(m) transaction as an intermediary as opposed to as a principal (for example, when the QI acts as a custodian of a structured note with a payment referencing a dividend of a domestic corporation). As a result, the QI may, but is not required to, act as a QI for those payments. The QI may treat the payments in the same manner as it would other withholdable payments or reportable amounts it receives, and thus it may either act as a QI (and choose whether or not to assume primary withholding responsibility), or it may act as a nonqualified intermediary (NQI) for such payments.

(C) *Reporting and withholding responsibilities of a QDD.* When a QI acts as a QDD, it must assume primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and section 3406 backup withholding responsibility for all payments made with respect to potential section 871(m) transactions as a principal. A QDD will be required to withhold on the dividend payment date for the applicable dividend. If a QDD makes any payment with respect to a potential section 871(m) transaction that is not a dividend equivalent payment but is an amount subject to chapter 3 or 4 withholding or a reportable payment, the QDD must also assume primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and section 3406 backup withholding responsibility for all of those payments. Under the proposed QI agreement, a QDD's reporting responsibilities also include specific payee (rather than pooled) reporting on Form 1042-S,

*Foreign Person's U.S. Source Income Subject to Withholding*, for payments to other QDDs to which the QDD makes a payment of an amount subject to chapter 3 withholding.

Among the other information reporting obligations described in sections 7 and 8 of the proposed QI agreement, a QDD will be required to report on separate Forms 1042-S the amount of qualifying dividend equivalent offsetting payments (as defined in section 2.70 of the proposed QI agreement and described in section 2.01(D), below) that represent (a) the aggregate amount of payments made to a United States person that would be dividend equivalent payments if made to a person who was not a United States person (as described in section 2.70(A)(1) of the proposed QI agreement); and (b) the aggregate amount of payments of effectively connected income (as described in section 2.70(A)(2) of the proposed QI agreement). In addition, a QDD will be required to provide specific information (for example, name, address, and U.S. TIN) upon request of the IRS about U.S. non-exempt recipients that receive qualifying dividend equivalent offsetting payments described in section 2.70(A)(1) of the proposed QI agreement. To the extent necessary, a QDD must obtain a waiver from each U.S. non-exempt recipient described in the preceding sentence of any limitation on providing such information to the IRS. If the QDD does not obtain a waiver or collect and maintain such information about a U.S. non-exempt recipient, any payment made to that U.S. non-exempt recipient is not a qualifying dividend equivalent offsetting payment. A QI will be required to report these payments in a pool on a separate Form 1042-S. The maintenance of such information by QDDs will assist the IRS in ensuring the compliance of these U.S. non-exempt recipients with their reporting of income associated with these transactions and of QDDs with their obligations under the QI agreement.

(D) *Tax liability of a QDD.* A QDD (other than a foreign branch of a U.S. financial institution acting as a QDD) must determine and pay any "QDD tax liability." A QDD tax liability is the sum of a QDD's liability under sections 871(a) and 881 for (a) its "section 871(m)

amount" (as defined in section 2.79 of the proposed QI agreement); (b) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity; and (c) any other U.S. source FDAP payments received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments. For purposes of determining the QDD tax liability, payments received by a QDD acting as a proprietary trader are treated as payments received in its non-dealer capacity, while transactions properly reflected in a QDD's dealer book are presumed to be held by a dealer in its dealer capacity. For purposes of determining the QDD tax liability, dealer activity is limited to its activity as a derivatives dealer.

Even though a QDD may act as a QDD for payments received in a non-dealer capacity, only payments made and received in its dealer capacity may be used for purposes of calculating its section 871(m) amount. In its dealer capacity, a QDD may hold underlying securities that are associated with potential section 871(m) transactions. An underlying security is associated with a potential section 871(m) transaction when the QDD holds that underlying security to manage the risk of price changes with respect to a potential section 871(m) transaction that the QDD entered into in the normal course of its business as a dealer. If a QDD holds stock in its non-dealer capacity (for example, as a proprietary trader), the QDD cannot treat that stock as an underlying security associated with a potential section 871(m) transaction for purposes of calculating its section 871(m) amount.

A QDD remains liable for tax on any dividends and dividend equivalents it receives in its dealer capacity to the extent the QDD is not contractually obligated to make offsetting payments that reference the same dividend or dividend equivalent that it received as a dealer. To determine its tax liability on dividends and dividend equivalents that it receives, a QDD may aggregate all dividends on underlying securities associated with potential section 871(m) transactions and dividend equivalent payments that it receives that refer-

ence the same dividend and all dividend equivalent payments that it is contractually obligated to make as a dealer that reference the same dividend. Transactions properly reflected in a QDD's dealer book are presumed to be held by the QDD in its dealer capacity for purposes of determining the QDD's tax liability. The net amount of the payments received and the offsetting payments made is referred to as the QDD's "section 871(m) amount." See section 2.79 of the proposed QI agreement. Under the proposed QI agreement, the amount of offsetting payments includes any dividend equivalent payment and any qualifying dividend equivalent offsetting payment that the QDD makes or is contractually obligated to make with respect to the same dividend. A "qualifying dividend equivalent offsetting payment" is defined in section 2.70 of the proposed QI agreement as (a) any payment made or contractually obligated to be made to a United States person that would be a dividend equivalent payment if made to a person who was not a United States person and (b) any payment made to a foreign person that would be a dividend equivalent payment if the payment were not treated as income effectively connected with the conduct of a U.S. trade or business. As discussed in section 2.01(C), above, to the extent a QDD does not obtain a waiver from a U.S. non-exempt recipient of a payment described in (a) in the preceding sentence of any limitation on providing its name, address, and TIN (if any) to the IRS and does not collect and maintain such information, payments made to that U.S. non-exempt recipient are not qualifying dividend equivalent offsetting payments.

A QDD will report its QDD tax liability on a Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*. The QDD's payment and deposit requirements with respect to any taxes due with respect to its QDD tax liability on Form 1042 are described in sections 3.08 and 3.09(C) of the proposed QI agreement. When a foreign branch of a U.S. financial institution acts as a QDD, the branch is not required to report a QDD tax liability for income relating to potential section 871(m) transactions and underlying securities on Form 1042. Instead, the U.S. financial institution must file the

appropriate U.S. income tax return (for example, Form 1120, *U.S. Corporation Income Tax Return*) for the tax year covered by the QI agreement to report and pay its tax liability under chapter 1.

(E) *Accounts for purposes of section 871(m) transactions*. Generally, an "account" for purposes of the QI agreement means any account for which QI acts as a qualified intermediary. See section 2.01 of the proposed QI agreement. QIs and taxpayers, however, do not always hold section 871(m) transactions in an account relationship. Section 2.01 of the proposed QI agreement therefore defines "account," when applied to a QI acting as a QDD, as any potential section 871(m) transaction or underlying security where the QI receives payments as a principal and any potential section 871(m) transaction where the QI makes payments as a principal. However, section 5 of the proposed QI agreement does not require a QI that is acting as a QDD to document each account; rather it limits a QDD's obligation to document only an account holder of an account to which the QDD makes a reportable payment or qualifying dividend equivalent offsetting payment (or payment that otherwise would have been a qualifying dividend equivalent offsetting payment but for the QDD's failure to obtain a waiver or collect and maintain information about a U.S. non-exempt recipient account holder as required by section 8.03(C) of the proposed QI agreement).

(F) *Qualified securities lenders*. Once implemented, the QDD regime is intended to replace the qualified securities lender (QSL) regime described in Notice 2010-46, 2010-25 I.R.B. 757. The proposed QI agreement will require a QI to act as a QDD for all securities lending and sale-repurchase transactions the QDD enters into that are section 871(m) transactions, in addition to acting as a QDD for payments with respect to other potential section 871(m) transactions and underlying securities as a principal. All securities lending and sale-repurchase transactions the QI enters into that are section 871(m) transactions will be deemed to be entered into by the QI as a principal and therefore within the QDD regime. Until the QDD regime is implemented, the QSL rules (including the credit-forward rules described in Notice 2010-46) will continue to apply

for substitute dividend payments made pursuant to a securities lending or a sale-repurchase transaction. For more information about the QSL regime, see Notice 2010-46.

(G) *Coordination with 871(m) regulations*. The Treasury Department (Treasury) and the IRS intend to modify, to the extent necessary, the section 871(m) regulations to coordinate with provisions of the QI agreement relevant to the requirements of QDDs and withholding agents making payments to QDDs (as those provisions are finalized).

#### *.02 Periodic Review and Certifications of Compliance*

(A) *In general*. The 2014 QI agreement replaced the previous external audit requirement with an internal compliance and review program. As part of this compliance program, the responsible officer is required to make periodic compliance certifications and provide certain factual information to the IRS. After the 2014 QI agreement was issued, commentators raised concerns about the administrability of the compliance review procedures, including potential costs of implementing and conducting a compliance program, difficulties in allocating resources to conduct the periodic review in the last year of the certification period, and the lack of detailed standards for performance of the QI's periodic review similar to those provided in Rev. Proc. 2002-55, 2002-2 C.B. 435.

Under the proposed QI agreement, a QI's responsible officer will still be required to make a periodic certification of internal controls as described in section 10.03 and Appendix I of the proposed QI agreement. In making this certification, the responsible officer may rely on, in addition to the results of the periodic review, any other processes or reviews that the responsible officer has determined are necessary in order to make the certification. This allows the responsible officer to decide, for example, whether to hire an external reviewer (for example, a law firm or accounting firm) and what the scope of the engagement should be (for example, whether the external reviewer will conduct a review of the sufficiency of the QI's internal controls or whether the re-

view will be limited to the periodic review discussed below). The responsible officer must, however, document what he or she has relied upon in making the certification and retain such documentation for the same period of time for which the compliance review report and certifications are required to be retained pursuant to section 10.06(D) of the proposed QI agreement. For example, if the responsible officer relies on an internal or external reviewer to conduct a review of the internal controls and systems, the responsible officer must retain any report delivered by the reviewer.

In addition to making the certification of internal controls, the QI is required to report certain factual information (described in Appendix I) regarding its documentation, withholding, reporting, and other obligations under the QI agreement, and, in the case of a QI that is acting as a QDD, certain information related to the determination of its QDD tax liability (as described in section 3.09 of the proposed QI agreement). This factual information will be gathered, in part, through the testing of accounts and transactions required as part of the periodic review, as described in sections 10.04 and 10.05 of the proposed QI agreement. This review will be focused on the testing of accounts and transactions rather than a substantive evaluation of the sufficiency of a QI's policies and procedures. Section 10.05(A) through (E) of the proposed QI agreement provides the objectives for performing the review, and Appendix I to the proposed QI agreement describes the factual information that will be required to be reported to the IRS upon completion of the review. In order to allow QIs to have some flexibility in determining how to satisfy the objectives for the review, the IRS does not intend to publish a step-by-step audit plan as was previously provided in Rev. Proc. 2002-55, but the QI is expected to create a step-by-step plan to satisfy the objectives for the review contained in section 10.05(A) through (E) of the proposed QI agreement and to provide the required factual information. In response to comments requesting a safe harbor method for determining a sample of accounts for the periodic review, this Notice provides a stratified statistical sampling methodology in Appendix II to the proposed QI agree-

ment. In addition, the proposed QI agreement requires that a QI that has 50 accounts or more review at least 50 accounts as part of the periodic review. If a QI has fewer than 50 accounts, it must review all of its accounts and is not allowed to use the sampling procedures in Appendix II to the proposed QI agreement.

In addition, section 10 of the proposed QI agreement has been clarified to prevent unintended inferences that the periodic review must satisfy the standards of a financial audit or other attestation engagement of a certified public accountant. References to an "auditor" (in all contexts, whether internal or external) have been replaced with "reviewer." The description of the standard of independence required of a reviewer has also been clarified. The responsible officer can arrange for the review to be conducted by either an external or an internal reviewer to the extent provided in the proposed QI agreement. In either case, the reviewer must have sufficient independence to objectively conduct the review. For example, a reviewer, whether internal or external, cannot be reviewing his or her own work (for example, systems he or she designed or documentation he or she validated).

(B) *Waiver.* Under certain circumstances, section 10.07 of the proposed QI agreement allows a QI that is a foreign financial institution (FFI) that is not acting as a QDD and that is not part of a consolidated compliance group to apply for and obtain a waiver of the requirement to conduct the periodic review and to provide some of the factual information specified in Appendix I to the proposed QI agreement. In cases where the QI applies for a waiver, it is still required to provide certain factual information along with its periodic certification. This information is provided in Appendix I to the proposed QI agreement.

(C) *Periodic review timing.* The 2014 QI agreement required that the periodic review be conducted for the last year of the certification period. In response to comments regarding potential difficulties with this requirement, including resource constraints with all QIs needing to conduct periodic reviews at the same time, the proposed QI agreement allows a QI to choose which year in the certification period to select for its periodic review. How-

ever, if a QI is also acting as a QDD, it must use 2017 for its periodic review for the initial certification period because QDD status is not applicable for 2015 and 2016.

(D) *Compliance obligations and initial certification date.* A QI that had a QI agreement under Rev. Proc. 2000-12, 2000-1 C.B. 387, (as amended) in effect prior to June 30, 2014, with an audit cycle that would have extended past June 30, 2014, is not required to complete an audit under the previous QI agreement (Rev. Proc. 2000-12). A QI with a 2014 QI agreement in effect on or after June 30, 2014, must comply with the compliance obligations under that agreement as revised in the QI agreement in effect after December 31, 2016.

For purposes of determining the certification period, the initial certification period is the period ending on the third full calendar year that the 2014 QI agreement and any superseding revenue procedure is in effect. Therefore, a QI with a QI agreement with an effective date of June 30, 2014, must treat the initial certification period as ending on December 31, 2017, and will be required to make the required certification on or before July 1, 2018, pursuant to the requirements of the QI agreement in effect after December 31, 2016.

(E) *FATCA requirements.* As part of the QI agreement, a QI that is an FFI is required to comply with the FATCA requirements applicable to its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and a QI that is a non-financial foreign entity (NFFE) acting on behalf of its shareholders is required to comply with the requirements of a direct reporting NFFE. In addition the proposed QI agreement clarifies that the QI's responsible officer can rely on other personnel with oversight or responsibility for the QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (as defined in section 2.28 of the proposed QI agreement) or its requirements as a direct reporting NFFE or sponsoring entity, as applicable, in making its certifications relating to its FATCA obligations. In conducting the periodic review, a QI's re-

quirements relating to its FATCA compliance are limited to those accounts for which it is acting as a QI.

(F) *Consolidated compliance program.* The compliance procedure described in the 2014 QI agreement included an allowance for a QI to be a member of a consolidated compliance program under the supervision of a “compliance QI,” subject to the approval of the IRS. In order to establish a consolidated compliance program, the responsible officer of the compliance QI should consult the Financial Intermediaries Team at the address in section 12.06 of the proposed QI agreement to determine if the proposed consolidated compliance program is acceptable. If statistical sampling is to be utilized for the periodic review and testing of accounts and transactions, a sample plan should also be proposed. In evaluating the consolidated compliance program request, the goal of the Financial Intermediaries Team is to have an open dialogue concerning any issues that may materially affect a QI’s ability to fulfill its responsibilities under the QI agreement. If a QI is part of a consolidated compliance program under section 10.02(B) of the proposed QI agreement that is approved by the IRS, the compliance QI will be required to provide factual information for each QI member of the group separately but can make the certification of internal controls for the entire consolidated compliance group.

.03 *Limited FFIs and Limited Branches.* Pursuant to the regulations under chapter 4, as modified by Notice 2015–66, 2015–41 I.R.B. 541, limited FFI (and limited branch) status will no longer be available as of January 1, 2017. Accordingly, to conform with the regulations and Notice 2015–66, the proposed QI agreement removes limited FFI as a category of entity eligible to enter into the QI agreement.

.04 *Substitute Interest.* Comments requested that, as the QSL regime is incorporated into the QDD regime, consideration be given to covering payments of substitute interest on debt securities under the QI agreement in addition to substitute dividend payments. In response, the proposed QI agreement allows a QI to assume primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for payments of interest and sub-

stitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a securities dealer. This will allow a QI to provide a Form W–8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, to a withholding agent certifying that the QI is a QI assuming primary withholding responsibility without requiring the QI to distinguish between these payments of interest and substitute interest the QI receives as a principal and those that it receives as an intermediary. QIs that assume primary withholding responsibility for payments of interest and substitute interest as described in this paragraph will be required to assume primary withholding responsibility for all such payments.

.05 *Partnerships or Trusts Applying the Joint Account or Agency Options.* In response to comments received on the 2014 QI agreement, sections 4.05(A)(1) and 4.06(A)(2) of the proposed QI agreement have been modified to allow a QI to apply the joint account or agency option to partnerships or trusts that are covered as accounts that are excluded from the definition of financial accounts under Annex II of an applicable IGA or under § 1.1471–5(a). In addition, consistent with the WP and WT agreements, a QI can apply the joint account or agency option to partnerships or trusts that are owner-documented FFIs with respect to the QI.

.06 *Limitation on Benefits for Treaty Claims.* In order to enhance and make more robust claims for a reduced rate of chapter 3 withholding under an income tax treaty, Treasury and the IRS intend to modify the chapter 3 regulations to require withholding agents to collect certain information and certifications regarding a beneficial owner’s claim for treaty benefits. Form W–8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*, was revised in April 2016 to include checkboxes for a beneficial owner to provide information regarding the limitation on benefits provision of an applicable treaty that it satisfies, and Form 1042–S was revised in 2016 to include a line for a withholding agent to report the corre-

sponding limitation on benefits provision code. The proposed QI agreement modifies the requirements for a QI using documentary evidence to document an entity account holder claiming a reduced rate of withholding under an income tax treaty to require the collection of information regarding limitation on benefits on the treaty statement provided by the account holder. A QI opening an account or obtaining documentation for an entity account holder on or after January 1, 2017, will be required to collect this limitation on benefits information. For QIs with pre-existing entity accounts (as described in section 5.10(A) of the proposed QI agreement) that were documented with documentary evidence, there will be a two-year transition period provided for the collection of the appropriate limitation on benefits information (unless there is a change in circumstances that requires the QI to obtain corrected information). For QIs that documented entity accounts with Forms W–8, those forms may be relied upon until their normal expiration period (unless there is a change in circumstances that requires QI to obtain corrected information). Under the proposed QI agreement, a withholding agent will be subject to an actual knowledge standard with respect to the limitation on benefits claims. The chapter 3 regulations also will be similarly amended to apply an actual knowledge standard for limitation on benefits claims.

.07 *Validation of Treaty Claims.* In addition to the standard of knowledge for limitation on benefits claims discussed in section 2.06 of this Notice, the proposed QI agreement provides that a QI will be considered to have reason to know that a claim for treaty benefits is unreliable or incorrect if the account holder claims benefits under a treaty that does not exist or is not in force and thus is not included on the list maintained at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>. This reason to know rule will generally apply to pre-existing accounts for which the QI already holds valid documentation only upon a change in circumstances. For a pre-existing entity account, this reason to know rule will also apply when the QI obtains a written limitation on benefits statement. For purposes of applying this

rule, a “pre-existing account” or “pre-existing entity account” is an account for which QI holds valid documentation prior to January 1, 2017, for a QI with a QI agreement in effect prior to that date. For a QI that did not have a QI agreement in effect prior to January 1, 2017, it means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI agreement. For all new accounts, the reason-to-know rule will apply upon account opening. The chapter 3 regulations will be amended to include this reason to know rule for all withholding agents.

.08 *Conforming Changes and Correction of Errors.* In addition to the changes described in this Notice, additional changes have been made in the proposed QI agreement that either correct minor errors, further clarify the current rule, conform to changes made in the WP and WT agreements, or make conforming changes consistent with changes addressed in other guidance or other IRS correspondence (for example, e-mails from the IRS to subscribing QIs). An example of a correction is the presumption rules described in section 5.13(C)(3) of the proposed QI agreement which have been modified to include U.S. source bank deposit interest not subject to chapter 4 withholding (as well as payments on certain short-term obligations) among those payments that a QI is required to treat as made to a U.S. non-exempt recipient account holder under the presumption rules. The application of this presumption rule to such bank deposit interest was inadvertently omitted in the 2014 QI agreement and is expected to apply only in limited cases. For the portion of calendar years 2014–2016 that a QI had in effect a 2014 QI agreement, the QI will not be treated as non-compliant if it does not apply the corrected presumption rule from the proposed QI agreement.

In addition, consistent with the definitions provided in the chapter 3 regulations, the definition of U.S. person in section 2.91 of the proposed QI agreement has been clarified for certain individuals who are dual-resident taxpayers.

.09 *Effective Date.* When the proposed QI agreement provided in section 4 of this Notice is finalized, it will be effective on or after January 1, 2017. The effective date of the proposed QI agreement for an

applicant will depend on when the QI submits its application and whether the QI has received any reportable payments prior to when it submits its application. Beginning on January 1, 2017, a prospective QI that applies for QI status prior to March 31 of a calendar year, if approved, will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 of a calendar year and has not received a reportable payment prior to the date it applies for QI status, if approved, it will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 and has received a reportable payment prior to the date it applies, if approved, its QI agreement will have an effective date of the first of the month in which its QI application is approved and the prospective QI is issued a QI-EIN. A QI that seeks to renew its QI agreement must renew prior to March 31, 2017, and the renewed QI agreement shall have an effective date of January 1, 2017.

.10 *Term of the QI Agreement.* The proposed QI agreement would expire, unless otherwise terminated, at the end of the third full calendar year the agreement is in effect.

.11 *Changes to the WP and WT Agreements.* The proposed changes to requirements for the QI compliance review previewed in this Notice are also intended, with appropriate modifications, to be incorporated in a revised withholding foreign partnership agreement (WP agreement) and withholding foreign trust agreement (WT agreement), revising the WP agreement and WT agreement published in Rev. Proc. 2014–47. Treasury and the IRS will publish the revised WP agreement and WT agreement with these revisions and a limited number of corrections to the WP agreement and WT agreement (as published in Rev. Proc. 2014–47), to be effective on or after January 1, 2017. Beginning January 1, 2017, the WP agreement will also provide the requirements for a reverse hybrid entity that desires to enter into a WP agreement with respect to the requirements for documenting and withholding on owners claiming treaty benefits. These requirements include that such entity meet all of its filing requirements as a corporation for U.S. tax

purposes; prepare and provide for certain interest holders that are U.S. persons a Passive Foreign Investment Company (PFIC) Annual Information Statement (described in § 1.1295–1(g)(1)) (if the WP is a PFIC for the year); and prepare and retain for IRS review a reconciliation statement showing the amount of U.S. source FDAP income allocated to each direct or indirect owner of the WP that claims treaty benefits during the calendar year. This is to eliminate the need for the riders that have been used previously for such entities to enter into WP agreements.

Treasury and the IRS request comments on an allowance for consolidated periodic reviews and certifications for WPs that are FFIs, similar to what is permitted for QIs. Treasury and the IRS will consider, if adopted, whether this option would only be available to WPs that, for chapter 4 purposes, should be considered sponsored FFIs under a sponsoring entity that implements a compliance program that includes uniform practices, procedures, and systems, subject to uniform monitoring and control, with respect to all WPs for which it acts. If this consolidated review approach is adopted, it is anticipated that the sponsoring entity for purposes of the WP agreement would be jointly liable (with the WP) for any liability of the WP for failing to withhold and report as required under the WP agreement. In addition, if this approach is adopted, the chapter 4 regulations will be amended to allow a WP to be a sponsored FFI to the extent provided in the revised WP agreement and to register under the sponsoring entity.

### SECTION 3. APPLICATION FOR QI STATUS

.01 *Entities Eligible to Execute a QI Agreement.* A QI agreement may be entered into by persons described in § 1.1441–1(e)(5)(ii) (for example, FFIs, foreign clearing organizations, and foreign branches of U.S. financial institutions or U.S. clearing organizations). With respect to an FFI, as defined in § 1.1471–5(d), the FFI may apply to enter into a QI agreement if the FFI is able to and agrees to satisfy the requirements and obligations of (1) a participating FFI (including a reporting Model 2 FFI), (2) a registered deemed-compliant FFI (including a re-

porting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), or (3) a registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the proposed QI agreement). See § 1.1471-1(b)(91) and (111). An FFI that is a certified deemed-compliant FFI (including a nonreporting IGA FFI (as defined in § 1.1471-1(b)(83)) may enter into a QI agreement if the FFI meets and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI or a nonreporting Model 2 FFI treated as registered deemed-compliant), or a registered deemed-compliant Model 1 IGA FFI with respect to all accounts that it maintains (even if the FFI does not intend to designate an account as one for which it will act as a QI). A central bank of issue may enter into a QI agreement provided that it meets and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) with respect to any account that it maintains and that is held in connection with a commercial financial activity described in § 1.1471-6(h) and for which it receives a withholdable payment (as defined in § 1.1471-1(b)(145)). A foreign branch of a U.S. financial institution may also apply to enter into a QI agreement provided that either it is a reporting Model 1 FFI or it agrees to assume the requirements and obligations of a participating FFI (including a reporting Model 2 FFI). See § 1.1441-1(e)(5)(ii).

An entity that is a territory financial institution (territory FI) (as defined in § 1.1471-1(b)(130)) or a nonparticipating FFI (as defined in § 1.1471-1(b)(82)) may not apply for a QI agreement.

The QI agreement may be entered into by a foreign corporation that is an NFFE (as defined in § 1.1471-1(b)(80)) described in § 1.1441-1(e)(5)(ii)(C) or that is an eligible entity seeking to become a QDD. For example, an entity may seek to obtain QI status to present claims of benefits under an income tax treaty on behalf of its shareholders or other persons (other than FFIs) for which the foreign corporation acts as an intermediary. An NFFE

that enters into a QI agreement to act on behalf of its shareholders must meet and agree to assume the obligations of, and to be treated as, a direct reporting NFFE under § 1.1472-1(c)(3). An NFFE that enters into a QI agreement to act on behalf of persons other than its shareholders will be required to satisfy the withholding and reporting requirements of §§ 1.1472-1(a) and 1.1474-1(i) with respect to any NFFE that is a beneficial owner for whom the QI is acting with respect to a withholdable payment. The QI agreement does not apply to a foreign partnership or foreign trust. A foreign partnership or foreign trust may seek to qualify as a withholding foreign partnership or withholding foreign trust. See §§ 1.1441-5(c)(2)(ii) and 1.1441-5(e)(5)(v). In light of the changes that will be made to the WP agreement discussed in section 2.11 of this Notice, Treasury and the IRS expect to eliminate the allowance for NFFEs acting on behalf of their shareholders to be QIs. Comments are requested regarding the types of entities and situations where an NFFE would be seeking to act as a QI on behalf of its shareholders (other than a reverse hybrid entity described in section 2.11 of this Notice) and why the WP agreement does not provide a solution for those entities.

.02 *Prospective QI (Including QI Acting as a QDD)*. Prior to submitting Form 14345, *Qualified Intermediary Application*, a prospective QI (other than an NFFE that is not acting as an intermediary on behalf of its shareholders and certain foreign central banks of issue) must have submitted the information specified in Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA), and obtained its chapter 4 status as a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the proposed QI agreement), direct reporting NFFE, or sponsoring entity of a direct reporting NFFE, as applicable, along with a global intermediary identification number (GIIN) to be used to identify itself to withholding agents and to

tax administrators for FATCA reporting (the GIIN is separate from the QI-EIN).

To become a QI, a prospective QI must submit Form 14345, *Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust Status*, in the manner provided by the form or accompanying instructions. An application must also include any additional information and documentation requested by the IRS. The Form 14345 must establish, to the satisfaction of the IRS, that the applicant has adequate resources and procedures to comply with the terms of the QI agreement. An entity that would like to become a QI to act as a QDD must apply to enter into a QI agreement and include the information relating to QDDs.

If the IRS approves the QI application, it will notify the QI of its approval. The approval notice will include a QI-EIN for fulfilling the requirements of a QI (including a QI acting as a QDD if approved for such purpose) under chapters 3, 4, and 61 and sections 871, 881, and 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

The IRS will not enter into a QI agreement with an FFI if the IRS has not approved the “know-your-customer” practices and procedures for opening accounts of the jurisdiction where the FFI is located because the QI agreement as applicable to an FFI allows for the use of documentary evidence obtained under a jurisdiction’s “know-your-customer” practices. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules are acceptable (approved KYC jurisdiction) is available at: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. To request approval of a jurisdiction’s know-your-customer rules, contact the KYC coordinator in the Foreign Intermediaries Program at the address provided in section 3.03 of this Notice.

A QI that is an NFFE generally is not required to be located in an approved KYC jurisdiction because an NFFE is required to collect Forms W-8 and W-9 and may not apply the KYC documentation practices and procedures. See section 5.01(A)(2) of the proposed QI agreement

for the documentation requirements applicable to a QI that is an NFFE.

**.03 Existing QI.** An FFI that seeks to renew its QI agreement must do so through the FATCA registration website available at *www.irs.gov/FATCA*. An NFFE that is a direct reporting NFFE or a sponsoring entity of a direct reporting NFFE must also renew its QI agreement through the FATCA registration website. The QI will retain its QI-EIN to fulfill the requirements of a QI under chapters 3, 4, and 61 and sections 871, 881, and 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

A QI that seeks to renew its QI agreement and also seeks to act as a QDD must supplement the renewal request by providing a statement containing all information required by Form 14345 relating to a QDD (but does not have to provide a new Form 14345).

A QI that is an NFFE and that is not acting as a QI on behalf of its shareholders, and is not a sponsoring entity, must renew its QI agreement by submitting a request for renewal to the Foreign Intermediaries Program at the following address:

Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12th Floor NW  
New York, New York 10007-1867  
Attention: QI Applications

#### SECTION 4. PROPOSED QUALIFIED INTERMEDIARY AGREEMENT

The text of the proposed QI agreement is set forth below. The IRS will no longer provide signed copies of the QI agreement. A reporting Model 2 FFI should apply this Agreement by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 2 FFI. A reporting Model 1 FFI and nonreporting Model 2 FFI treated as a registered deemed-compliant FFI should apply this Agreement by substituting the term “reporting Model 1 FFI” or “nonreporting Model 2 FFI” (as applicable) for “registered deemed-compliant FFI” throughout this Agreement, except in cases where this

Agreement explicitly refers to a reporting Model 1 FFI or nonreporting Model 2 FFI treated as a registered deemed-compliant FFI.

THIS AGREEMENT is made under and in pursuance of sections 1441, 1442, 1471, and 1472 and §§ 1.1441-1(e)(5) and 1.1441-1(e)(6):

**WHEREAS**, QI has submitted an application in accordance with this revenue procedure to be a qualified intermediary;

**WHEREAS**, QI and the IRS desire to enter into an agreement to establish QI’s rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposit, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474, 3406, 6041, 6042, 6045, 6049, 6050N, 6302, 6402, and 6414, and tax liability under sections 871(a) and 881 for a QI that is acting as a qualified derivatives dealer (QDD), with respect to certain types of payments;

**WHEREAS**, QI represents that there are no legal restrictions that prohibit it from complying with the requirements of this Agreement;

**WHEREAS**, if QI is a foreign financial institution (FFI), QI represents that, as of the effective date of this Agreement, it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI (including a reporting Model 2 FFI); § 1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or the applicable Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI; and

**WHEREAS**, if QI is an NFFE that desires to enter into this Agreement for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders, QI represents that it will comply with the requirements of a direct reporting NFFE under § 1.1472-1(c)(3);

**NOW, THEREFORE**, in consideration of the following terms, representations, and conditions, the parties agree as follows:

#### SECTION 1. PURPOSE AND SCOPE

**Sec. 1.01. General Obligations.** When the IRS enters into a QI Agreement with a foreign person or a U.S. person to cover a foreign branch, that foreign person (or foreign branch) becomes a QI. QI is a

withholding agent under chapters 3 and 4, and a payor under chapter 61 and section 3406, for amounts that it pays to its account holders.

If QI is an FFI, the requirements QI has agreed to as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI continue to apply in addition to the requirements under this Agreement. If QI acts as a QI with respect to an account, this Agreement will reference QI’s chapter 4 obligations when necessary to facilitate coordination with a QI’s obligations under chapters 3, 4, and 61, and section 3406, with respect to such account holders. A participating FFI’s (including a reporting Model 2 FFI’s) obligations are provided in the FFI agreement, a registered deemed-compliant FFI’s (other than a reporting Model 1 FFI) obligations are provided in § 1.1471-5(f)(1) or the applicable Model 2 IGA, and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA. For purposes of chapter 4, QI must comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (as applicable) with respect to all financial accounts that it maintains, irrespective of whether QI acts as a QI with respect to an account holder, as well as the requirements of a withholding agent for any payee that is a nonparticipating FFI or NFFE that is not an account holder. If QI is an FFI, QI must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472, for certain indirect account holders for which it acts as a QI.

If QI is an NFFE acting as a QI on behalf of its shareholders, the requirements QI has agreed to as a direct reporting NFFE apply in addition to the requirements under this Agreement, and, to the extent necessary to facilitate coordination of its direct reporting NFFE obligations with its obligations as a QI, the direct reporting NFFE obligations are incorporated into this Agreement. A direct reporting NFFE’s obligations are provided in § 1.1472-1(c)(3). For purposes of chapter 4, if QI is an NFFE acting as a QI on behalf of its shareholders, QI must comply with the requirements of a direct reporting

NFFE with respect to any shareholder that is a substantial U.S. owner as defined in § 1.1473-1(b). If QI is an NFFE acting on behalf of persons other than its shareholders, QI must assume primary reporting responsibility for purposes of section 1472 for any person for which it acts as a QI.

For purposes of chapters 3 and 61 and section 3406, QI must act in its capacity as a QI pursuant to this Agreement for those accounts that QI holds with a withholding agent and that QI has designated as accounts for which it acts as a QI. QI is not required to act as a QI for all accounts that it holds with a withholding agent. However, QI must, as part of its QI Agreement, materially comply with the requirements of a withholding agent or payor, as applicable to a nonqualified intermediary (NQI) under chapters 3 and 61 and section 3406, for any account for which it does not (or cannot) act as a QI and for any payee that is not an account holder. If QI designates an account as one for which it will act as a QI, it must act as a QI for all payments made to that account and obtain the documentation required under section 5 of this Agreement for such account.

When QI acts as a QI for an account and assumes primary chapter 3 withholding responsibility for payments to the account, QI must also assume primary withholding responsibility for withholdable payments made to such account for chapter 4 purposes. If QI acts as a QI with respect to payments of substitute interest, as described in section 3.03(A) of this Agreement, it must act as a QI and assume primary withholding responsibility for all such payments of substitute interest.

If QI acts as a sponsoring entity on behalf of a sponsored FFI (as defined in § 1.1471-1(b)(121)) or sponsored direct reporting NFFE (as defined in § 1.1471-1(b)(123)), it must comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity in addition to its requirements under this Agreement.

If QI acts as a QDD, it must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments received by the QDD to the extent the pay-

ment is treated as income effectively connected with the conduct of a trade or business within the United States within the meaning of section 864. In addition, a QI must act as a QDD for any securities lending or sale-repurchase transactions (as defined in § 1.871-15(a)(13)) QI enters into that are section 871(m) transactions. For purposes of this Agreement, a QDD is deemed to make and receive payments pursuant to those securities lending and sale-repurchase transactions as a principal. A QI may not act as a QDD when it receives or makes payments as an intermediary. A QI acting as a QDD must assume primary chapter 3 and chapter 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility under section 3406 for payments made as a QDD with respect to any potential section 871(m) transaction provided the amount paid is an amount subject to chapter 3 or 4 withholding or a reportable payment under chapter 61. A QI acting as a QDD (other than a QDD that is a foreign branch of a U.S. financial institution) also must satisfy its QDD tax liability as determined under section 3.09 of this Agreement. The QDD (other than a QDD that is a foreign branch of a U.S. financial institution) must report both its withholding tax liability under chapters 3 and 4 and its QDD tax liability on Form 1042. A U.S. financial institution with a foreign branch that acts as a QDD must file the appropriate U.S. income tax return (e.g., Form 1120, *U.S. Corporation Income Tax Return*) for the tax year covered by the QI Agreement to report and pay its tax liability under chapter 1 and would not have a separate QDD tax liability.

#### **Sec. 1.02. Parties to the Agreement.**

This Agreement applies to:

- (A) QI; and
- (B) The Internal Revenue Service.

If QI is an FFI, QI can only designate an account that it holds as a QI designated account if the branch of QI that holds the account operates in a KYC jurisdiction identified under the QI Agreement. QI may add any jurisdiction in which it operates a branch that is not initially included in its QI application without prior IRS approval if the jurisdiction is one for which the IRS will enter into a qualified intermediary agreement (*i.e.*, the jurisdic-

tion is identified on the IRS's Approved KYC List) and QI updates its information on the FATCA registration website with respect to such branch prior to treating such branch as a qualified intermediary. A branch of a QI that is not subject to the provisions of this Agreement remains subject to the rules of chapters 3, 4, and 61 and section 3406, as provided in section 1.01 of this Agreement.

## **SECTION 2. DEFINITIONS**

For purposes of this Agreement, except as otherwise provided in this Agreement, the terms listed below are defined as follows:

**Sec. 2.01. Account.** “Account” or “Financial Account” has the meaning given to that term in § 1.1471-1(b) with respect to QI's obligations for chapter 4 purposes. For other purposes under this Agreement, “account” or “financial account” means any account for which QI acts as a qualified intermediary. With respect to a QI acting as a QDD, “account” means any potential section 871(m) transaction or underlying security where QDD receives payments as a principal and any potential section 871(m) transaction where QDD makes payments as a principal.

**Sec. 2.02. Account Holder.** If QI is an FFI, an “account holder” means any person that is a direct account holder or an indirect account holder of an account that QI has designated to its withholding agent as an account for which it is acting as a qualified intermediary. With respect to a QI that assumes primary withholding responsibility for a substitute interest payment as described in section 3.03(A) of this Agreement, an “account holder” includes any person that receives such a payment from the QI. “Account holder” also means any person that enters into or holds a potential section 871(m) transaction with a QI acting as a QDD. If QI is an NFFE acting on behalf of its shareholders, an “account holder” means each shareholder for whom QI is acting with respect to an amount subject to chapter 3 withholding or with respect to a withholdable payment. If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, an “account holder” means any person for whom QI is acting with respect to a reportable payment or withholdable payment.

**(A) Direct Account Holder.** A direct account holder is any person who holds an account directly with QI or holds an ownership interest (*i.e.*, a shareholder) directly in QI if QI is an NFFE. In the case of an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, a direct account holder is any person for whom QI is acting with respect to a reportable payment regardless of whether such person is the beneficial owner.

**(B) Indirect Account Holder.** An indirect account holder is any person who receives amounts from QI but who does not have a direct relationship with QI. For example, a person that holds an account with a foreign intermediary or an interest in a foreign flow-through entity which, in turn, has a direct relationship with QI is an indirect account holder. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and QI.

**Sec. 2.03. Agreement.** “Agreement” means this Agreement, and the two Appendices and any Attachments to this Agreement, and QI’s application to become a qualified intermediary. All such Appendices, Attachments, and QI’s application are incorporated into this Agreement by reference.

**Sec. 2.04. Amount Subject to Chapter 3 Withholding.** An “amount subject to chapter 3 withholding” is an amount described in § 1.1441–2(a) regardless of whether such amount is withheld upon. An amount subject to chapter 3 withholding shall not include interest paid as part of the purchase price of an obligation sold between interest payment dates or original issue discount paid as part of the purchase price of an obligation sold in a transaction other than the redemption of such obligation, unless the sale is part of a plan the principal purpose of which is to avoid tax and QI has actual knowledge or reason to know of such plan.

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An “amount subject to chapter 4 withholding” is a withholdable payment (as defined in section 2.98 of this Agreement) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4.

**Sec. 2.06. Assumption of Withholding Responsibility.** An “assumption of withholding responsibility” refers to a QI that assumes primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income, or assumes primary Form 1099 reporting and backup withholding responsibility. A QI that has an assumption of withholding responsibility assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, QI’s assumption of primary chapters 3 and 4 withholding responsibility or the assumption of primary backup withholding responsibility relieves the person who makes a payment to QI from the responsibility to withhold. Under section 3.05 of this Agreement, QI generally has primary Form 1099 reporting and backup withholding responsibility with respect to certain payments even though it does not assume such responsibility for payments not described in that section.

**Sec. 2.07. Backup Withholding.** “Backup withholding” means the withholding required under section 3406.

**Sec. 2.08. Beneficial Owner.** A “beneficial owner” has the meaning given to that term in § 1.1441–1(c)(6).

**Sec. 2.09. Broker Proceeds.** “Broker proceeds” means gross proceeds (as defined in § 1.6045–1(d)(5)) from a sale that is reportable under § 1.6045–1(c).

**Sec. 2.10. Chapter 3.** Any reference to “chapter 3” means sections 1441, 1442, 1443, 1461, 1463, and 1464.

**Sec. 2.11. Chapter 3 Reporting Pool.** A “chapter 3 reporting pool” means a reporting pool described in section 8.03(B) of this Agreement.

**Sec. 2.12. Chapter 4.** Any reference to “chapter 4” means sections 1471, 1472, 1473, and 1474.

**Sec. 2.13. Chapter 4 Reporting Pool.** A “chapter 4 reporting pool” means a reporting pool described in section 8.03(A) of this Agreement.

**Sec. 2.14. Chapter 4 Status.** “Chapter 4 status” means the status of a person as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory

financial institution, an excepted NFFE, or a passive NFFE.

**Sec. 2.15. Chapter 61.** Any reference to “chapter 61” means sections 6041, 6042, 6045, 6049, and 6050N.

**Sec. 2.16. Dealer.** A “dealer” has the meaning given to the term dealer in § 1.871–15(a)(2) (*i.e.*, a dealer in securities within the meaning of section 475(c)(1)).

**Sec. 2.17. Deemed-Compliant FFI.** “Deemed-compliant FFI” means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b).

**(A) Certified Deemed-Compliant FFI.** “Certified deemed-compliant FFI” means an FFI described in § 1.1471–5(f)(2) and includes a nonreporting IGA FFI, but excludes a nonreporting Model 2 FFI that is treated as a registered deemed-compliant FFI.

**(B) Registered Deemed-Compliant FFI.** “Registered deemed-compliant FFI” means an FFI described in § 1.1471–5(f)(1) and includes a reporting Model 1 FFI and a nonreporting Model 2 FFI that is treated as registered deemed-compliant FFI. For purposes of this Agreement, a reference to a registered deemed-compliant FFI that is providing a chapter 4 withholding rate pool of U.S. payees includes a registered deemed-compliant Model 1 IGA FFI.

**(C) Registered Deemed-Compliant Model 1 IGA FFI.** “Registered deemed-compliant Model 1 IGA FFI” means an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to U.S. accounts as those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1), including the requirement to register with the IRS.

**Sec. 2.18. Deposit Interest.** “Deposit interest” means interest described in section 871(i)(2)(A).

**Sec. 2.19. Dividend Equivalent.** A “dividend equivalent” has the meaning given to that term in § 1.871–15(c).

**Sec. 2.20. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules (as described in the Attachments to this Agreement), any documentary evidence described in

§ 1.1441–6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty, or any documentary evidence described in § 1.6049–5(c) sufficient to establish an account holder’s status as a foreign person for purposes of chapter 61. Documentary evidence does not include a Form W–8 or Form W–9 (or an acceptable substitute Form W–8 or Form W–9).

**Sec. 2.21. Documentation.** “Documentation” means any valid Form W–8, Form W–9 (or an acceptable substitute Form W–8 or Form W–9), or documentary evidence as defined in section 2.20 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.22. Documented Account Holder.** A “documented account holder” is an account holder for whom QI holds valid documentation.

**Sec. 2.23. Effective Date of the QI Agreement.** For a prospective QI that applies to be a QI prior to March 31 of a given calendar year, the effective date of the QI Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has not received any reportable payments prior to the date the application is submitted, the effective date of the QI Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has received a reportable payment in the calendar year prior to the date the application is submitted, the effective date of the QI Agreement will be the first of the month in which the QI application is complete and the QI has received its QI-EIN. For a QI that is renewing its QI Agreement provided in Rev. Proc. 2014–39, 2014–29 I.R.B. 150, the effective date of the QI Agreement when renewed by March 31, 2017, will be January 1, 2017.

**Sec. 2.24. Eligible Entity.** “Eligible entity” for QDD status means a qualified intermediary that is—

- (A) A dealer in securities subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;
- (B) A bank subject to regulatory supervision as a bank by a governmental authority in the jurisdiction in which it was

organized or operates and that (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;

(C) An entity that is wholly-owned (directly or indirectly) by a bank subject to regulatory supervision as a bank by a governmental authority in the jurisdiction in which the bank was organized or operates and that (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued; or

(D) A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A), (B), or (C), if it were a separate entity.

**Sec. 2.25. Excepted NFFE.** “Excepted NFFE” means a person described in § 1.1471–1(b)(41).

**Sec. 2.26. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in § 1.1471–1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

**Sec. 2.27. Exempt Recipient.** For purposes of Form 1099 reporting and backup withholding, an “exempt recipient” means a person described in § 1.6049–4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045–2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041–3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

**Sec. 2.28. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI” means—

- (A) For a participating FFI or an FFI that agrees to be treated as a participating

FFI, the requirements set forth in the FFI agreement;

(B) For a registered deemed-compliant FFI (other than a reporting Model 1 FFI) or an FFI that agrees to be treated as a registered deemed-compliant FFI, the requirements under § 1.1471–5(f)(1) or an applicable Model 2 IGA; or

(C) For a registered deemed-compliant Model 1 IGA FFI, reporting Model 1 FFI, or an FFI that agrees to be treated as a registered deemed-compliant Model 1 IGA FFI or reporting Model 1 FFI, the requirements under an applicable Model 1 IGA.

**Sec. 2.29. Financial Institution (FI).** “Financial institution” or “FI” means an entity described in § 1.1471–5(d) and includes a financial institution as defined under an applicable Model 1 or Model 2 IGA.

**Sec. 2.30. Foreign Financial Institution (FFI).** “Foreign Financial Institution” or “FFI” means a foreign entity (as defined in § 1.1473–1(e)) that is a financial institution.

**Sec. 2.31. FFI Agreement.** “FFI Agreement” means an agreement described in § 1.1471–4(a) and provided in Rev. Proc. 2014–3, 2014–3 I.R.B. 419, as revised by Rev. Proc. 2014–38, 2014–29 I.R.B. 131 (and any superseding revenue procedure).

**Sec. 2.32. FFI Withholding Statement.** An “FFI withholding statement” means a withholding statement provided by an FFI that meets the requirements of § 1.1471–3(c)(3)(iii)(B)(I) and (2).

**Sec. 2.33. Flow-Through Entity.** A flow-through entity is a foreign partnership described in § 301.7701–2 or 3 (other than a withholding foreign partnership), a foreign trust (other than a withholding foreign trust) that is described in section 651(a), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

**Sec. 2.34. Foreign Person.** A “foreign person” is any person that is not a “United States person” and includes a “nonresident alien individual,” a “foreign corporation,” a “foreign partnership,” a “foreign trust,” and a “foreign estate,” as those

terms are defined in section 7701. For purposes of chapters 3 and 4, the term foreign person also means, with respect to a payment by a withholding agent (including a qualified intermediary), a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a qualified intermediary. A foreign branch of a U.S. person that is a qualified intermediary is, however, a U.S. payor for purposes of chapter 61 and section 3406.

**Sec. 2.35. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.36. Form W-8.** “Form W-8” means IRS Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals)*; IRS Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*; IRS Form W-8ECI, *Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States*; IRS Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*; and IRS Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, as appropriate. It also includes any acceptable substitute Form W-8.

**Sec. 2.37. Form W-9.** “Form W-9” means IRS Form W-9, *Request for Taxpayer Identification Number and Certification*, or any acceptable substitute Form W-9.

**Sec. 2.38. Form 945.** “Form 945” means IRS Form 945, *Annual Return of Withheld Federal Income Tax*.

**Sec. 2.39. Form 1042.** “Form 1042” means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

**Sec. 2.40. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*.

**Sec. 2.41. Form 1096.** “Form 1096” means IRS Form 1096, *Annual Summary*

*and Transmittal of U.S. Information Returns*.

**Sec. 2.42. Form 1099.** “Form 1099” means IRS Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*; IRS Form 1099-DIV, *Dividends and Distributions*; IRS Form 1099-INT, *Interest Income*; IRS Form 1099-MISC, *Miscellaneous Income*; IRS Form 1099-OID, *Original Issue Discount*; and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**Sec. 2.43. Form 8966.** “Form 8966” means IRS Form 8966, *FATCA Report*.

**Sec. 2.44. Form 1099 Reporting.** “Form 1099 reporting” means the reporting required on Form 1099.

**Sec. 2.45. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN” means the identification number that is assigned to a participating FFI, registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity of a direct reporting NFFE. The term also includes the identification number assigned to a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that is a QI for the purpose of identifying itself to withholding agents.

**Sec. 2.46. Intermediary.** An “intermediary” means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent.

**Sec. 2.47. Know-Your-Customer Rules.** “Know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures, identified in the Attachments to this Agreement, governing the requirements of QI to obtain documentation confirming the identity of QI’s account holders.

**Sec. 2.48. Marketable Securities.** For purposes of this Agreement, the term “marketable securities” means those securities described in § 1.1441-6 for which a U.S. TIN (or foreign TIN) is not required to obtain treaty benefits.

**Sec. 2.49. Non-Consenting U.S. Account.** For purposes of a reporting Model 2 FFI, “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.

**Sec. 2.50. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the

definition in section 2.27 of this Agreement.

**Sec. 2.51. Non-Financial Foreign Entity (NFFE).** A “non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including an entity that is incorporated or organized under the laws of any U.S. territory and that is not a financial institution). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 or Model 2 IGA.

**Sec. 2.52. Nonparticipating FFI.** A “nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**Sec. 2.53. Nonqualified Intermediary.** A “nonqualified intermediary” is any intermediary that is not a qualified intermediary. A nonqualified intermediary includes any intermediary that is a foreign person unless such person enters an agreement to be a qualified intermediary and acts in such capacity. A nonqualified intermediary also includes an intermediary that is a territory FI (as defined section 2.83 of this Agreement) unless such institution agrees to be treated as a U.S. person.

**Sec. 2.54. Non-U.S. Payor.** A “non-U.S. payor” means a payor other than a U.S. payor as defined in this section 2.90 of this Agreement.

**Sec. 2.55. Nonwithholding Foreign Partnership.** A “nonwithholding foreign partnership” means a foreign partnership other than a withholding foreign partnership as defined in § 1.1441-5(c)(2)(i).

**Sec. 2.56. Nonwithholding Foreign Trust.** A “nonwithholding foreign trust” means a foreign trust (as defined in section 7701(a)(31)(B)) that is a foreign simple trust or a foreign grantor trust and that is not a withholding foreign trust.

**Sec. 2.57. Overwithholding.** The term “overwithholding” means any amount actually withheld (determined before application of the adjustment procedures described in section 9 of this Agreement) from an item of income or other payment that is in excess of:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and,

**(B)** In the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.58. Participating FFI.** A “participating FFI” means an FFI that has agreed to comply with the requirements of an FFI Agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement (reporting Model 2 FFI). The term participating FFI also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

**Sec. 2.59. Payee.** For chapter 4 purposes, a “payee” means a person described in § 1.1471–3(a). For purposes of chapter 61, a “payee” means the person to whom a payment is made. For purposes of chapter 3, a “payee” means a person described in § 1.1441–1(c)(12).

**Sec. 2.60. Payment.** A “payment” is considered made to a person if that person realizes income, whether or not such income results from an actual transfer of cash or other property. See § 1.1441–2(e). For example, a payment includes crediting an amount to an account. For any payment of a dividend equivalent or qualifying dividend equivalent offsetting payment, a “payment” has the meaning provided in § 1.871–15(i). For any qualifying dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement), the payment definition in § 1.871–15(i) is applied as if the qualifying dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement) is a dividend equivalent.

**Sec. 2.61. Payor.** A “payor” is defined in § 31.3406(a)–2 and § 1.6049–4(a)(2) and generally means any person required to make an information return under chapter 61. The term includes any person that makes a payment, directly or indirectly, to QI and to whom QI provides information, pursuant to this Agreement, so that such person can report a payment on Form

1099 and, if appropriate, backup withhold. See sections 3.05 and 3.06 of this Agreement. Also see sections 2.90 and 2.54 of this Agreement for the definition of U.S. payor and non-U.S. payor.

**Sec. 2.62. Permanent Residence Address.** A “permanent residence address” means an address described in § 1.1441–1(c)(38).

**Sec. 2.63. Potential Section 871(m) Transaction.** A “potential section 871(m) transaction” is any securities lending or sale-repurchase transaction, notional principal contract (NPC), or equity linked instrument (ELI) that references one or more underlying securities. For purposes of this definition, securities lending or sale-repurchase transaction, NPC, ELI, reference, and underlying security have the meaning given to the terms in §§ 1.871–15(a)(13), (7), (4), (11), and (15), respectively.

**Sec. 2.64. Presume/Presumption.** The terms “presume” and “presumption” refer to the presumption rules set forth in section 5.13(C) of this Agreement.

**Sec. 2.65. Private Arrangement Intermediary (PAI).** A “private arrangement intermediary” or “PAI” is an intermediary described in section 4 of this Agreement.

**Sec. 2.66. Qualified Derivatives Dealer (QDD).** A “qualified derivatives dealer” (“QDD”) is an eligible entity that agrees to meet the requirements of § 1.1441–1(e)(6)(i) and of this Agreement with respect to payments on potential section 871(m) transactions and underlying securities that it receives or makes as a principal. In order to act as a QDD, QI must apply and be approved for QDD status and must represent itself as a QDD on its Form W–8IMY.

**Sec. 2.67. QDD Tax Liability.** A “QDD tax liability” is the amount described in section 3.09 of this Agreement.

**Sec. 2.68. Qualified Intermediary.** A “qualified intermediary” is a person, described in § 1.1441–1(e)(5)(ii), that has in effect an agreement with the IRS to be treated as a qualified intermediary and acts as a qualified intermediary.

**Sec. 2.69. Qualified Intermediary (QI) EIN.** A “qualified intermediary EIN” or “QI-EIN” means the employer identification number assigned by the IRS to a qualified intermediary. QI’s QI-EIN is

only to be used when QI is acting as a qualified intermediary. For example, QI must give a withholding agent its EIN (other than its QI-EIN), if any, if it is receiving income as a beneficial owner (excluding when it receives income as a principal when acting as a QDD or as a qualified intermediary assuming primary withholding responsibility for a substitute interest payment). QI must also use its non-QI EIN, if any, when acting as a nonqualified intermediary. Each signatory to this Agreement must have its own QI-EIN (to the extent referenced in this section 2.69).

### **Sec. 2.70. Qualifying Dividend Equivalent Offsetting Payment.**

**(A) In General.** For purposes of a QI that is acting as a QDD, a “qualifying dividend equivalent offsetting payment” means:

(1) Any payment made with respect to a potential section 871(m) transaction to a U.S. person that would be a dividend equivalent payment if the payment were made to a foreign person or

(2) Any payment made with respect to a potential section 871(m) transaction to a foreign person that would be a dividend equivalent payment if the payment was not treated as income effectively connected with the conduct of a trade or business within the United States within the meaning of section 864.

**(B) Exception.** To the extent a QI acting as a QDD does not obtain a waiver and collect and maintain information, as required by section 8.03(C) of this Agreement, from a U.S. non-exempt recipient described in section 2.70(A)(1), any payment made to such person is not a qualifying dividend equivalent offsetting payment.

**Sec. 2.71. Recalcitrant Account Holder.** A “recalcitrant account holder” means an account holder described in § 1.1471–5(g).

**Sec. 2.72. Reduced Rate of Withholding.** A “reduced rate of withholding” means a rate of withholding under chapter 3 that is less than 30 percent, including an exemption from withholding.

**Sec. 2.73. Reliably Associating a Payment With Documentation.** See section 5.13(B) of this Agreement to determine

whether QI can reliably associate a payment with documentation.

**Sec. 2.74. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding (as defined in section 2.04 of this Agreement), U.S. source deposit interest (as defined in section 2.18 of this Agreement), and U.S. source interest or original issue discount paid on the redemption of short-term obligations (as defined in section 2.81 of this Agreement). The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in § 1.6049–5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.75. Reportable Payment.** For purposes of this Agreement, a “reportable payment” means an amount described in section 2.75(A) of this Agreement, in the case of a U.S. payor, and an amount described in section 2.75(B) of this Agreement, in the case of a non-U.S. payor.

(A) **U.S. Payor.** If QI is a U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61,—

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale reportable under § 1.6045–1(c); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income.

(B) **Non-U.S. Payor.** If QI is a non-U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61,—

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale effected at an office inside the United States, as defined in § 1.6045–1(g)(3)(iii); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income if such income is not paid outside the United States as described under section 5.13(C)(1) of this Agreement.

**Sec. 2.76. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI with respect to which a foreign govern-

ment or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or a nonparticipating FFI under an applicable Model 1 IGA.

**Sec. 2.77. Reporting Pool.** A “reporting pool” is defined in section 8 of this Agreement.

**Sec. 2.78. Responsible Officer.** A “responsible officer” of a QI means an officer of the QI with sufficient authority to fulfill the duties of a responsible officer as described in section 10 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review the QI’s compliance (or that of a PAI).

**Sec. 2.79. Section 871(m) Amount.** A “section 871(m) amount” means the sum of the amounts by which, for each dividend on each underlying security, (A) the dividends on underlying securities associated with potential section 871(m) transactions and dividend equivalent payments that QI acting as a QDD receives in its dealer capacity exceed (B) the dividend equivalent payments and the qualifying dividend equivalent offsetting payments that QI acting as a QDD makes or is contractually obligated to make with respect to the same dividend in its dealer capacity.

For purposes of determining the QDD tax liability, a dividend or dividend equivalent is treated as received by a QDD acting in its non-dealer capacity if the dividend or dividend equivalent is received by a QDD acting as a proprietary trader. Transactions properly reflected in a QDD’s dealer book are presumed to be held by a dealer in its dealer capacity for purposes of determining the QDD tax liability. In addition, for purposes of determining whether a dealer is acting in its dealer capacity, only the dealer’s activities as a derivatives dealer are taken into account.

**Sec. 2.80. Section 871(m) Transaction.** A “section 871(m) transaction” is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI described in § 1.871–15(a)(13), (d), and (e), respectively.

**Sec. 2.81. Short-Term Obligation.** A “short-term obligation” is any obligation described in section 871(g)(1)(B)(i).

**Sec. 2.82. Substitute Interest.** “Substitute interest” means a substitute interest payment described in § 1.861–2(a)(7).

**Sec. 2.83. Territory FI.** A “territory FI” means a financial institution that is incorporated or organized under the laws of any U.S. territory, excluding a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company (as defined in § 1.1471–5(e)(1)(i), (ii), and (iv), respectively).

**Sec. 2.84. Underlying Security.** For purposes of a QI acting as a QDD or any determination relating to section 871(m), “underlying security” has the meaning provided in § 1.871–15(a)(15).

**Sec. 2.85. Underlying Security Associated with Potential Section 871(m) Transactions.** For purposes of a QI acting as a QDD, “underlying security associated with potential section 871(m) transactions” means any underlying security held by a QDD to manage risk of price changes with respect to a potential section 871(m) transactions that the QDD entered into in the normal course of its business as a dealer.

**Sec. 2.86. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 or section 3406 over the amount actually withheld.

**Sec. 2.87. Undocumented Account Holder.** An “undocumented account holder” is an account holder for whom QI does not hold valid documentation.

**Sec. 2.88. U.S. Account.** A “U.S. account” is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S.-owned foreign entities that such FFI reports or elects to report under the FFI Agreement or § 1.1471–5(f), as applicable.

**Sec. 2.89. U.S. Branch Treated as a U.S. Person.** A “U.S. branch treated as a U.S. person” means a U.S. branch of a participating FFI, registered deemed-compliant FFI, or NFFE that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

**Sec. 2.90. U.S. Payor.** The term “U.S. payor” has the same meaning as in § 1.6049–5(c)(5).

**Sec. 2.91. U.S. Person.** A “U.S. person” (or “United States person”) is a person described in section 7701(a)(30), the U.S. government (including an agency or

instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). An individual will not be treated as a U.S. person for purposes of this section for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1)) who is treated as a nonresident alien pursuant to § 301.7701(b)-7 for purposes of computing his or her U.S. tax liability. The term “U.S. person” or “United States person” also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

**Sec. 2.92. U.S. Reportable Account.** A “U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.93. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in § 1.1441-2(b)(1).

**Sec. 2.94. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.95. Withholding Agent.** A “withholding agent” has the same meaning as set forth in § 1.1441-7(a) for purposes of chapter 3 and as set forth in § 1.1473-1(d) for purposes of chapter 4, and includes a payor (as defined in section 2.61 of this Agreement). As used in this Agreement, the term generally refers to the person making a payment to a qualified intermediary.

**Sec. 2.96. Withholding Foreign Partnership.** A “withholding foreign partnership” or “WP” means a partnership, described in § 1.1441-5(c)(2), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.97. Withholding Foreign Trust.** A “withholding foreign trust” or “WT” means a trust, described in § 1.1441-5(e)(5)(v), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign trust.

**Sec. 2.98. Withholdable Payment.** A “withholdable payment” means an amount described in § 1.1473-1(a).

**Sec. 2.99. Withholding Rate Pool.** A “withholding rate pool” is defined in section 6.03 of this Agreement and includes a chapter 3 withholding rate pool and a chapter 4 withholding rate pool.

**Sec. 2.100. Withholding Statement.** The term “withholding statement” is defined in section 6.02 of this Agreement.

**Sec. 2.101. Other Terms.** Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 or Model 2 IGA with respect to a QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. Except as expressly provided in this Agreement, any term relating to a QDD or section 871(m) has the same meaning given to the term in § 1.871-15.

### SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

#### Sec. 3.01. Chapters 3 and 4 Withholding Responsibilities.

(A) Chapter 4 Withholding. QI is a withholding agent for purposes of chapter 4 and subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its accounts. QI is required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an FFI unless either QI can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under § 1.1471-2(a)(4) or the payment is made under a grandfathered obligation described in § 1.1471-2(b). See § 1.1471-2(b)(2)(i)(A)(2) for the definition of grandfathered obligation with respect to an obligation giving rise to

a dividend equivalent. QI is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an NFFE unless either QI can reliably associate the payment (or portion of the payment) with a certification described in § 1.1472-1(b)(1)(ii) or an exception to withholding under § 1.1472-1 otherwise applies.

If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), QI will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct account holders that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI. See the FFI Agreement, § 1.1471-5(f)(1), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to account holders of the FFI that are individuals treated as recalcitrant account holders or non-consenting accounts. If QI is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, QI will satisfy its requirement to withhold under section 1471(a) with respect to direct account holders by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. QI must, however, withhold in the manner described in sections 3.02 and 3.03 of this Agreement for when QI assumes or does not assume primary withholding responsibility for purposes of chapters 3 and 4 regardless of its chapter 4 status.

(B) Chapter 3 Withholding. To the extent that QI makes a payment of an amount subject to chapter 3 withholding, QI is required to withhold 30 percent of the gross amount of any such payment made to an account holder that is (or is presumed) a foreign person unless QI can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documenta-

tion requirements. With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, QI may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to withhold under chapter 3 to the extent required in this Agreement.

**Sec. 3.02. Primary Chapters 3 and 4 Withholding Responsibility Not Assumed.** Notwithstanding sections 1.01 and 3.01 of this Agreement, QI is not required to withhold with respect to a payment of U.S. source FDAP income if it (a) does not assume primary withholding responsibility under section 3.03 of this Agreement by electing to be withheld upon under § 1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a qualified intermediary that assumes primary withholding responsibility, withholding foreign partnership, or withholding foreign trust) as described in section 6.02 of this Agreement. However, QI that is acting as a QDD must assume primary withholding responsibility to the extent required under section 3.03(B) of this Agreement. Notwithstanding its election not to assume primary withholding responsibility under chapters 3 and 4, QI shall, however, withhold the difference between the amount of withholding required under chapter 3 or 4 and the amount actually withheld by another withholding agent if QI—

(A) Actually knows that the appropriate amount has not been withheld by another withholding agent; or

(B) Made an error which results in the withholding agent's failure to withhold the correct amount due (e.g., QI fails to

provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement) and QI has not corrected the underwithholding under section 9.05 of this Agreement. QI is not required to withhold on an amount that it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment or to a withholding foreign partnership or withholding foreign trust. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding under chapter 3 or 4 on Form 1042-S.

**Sec. 3.03. Assumption of Primary Chapters 3 and 4 Withholding Responsibility.**

(A) In General. QI, upon notification to a withholding agent, may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility. QI may assume primary withholding responsibility without informing the IRS. QI is not required to assume primary withholding responsibility for all accounts it holds with the withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. QI may assume primary withholding responsibility for U.S. source FDAP payments of substitute interest as described in § 1.861-2(a)(7). If QI assumes primary withholding responsibility for payments of substitute interest (as described in this paragraph), it must assume primary withholding responsibility with respect to all such payments. QI assumes primary withholding responsibility for payments of substitute interest for purposes of this

Agreement when it assumes such responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a dealer in securities. As a result, QI may represent its status as a qualified intermediary on the withholding certificate described in section 6.01 of this Agreement with respect to payments it receives of interest and substitute interest described in the preceding sentence regardless of whether it acts as an intermediary or as a principal with respect to these payments.

To the extent that QI assumes primary withholding responsibility, QI shall withhold as described in section 3.01 of this Agreement. QI is not required to withhold on amounts it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment (including a qualified intermediary acting as a QDD) or to a withholding foreign partnership or a withholding foreign trust. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding on Form 1042-S.

(B) Assumption of Withholding Responsibility by a QDD. If QI is acting as a QDD, it must assume primary chapters 3 and 4 withholding responsibility for any dividend equivalent payment that it makes and must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend (as determined in § 1.1441-2(e)(4)). A QDD must also assume primary chapter 3 and chapter 4 withholding responsibility for payments made with respect to a potential section 871(m) transaction even if the payment is not a dividend equivalent if the amount paid is an amount subject to chapter 3 or 4 withholding. A QDD is not required to withhold under chapter 3 or 4 on amounts it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment, or to a withholding foreign partnership or a withholding foreign trust. See section 8 of this Agreement regarding QDD's responsibility to report dividend equivalent payments and other amounts subject to withholding on Form 1042-S.

### **Sec. 3.04. Backup Withholding Under Section 3406 and Form 1099 Reporting Responsibility.**

(A) **Backup Withholding.** QI is a payor under section 3406 with respect to reportable payments. Under section 3406, unless an exception to backup withholding applies, a payor is required to deduct and withhold 28<sup>2</sup> percent from a reportable payment to an account holder that is a U.S. non-exempt recipient if the U.S. non-exempt recipient has not provided its U.S. TIN in the manner required under that section; the IRS notifies the payor that the U.S. TIN furnished by the payee is incorrect; there has been a notified payee under-reporting described in section 3406(c); or there has been a payee certification failure described in section 3406(d).

(B) **Coordination of Chapter 4 Withholding and Backup Withholding.** With respect to a withholdable payment that is also a reportable payment subject to backup withholding under section 3406, QI is not required to withhold under section 3406 if QI withheld on such payment under chapter 4. See § 31.3406(g)-1(e). Alternatively, if QI is a participating FFI or a registered deemed-compliant FFI (other than a reporting Model 1 FFI), it may elect to satisfy its obligation to withhold under chapter 4 (or the FFI Agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by satisfying its backup withholding obligation under section 3406 provided that the payment is also a reportable payment. See section 4 of the FFI Agreement. Nothing in chapter 4 (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to backup withhold under section 3406 to the extent required by this Agreement.

(C) **Form 1099 Reporting.** If QI applies backup withholding (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099 and not on Form 1042-S.

**Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments**

**Other Than Reportable Amounts.** QI is responsible for reporting on Form 1099 and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.05 and section 8.06 of this Agreement, whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. Further, no provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts.

See, however, § 31.3406(g)-1(e) providing that a payor (irrespective of whether the payor is a U.S. or non-U.S. payor) is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States, unless the payor has actual knowledge that the payee is a U.S. person.

(A) **U.S. Payor.** Except as provided in section 3.05(C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients.

(B) **Non-U.S. Payor.** If QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.75(B)(2) of this Agreement and foreign source fixed and determinable income other than income paid and received outside United States as described in section 2.75(B)(3) of this Agreement, if such payments are made (or presumed made) to U.S. non-exempt recipients.

(C) **Special Procedure for Broker Proceeds.** If QI is a U.S. payor, QI may request another payor that is either a U.S.

financial institution or another qualified intermediary to report on Form 1099 and, if required, backup withhold with respect to broker proceeds from a sale that is effected at an office outside the United States (as defined in § 1.6045-1(g)(3)(iii)) that QI is otherwise required to report under section 3.05(A) and section 8.05 of this Agreement, provided the other payor actually receives the broker proceeds. In such a case, QI will not be responsible for primary Form 1099 reporting and backup withholding with respect to broker proceeds, provided that the other payor agrees to do the reporting and backup withholding and QI provides all of the information necessary for the other payor to properly report and backup withhold. QI, however, remains responsible for primary Form 1099 reporting and backup withholding if the other payor does not agree to report and backup withhold, or if QI knows that the other payor failed to do so. If, however, QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) that reports an account on Form 1099 in order to satisfy its U.S. account reporting requirement under chapter 4, as described in section 8.04 of this Agreement, QI is responsible for reporting on Form 1099 with respect to reportable payments made to such U.S. account and must report in the manner described in the FFI Agreement.

(D) **Special Procedure for QDDs.** QI acting as a QDD must assume primary Form 1099 reporting and backup withholding responsibility for any payments made with respect to a potential section 871(m) transaction that are reportable payments. Thus, for example, if QI acts as a QDD with respect to an NPC that is a potential section 871(m) transaction and makes a payment pursuant to the NPC to a U.S. person that is a U.S. non-exempt recipient, QI must backup withhold and report any amount paid to the U.S. person to the extent required under section 3406 and § 1.6041-1(d)(5). See also section 8.03(C) of this Agreement for a QDD's Form 1042-S reporting requirements for a qualifying dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement).

<sup>2</sup>See section 3406(a) providing that the current applicable rate of backup withholding is the fourth lowest rate of tax applicable under section 1(c).

**Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Amounts Not Assumed.**

Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to report on Form 1099 and, if required, backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient fails to provide a Form W-9, information regarding the account holder's name, address, and U.S. TIN, if a U.S. TIN is available) together with the withholding rate pools (as defined in section 6.03(D) of this Agreement) attributable to U.S. non-exempt recipient account holders so that such payor may report on Form 1099 and, if required, backup withhold. If QI elects to backup withhold on withholdable payments that are also reportable amounts made to recalcitrant account holders that are also U.S. non-exempt recipients, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if it provides a payor from which it receives a reportable amount information regarding such recalcitrant account holders. See section 6.03 of this Agreement and section 4 of the FFI Agreement. If QI reports its U.S. accounts on Forms 1099 under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, see section 8.04(A) of this Agreement providing that QI cannot delegate to a withholding agent its requirement to report its U.S. accounts. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts and see also section 6.03 of this Agreement for when QI may provide a chapter 4 withholding rate pool of U.S. payees. If QI elects not to assume primary Form 1099 reporting and backup withholding responsibility, QI must provide the withholding agent with such information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI. See also sections 3.05(D) and 3.07 of this Agreement requiring a QI

acting as a QDD for payments with respect to potential section 871(m) transactions to assume primary Form 1099 and backup withholding responsibility for such amounts. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding responsibility, QI shall backup withhold and report a reportable amount to the extent required under sections 3.04 and 8.06 of this Agreement if—

(A) QI actually knows that a reportable amount is subject to backup withholding and that another payor failed to apply backup withholding, or

(B) Another payor has not applied backup withholding to a reportable amount because of an error made by QI (e.g., QI failed to provide the other payor with information regarding the name, address, U.S. TIN (if available), and withholding rate pool for a U.S. non-exempt recipient account holder subject to backup withholding, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement).

QI is not required to backup withhold, however, on a reportable amount that QI makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the payment. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 3.05 of this Agreement for backup withholding responsibility

for reportable payments other than reportable amounts. See section 8.06 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

**Sec. 3.07. Assumption of Primary Form 1099 Reporting and Backup Withholding Responsibility.**

QI may assume primary Form 1099 reporting responsibility and primary backup withholding responsibility with respect to reportable amounts without approval from the IRS. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts. QI that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406, as modified by this Agreement, and QI shall be subject to any applicable penalties for failure to meet those obligations. QI shall inform a payor from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the payor with a valid withholding certificate described in section 6 of this Agreement and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility. QI may assume primary Form 1099 reporting and backup withholding responsibility without informing the IRS.

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it holds with a payor. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account.

If QI is acting as a QDD, it must assume primary Form 1099 reporting and backup withholding responsibility with respect to any payment made with respect to a potential section 871(m) transaction, provided that the amount is a reportable payment. In addition, if QI is assuming primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of this Agreement), it must assume primary Form 1099

reporting and backup withholding responsibility with respect to all such payments.

QI shall not be required to backup withhold on a reportable amount it makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 8 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

**Sec. 3.08. Deposit Requirements.** If QI assumes primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, it must deposit amounts withheld under chapter 3 or 4 or section 3406 at the time and in the manner provided under section 6302 (see § 1.6302-2) by electronic funds transfer as provided under § 31.6302-1(h). If QI is a non-U.S. payor that does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and section 3406 backup withholding responsibility, QI must deposit amounts withheld by the 15th day following the month in which the withholding occurred.

If QI is acting as a QDD, it must also make deposits with respect to its QDD tax liability. At the time the QDD determines that it has a QDD tax liability (as described in section 3.09(D) of this Agreement), it must deposit any tax for which it is liable at the time and in the manner

provided under section 6302 (see § 1.6302-2) (substituting the term "QDD" for "withholding agent" and "sections 871(a) and 881" for "chapter 3" and "due under sections 871 and 881" for "withheld pursuant to chapter 3") by electronic funds transfer as provided in § 31.6302-1(h). See section 3.09(D) of this Agreement for the timing for determining the QDD tax liability. The deposit requirements under section 6302 and § 1.6302-2 apply separately to amounts due for a QDD's QDD tax liability and any amounts withheld under chapters 3 and 4.

**Sec. 3.09. QDD Tax Liability.** In addition to satisfying its withholding tax liability as described in this Agreement, a QDD must satisfy its QDD tax liability. The QDD's QDD tax liability is the sum of its tax liability under sections 871(a) and 881, if any, for:

(A) its section 871(m) amount (as defined in section 2.79 of this Agreement) for amounts received and made as a QDD in its dealer capacity;

(B) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity; and

(C) any payments, such as interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments.

A QDD that is a foreign branch of a U.S. financial institution does not have a QDD tax liability and is not required to report such liability on Form 1042. Instead, such a QDD must determine and report its tax liability in accordance with chapter 1 and the appropriate income tax return filing obligations for the U.S. corporation.

**(D) Timing for Determining QDD Tax Liability.** A QDD must determine its QDD tax liability due under sections 3.09(A) and (B) for each underlying security and section 871(m) transaction on the date that a dividend is paid on the underlying security, as provided in § 1.1441-2(e)(4). A QDD must determine its QDD tax liability due under section 3.09(C) at the time such payments are made, as provided in § 1.1441-2(e).

See section 7.01(C) of this Agreement regarding QI that is acting as a QDD's

responsibility to report on Form 1042 its QDD tax liability and to maintain a reconciliation schedule for its section 871(m) amount and other amounts related to its QDD tax liability.

## **SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS**

**Sec. 4.01. Private Arrangement Intermediaries-In General.** If QI is an FFI, QI may enter into a private arrangement with another intermediary under which the other intermediary agrees to perform all of the obligations of QI under this Agreement, except as modified in section 4.03 of this Agreement. QI, however, when acting as a QDD may not enter into a private arrangement under this section 4.01 with any account holder for which it acts as a QDD. The agreement between QI and the other intermediary shall be between QI and all the offices of the other intermediary located in a specified jurisdiction. The specified jurisdiction must be one for which this Agreement is available (*i.e.*, IRS has approved the know-your-customer practices). Such an intermediary is referred to in this Agreement as a private arrangement intermediary (PAI). By entering into a PAI agreement, QI is not assigning its liability for the performance of any of its obligations under this Agreement. Therefore, QI shall remain liable for any tax, penalties, interest, and any other sanctions that may result from the failure of the PAI to meet any of the obligations imposed by its agreement with QI. QI agrees not to assert any defenses against the IRS for the failures of the PAI or any defenses that the PAI may assert against QI. For purposes of this Agreement, the PAI's actual knowledge or reason to know of facts relevant to withholding or reporting shall be imputed to QI. QI's liability for the failures of the PAI shall apply even though the PAI is itself a withholding agent under chapters 3 and 4 and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Code. Notwithstanding the foregoing, QI shall not be liable for tax, interest, or penalties for failure to withhold and report under chapters 3, 4, and 61 and section 3406 unless the underwithholding or the failure to re-

port amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to QI's or its PAI's failure to properly perform its obligations under this Agreement. The PAI is not required to enter into an agreement with the IRS but must respond (either directly or through QI) to IRS inquiries related to its compliance described in section 10.08 of this Agreement. The IRS may, however, in its sole discretion, refuse to permit an intermediary to operate as a PAI by providing notice to QI at the address provided in section 12.06 of this Agreement. QI may, however, appeal the IRS's determination by following the notice and cure provisions in section 11.06 of this Agreement. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

(A) The PAI is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) that acts as an intermediary with respect to reportable amounts and has provided QI with a certification that it has maintained such certified deemed-compliant FFI status during each certification period;

(B) The PAI does not act as an intermediary for a direct account holder that is a qualified intermediary, withholding foreign trust, withholding foreign partnership, participating FFI, registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI;

(C) The PAI is, pursuant to a written agreement between QI and the PAI (PAI agreement), subject to all the obligations of QI under this Agreement, except to the extent modified by sections 4.02 and 4.03 of this Agreement;

(D) For purposes of chapter 4, the PAI agrees to comply with the FATCA requirements applicable to its chapter 4 status as a certified deemed-compliant FFI, as modified by sections 4.02 and 4.03 of this Agreement, and is not required to fulfill QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(E) QI identifies the PAI on the FATCA registration website before the first payment for which the PAI is operating under the PAI agreement;

(F) PAI agrees, to the extent necessary for QI to satisfy its compliance obliga-

tions (e.g., if QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement, and provide QI with the certification required under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding PAI's compliance, and agrees to respond (either directly or through QI) to IRS inquiries regarding its periodic review described in section 10.08 of this Agreement, including providing the QI and the IRS with the periodic review report described in section 10.06 of this Agreement;

(G) The PAI furnishes QI with a Form W-8IMY and withholding statement described in section 6 of this Agreement as modified by this section 4.01(G). The PAI is required to provide QI with Forms W-9 (or, in absence of the form, the name, address, and U.S. TIN (if available)) of the PAI's U.S. non-exempt recipient account holders and the withholding rate pool information for those account holders as required by section 6.03(D) of this Agreement so that the QI (or the payor) may report on Form 1099 and, if required, backup withhold. In addition, the PAI is required to disclose to QI any account holder of PAI that is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) as defined in §§ 1.1471-1(b)(74) and 1.1473-1(b), respectively (or in the applicable IGA), and the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an account with the PAI, and provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement. Except to the extent the PAI provides its information to QI for purposes of performing the periodic review, the PAI is not required to disclose to QI,

or another withholding agent, its direct account holders that are foreign persons other than a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person); and

(H) The PAI agrees to notify QI if the PAI no longer meets the requirements for certified deemed-compliant status, and upon such notification, the agreement between the PAI and QI will terminate.

#### **Sec. 4.02. Modification of Obligations for PAI Agreements.**

(A) Payments Reportable under Chapters 3 and 4. The agreement between QI and a PAI must provide that QI shall report all payments of amounts subject to chapter 3 or 4 withholding made by the PAI on QI's Forms 1042 and 1042-S as if QI had made the payments directly to the PAI's account holders. Therefore, QI shall report payments made to each of the following types of a PAI's account holders as follows:

(1) A direct account holder of the PAI that is a nonparticipating FFI, QI shall report an amount subject to chapter 4 withholding using the chapter 4 reporting pool described in section 8.03 of this Agreement with the PAI reported as the recipient with respect to the pool.

(2) A direct foreign account holder of the PAI for which no withholding is required under chapter 4 (other than an intermediary, custodian, nominee, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 8.03 of this Agreement with the PAI reported as the recipient.

(3) A direct foreign account holder of the PAI that is a nonqualified intermediary or flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding with respect to any indirect account holders of the PAI that the nonqualified intermediary or flow-through entity includes in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such account holders described in section 8.03 of this Agreement with the nonqualified intermediary or flow-through entity reported as the recipient and shall report payments of amounts subject to chapter 3 withhold-

ing made with respect to indirect foreign account holders of the PAI that are not subject to chapter 4 withholding by reporting the payments as made to specific recipients under the rules of section 8.02 of this Agreement.

**(B) Form 1099 Reporting and Backup Withholding.** The agreement between QI and a PAI must also provide that QI shall report all reportable payments made by the PAI on QI's Forms 945 and 1099 to the extent required under this section 4.02(B). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI (including by a PAI) to U.S. non-exempt recipients that are direct or indirect account holders of a PAI in accordance with the terms of this Agreement.

**(C) Form 8966 Reporting.** The agreement between QI and a PAI must also provide that QI shall report all withholdable payments made by the PAI on Form 8966 to the extent required under this section 4.02(C). QI shall file Forms 8966 to report withholdable payments made by QI (including by a PAI) to passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) that are direct or indirect account holders of a PAI in accordance with section 8.05 of this Agreement.

**Sec. 4.03. Other Requirements of PAI Agreement.** QI shall require a PAI to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and a PAI that preclude, and no provisions of this Agreement shall be construed to preclude, the PAI's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61 and section 3406 to the extent that underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or Form 8966 are due to a PAI's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and a PAI shall be construed to limit the PAI's requirements under chapter 4 or an applicable IGA. Further, nothing in the agreement between QI and a PAI shall permit the PAI to assume

primary chapters 3 and 4 withholding responsibility or assume primary Form 1099 reporting and backup withholding responsibility.

**Sec. 4.04. Termination of Arrangement.** Except as otherwise provided in section 4.01(H) of this Agreement, QI shall cease to treat an intermediary as a PAI within 90 days from the day QI knows that the PAI is in default of its agreement with QI unless the PAI has cured the event of default prior to the expiration of such 90-day period. QI must provide the IRS with notice of any PAI agreement that has been terminated within 30 days of the termination by removing the intermediary as a PAI on the FATCA registration website.

**Sec. 4.05. Joint Account Treatment for Certain Partnerships and Trusts.**

**(A) In General.** If QI is an FFI, QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in this section 4.05(A) to apply the simplified joint account documentation, reporting, and withholding procedures provided in section 4.05(B) of this Agreement. QI, however, when acting as a QDD, may not enter into an agreement under this section 4.05 with a nonwithholding foreign partnership or nonwithholding foreign trust account holder for which it acts as a QDD. QI and a partnership or trust that apply this section 4.05 to any calendar year must apply these rules to the calendar year in its entirety. QI and the partnership or trust may not apply this section 4.05 to any calendar year in which the partnership or trust has failed to make available to QI or QI's reviewer the records described in this section 4.05(A) within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirements of this section 4.05, QI must apply the provisions of §§ 1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period during

which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply this section 4.05 to subsequent calendar years. QI and a partnership or trust that apply this section 4.05 to any calendar year are not required to apply this section 4.05 to subsequent calendar years.

A partnership or trust is described in this section 4.05(A) of this Agreement if the following conditions are met:

**(1)** The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under § 1.1471-5(a) and has provided QI with a certification that it has maintained such chapter 4 status during each certification period;

**(2)** The partnership or trust is a direct account holder of QI;

**(3)** None of the partnership's or trust's partners, beneficiaries, or owners is a flow-through entity or is acting as intermediary for a payment made by QI to the partnership or trust;

**(4)** None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person and none of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under chapter 4 (which would include a nonparticipating FFI and certain passive NFFEs); and

**(5)** The partnership or trust agrees to make available upon request to QI or QI's reviewer for purposes of QI's periodic review under section 10 of this Agreement (including to respond to IRS inquiries regarding its compliance review) records that establish that the partnership or trust has provided QI with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

**(B) Modification of Obligations for QI.**

**(1)** QI may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of § 1.1441-5(c)(3)(iv) or (e)(5)(iv), and § 1.1471-3(c)(3)(iii)(B), if the payment is a withholdable payment, and that provides

information for all partners, beneficiaries, or owners together with valid Forms W-8 or, in the case of a partnership or trust that is a certified deemed-compliant FFI, documentary evidence listed in the know-your-customer (KYC) attachment to this Agreement from each partner, beneficiary, or owner, and, for a withholdable payment, documentation that meets the requirements of § 1.1471-3(d) to establish the partner's, beneficiary's, or owner's chapter 4 status. The withholding statement need not provide any allocation information.

(2) QI must treat payments to the partnership or trust as allocated solely to a partner, beneficiary, or owner that is subject to the highest rate of withholding under chapter 3 and must withhold at that rate.

(3) QI may pool report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in chapter 3 reporting pools on Form 1042-S as described in section 8.03(B) of this Agreement.

(4) After QI has withheld in accordance with section 4.05(B)(2) of this Agreement, it may file a separate Form 1042-S for any partner, beneficiary, or owner who requests that it do so. If QI issues a separate Form 1042-S for any partner, beneficiary, or owner, it cannot include such partner, beneficiary, or owner in QI's chapter 3 reporting pool. If QI has already filed a Form 1042-S and included the partner, beneficiary, or owner in a chapter 3 reporting pool, it must file an amended return to reduce the amount of the payment reported to reflect the amount allocated to the recipient on the recipient's specific Form 1042-S. QI may file a separate Form 1042-S for a partner, beneficiary, or owner only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary, or owner and only if the partnership or trust has agreed in writing under section 4.05(A)(5) of this Agreement to make available to QI or QI's reviewer the records that substantiate the allocation information included in its withholding statement.

(5) QI may not include any payments made to a partnership or trust to which QI

is applying the rules of this section 4.05 in any collective refund claim made under section 9.04 of this Agreement.

**Sec. 4.06. Agency Option for Certain Partnerships and Trusts.** QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 4.06(A) of this Agreement under which the partnership or trust agrees to act as an agent of QI with respect to its partners, beneficiaries, or owners, and, as QI's agent, to apply the provisions of the QI Agreement to the partners, beneficiaries, or owners. QI, however, when acting as a QDD may not enter an agreement under this section 4.06 with any account holder for which it acts as a QDD. By entering into an agreement with a partnership or trust as described in this section 4.06, QI is not assigning its liability for the performance of any of its obligations under this Agreement. QI and the partnership or trust to which QI applies the rules of this section 4.06 are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with QI. QI and a partnership or trust that applies the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, QI and a partnership or trust that applies the agency option to any calendar year is not required to apply the agency option to subsequent calendar years. If, however, QI withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 4.06(B)(2) of this Agreement, QI must apply the agency option to that calendar year in its entirety. QI and a partnership or trust may not apply the agency option to any calendar year when the partnership or trust has failed to make available to QI or QI's reviewer the records described in section 4.06 of this Agreement within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirement of this

section 4.06, QI must apply §§ 1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period in which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply the agency option to subsequent calendar years.

(A) A partnership or trust is described in this section 4.06(A) of this Agreement if the following conditions are met:

(1) The partnership or trust is either a direct account holder of QI or an indirect account holder of QI that is a direct partner, beneficiary, or owner of a partnership or trust to which QI also applies the agency option.

(2) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI, an NFFE, an exempt beneficial owner, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under § 1.1471-5(a) and has provided QI with a certification that it has maintained such chapter 4 status during each certification period;

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a withholding foreign trust, withholding foreign partnership, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or another qualified intermediary acting as an intermediary for a payment made by QI to the partnership or trust.

(4) The partnership or trust agrees to permit QI to treat its direct partners, beneficiaries, or owners as direct account holders of QI under this Agreement and to treat its indirect partners, beneficiaries, or owners as indirect account holders of QI under this Agreement.

#### **(B) Modification of Obligations for QI.**

(1) QI may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in § 1.1441-5(c)(3)(iv) or (e)(5)(iv) and § 1.1471-3(c)(3)(iii)(B), if the payment is a withholdable payment, that includes all information necessary for QI to fulfill its withholding, reporting, and filing obligations under this Agreement.

The withholding statement may include chapter 3 withholding rate pools described in section 6.03 of this Agreement for partners, beneficiaries, or owners that are not intermediaries, flow-through entities (or persons holding interests in the partnership or trust through such entities), U.S. persons, or passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), and the partnership or trust need not provide to QI documentation for these partners, beneficiaries, or owners. The withholding statement may also include a chapter 4 withholding rate pool of nonparticipating FFI's described in section 6.03 of this Agreement for payments of amounts subject to chapter 4 withholding. Notwithstanding the preceding sentences of this section 4.06(B)(1), the partnership or trust is required to disclose to QI any interest holder that is a passive NFFE with substantial U.S. owners (or controlling persons that are specified U.S. persons) or that is a U.S. non-exempt recipient, as well as the account holders or interest holders of any non-qualified intermediary or flow-through entity, respectively, which has an interest in the partnership or trust, and to provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement.

**(2) Timing of Withholding.** QI must withhold on the date it makes a payment to the partnership or trust based on a withholding statement provided by the partnership or trust on which QI is permitted to rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's, or owner's actual distributive share and must provide this corrected information to QI on the earlier of the date that the statement required under section 6031(b) (*i.e.*, Schedule K-1) or the Beneficiary Statement or Owner Statement is mailed or otherwise

provided to the partner, beneficiary, or owner, or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for QI's Forms 1042 and 1042-S for the calendar year, QI may withhold and report any adjustments required by the corrected information in the following calendar year.

**(3) Payments Reportable Under Chapters 3 and 4.** QI shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows:

(a) For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, QI shall report an amount subject to withholding using the chapter 4 reporting pool described in section 8.03(A) of this Agreement with the partnership or trust reported as a recipient.

(b) For a direct partner, beneficiary, or owner of the partnership or trust that is a foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools described in section 8.03(B) of this Agreement with the partnership or trust reported as a recipient.

(c) For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or foreign flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding in a chapter 4 withholding rate pool of nonparticipating FFI's using the chapter 4 reporting pool for such partner, beneficiary, or owner with the non-qualified intermediary or foreign flow-through entity reported as the recipient, and QI shall report payments of amounts subject to chapter 3 withholding for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in section 8.02 of this Agreement.

**(4) Form 1099 Reporting and Backup Withholding.** The agreement between QI and the partnership or trust must also provide that QI shall include all reportable payments made by the partnership or trust in QI's Forms 945 and 1099

to the extent required under this section 4.06(B)(4). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI to U.S. non-exempt recipient that are direct or indirect partners, beneficiaries, owners of the partnership or trust in accordance with the terms of this Agreement.

**(5) Form 8966 Reporting Requirements.** The agreement between QI and the partnership or trust must also provide that QI shall report all withholdable payments made by the partnership or trust on Form 8966 to the extent required under this section 4.06(B)(5). If the partnership or trust is itself a passive NFFE and if any of its partners, beneficiaries, or owners is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), QI shall file Forms 8966 to report all withholdable payments made by QI to any such passive NFFE in accordance with sections 8.04 and 8.05 of this Agreement.

**(C) Other Requirements of Agency Agreement.** QI shall require the partnership or trust to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and the partnership or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership or trust's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61 and section 3406, to the extent that the underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to the partnership's or trust's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and the partnership or trust shall be construed to limit the partnership's or trust's requirements under chapter 4 as a certified deemed-compliant FFI, owner-documented FFI, NFFE, or exempt beneficial owner. Further, nothing in the agreement between QI and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility.

## SECTION 5. DOCUMENTATION REQUIREMENTS

### Sec. 5.01. Documentation Requirements.

**(A) Coordination of Documentation Requirements with Chapter 4. (1) QI that is an FFI.** If QI is an FFI, QI is required to perform the due diligence procedures for each account holder for whom QI is acting under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to determine if the account is a U.S. account (or U.S. reportable account) and each account holder that is a nonparticipating FFI and, if applicable, recalcitrant account holder (or non-consenting U.S. account). See QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to perform due diligence with respect to each account that it maintains. If an account holder receiving the payment is not the payee, QI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding applies under chapter 4. See section 5.13(B)(1) of this Agreement for the requirements for QI to reliably associate a withholdable payment with a Form W-8IMY for chapter 4 purposes. To the extent an account holder receives a payment with respect to which QI has determined that withholding is not required under chapter 4, QI shall obtain, unless already collected, documentation that meets the requirements of this section 5 to determine whether the account holder is a foreign person for which QI is required to withhold under chapter 3 or a U.S. payee for which QI is required to backup withhold under section 3406 or report on Form 1099 under chapter 61. See, however, section 8.06 of this Agreement providing the circumstances in which reporting of U.S. accounts (or U.S. reportable accounts) under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI satisfies QI's Form 1099 reporting responsibilities. See Notice 2014-33, 2014-21 I.R.B. 1033, which modifies the time in which QI is required to implement the applicable due diligence procedures under

its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI with respect to an obligation held by an entity that is opened, issued, or executed on or after July 1, 2014, and before January 1, 2015.

**(2) QI that is an NFFE.** If QI is an NFFE, QI is required to document the chapter 4 status of each account holder for whom QI is acting to determine if withholding and reporting apply under section 1471 or 1472 on withholdable payments made to the account holder. QI is required to obtain, unless already collected, a valid Form W-8 or Form W-9 from each account holder to determine whether QI is required to withhold under chapter 3 or 4 or report on Form 1099 under chapter 61. Thus, the allowance in this section 5 for QI to obtain documentary evidence does not apply if QI is an NFFE. QI may, however, obtain appropriate documentary evidence as additional documentation to establish the foreign status of an account holder. See § 1.1471-3(e)(4) for when QI will have reason to know that an entity's claim of chapter 4 status is unreliable or incorrect and § 1.1471-3(c)(6)(ii)(E) for QI's requirements following a change in circumstances.

**(B) General Documentation Requirements.** QI agrees to use its best efforts to obtain documentation from account holders that receive a reportable payment to determine whether withholding applies or whether a payment is reportable under this Agreement. If QI is an FFI obtaining documentary evidence, QI also agrees to adhere to the know-your-customer rules that apply to QI with respect to the account holder from whom the documentary evidence is obtained. Unless QI can reliably associate a reportable payment with valid documentation from the account holder under section 5.13(B) of this Agreement, QI shall apply the presumption rules described in section 5.13(C) of this Agreement to any account holder that receives a reportable payment to determine if withholding is required under chapter 3 or 4 or if backup withholding is required under section 3406. As set forth in section 11.06 of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of de-

fault. QI agrees to review and maintain documentation in accordance with this section 5 and, in the case of documentary evidence obtained from direct account holders, in accordance with the know-your-customer rules set forth in the Attachments to this Agreement. QI also agrees, if the performance of an external review is requested by IRS as described in section 10.08(D) of this Agreement, to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by QI's external reviewer. QI represents that none of the laws to which it is subject prohibits disclosure of the identity of any account holder or account information to QI's external reviewer. QI may rely on the documentation it obtains under this section 5 as the basis for the information it provides to another withholding agent under section 6 of this Agreement, as well as to determine its own withholding, tax, and reporting obligations.

**(C) QI that is a QDD.** If QI is acting as a QDD, QI is required to apply the rules of this section 5 to each account holder of an account for which it is acting as a QDD and to which it makes a reportable payment or a payment of a qualifying dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement) in accordance with the applicable requirements in section 5.01(A) and (B) of this Agreement.

**Sec. 5.02. Documentation for Foreign Account Holders.** QI may treat an account holder as a foreign beneficial owner of an amount if the account holder provides a valid Form W-8 (other than Form W-8IMY unless provided by a QI that is acting as a QDD or assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence, as described in section 2.20 of this Agreement, that supports the account holder's status as a foreign person. QI may not treat an account holder that provides documentation indicating that it is a bank, broker, intermediary, or agent (such as an attorney) as a beneficial owner unless QI receives a statement, in writing and signed by a person with authority to sign such a statement, stating that such account holder is the beneficial owner of the income. Further, QI may not

reduce the rate of withholding with respect to an indirect account holder that is a foreign beneficial owner unless the certification provided by the direct account holder is a valid Form W-8IMY, and then only to the extent that QI can reliably associate the payment with valid documentation that establishes the indirect account holder's entitlement to a reduced rate of withholding under chapter 3 and establishes that withholding does not apply under chapter 4 in the case of a withholdable payment made to the account holder. See section 5.13(B) of this Agreement for rules regarding reliable association with documentation.

**Sec. 5.03. Beneficial Owner's Claim of Treaty Benefits.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not reduce the rate of withholding under chapter 3 based on a beneficial owner's claim of treaty benefits unless QI obtains the documentation required by section 5.03(A) of this Agreement. In addition, QI agrees to establish procedures to inform account holders of the terms of limitation on benefits provisions of a treaty (whether or not those provisions are contained in a separate article entitled Limitation on Benefits) under which the account holder is claiming benefits. For accounts held by an entity opened or documented on or after January 1, 2017, QI is required to obtain a Form W-8BEN-E with the appropriate limitation on benefits certification or, if QI is allowed to and obtains documentary evidence, the written certification accompanying the treaty statement as described in section 5.03(B) of this Agreement. For accounts maintained by QI prior to January 1, 2017 that were documented with documentary evidence and for which treaty benefits are being claimed, QI is required to obtain the appropriate limitation on benefits statement prior to January 1, 2019.

**(A) Treaty Documentation.** The documentation required by this section 5.03(A) is as follows:

**(1)** The account holder has provided a properly completed Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including for an entity the appropriate limitation on benefits and section 894 certifications, as provided in § 1.1441-6(b)(1). A U.S. TIN or

foreign TIN shall not be required, however, if the beneficial owner is a direct account holder. An indirect account holder is required to have either a U.S. TIN or foreign TIN to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities;

**(2)** The account holder has provided documentary evidence that has been obtained pursuant to the know-your-customer rules that apply to the account holder and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement; or

**(3)** The account holder provides the type of documentary evidence required under § 1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement.

**(B) Treaty Statement.** The treaty statement required by an entity account holder under this section 5.03(B) is as follows:

[Name of entity account holder] meets all provisions of the applicable treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894, and the regulations thereunder, as the beneficial owner.

The treaty statement must also include a written certification that the entity meets the appropriate limitation on benefits certification as described on Form W-8BEN-E and its accompanying instructions and that specifies the category of the limitation on benefits provision that the entity meets. QI is only required to obtain the treaty statement required by this section 5.03(B) from an account holder that is an entity. QI shall not be required to obtain a treaty statement required by this section 5.03(B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country.

**Sec. 5.04. Documentation for International Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat the account holder as

an international organization entitled to an exemption from withholding under section 892 unless the name provided on the documentation (including a Form W-8EXP) is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f) and the documentation is valid under section 5.10 of this Agreement. If an international organization is not claiming benefits under section 892 but under another Code exception, the provisions of section 5.02 of this Agreement shall apply rather than the provisions of this section 5.04.

#### **Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

**(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption From Withholding Under Section 892 or Section 895.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat an account holder as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 unless—

**(1)** QI receives from the account holder a Form W-8EXP or documentary evidence establishing that the account holder is a foreign government or foreign central bank of issue;

**(2)** The income paid to the account holder is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

**(3)** QI does not know, or have reason to know, that the account holder is a controlled commercial entity as described in section 892, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

**(B) Treaty Exemption.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may treat an account holder as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 if it has valid documentation that is sufficient to obtain a

reduced rate of withholding under a treaty as described in section 5.03 of this Agreement.

**(C) Other Code Exception.** If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or under an income tax treaty but under another Code exception (*e.g.*, the portfolio interest exception under section 871(h) or 881(c)), the provisions of section 5.02 of this Agreement apply rather than the provisions of this section 5.05.

**Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat an account holder as a foreign tax-exempt organization and reduce the rate of or exempt the account holder from withholding for purposes of chapter 3 unless it satisfies the requirements provided in section 5.06(A), (B), or (C) of this Agreement.

**(A) Reduced Rate of Withholding Under Section 501.** QI may not treat an account holder as a foreign organization described under section 501(c), and therefore exempt from withholding under chapter 3 (or, if the account holder is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b)) unless QI obtains a valid Form W-8EXP on which Part IV of the form is completed.

**(B) Reduced Rate of Withholding Under Treaty.** QI may not treat an account holder as a foreign organization that is tax-exempt on an item of income pursuant to an income tax treaty unless QI obtains valid documentation as described under section 5.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under the treaty and the documentation establishes that the account holder is an organization exempt from tax under the treaty on that item of income.

**(C) Other Exceptions.** If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or under a treaty article that applies to exempt certain foreign organizations from tax, but is claiming a reduced rate of withholding under another Code or income tax treaty exception, the provisions of section 5.02 or 5.03 (as applicable) of this Agree-

ment shall apply rather than the provisions of this section 5.06.

**Sec. 5.07. Documentation from Intermediaries or Flow-Through Entities.** QI must apply the presumption rules to a reportable payment made to a nonqualified intermediary or flow-through entity that is a direct account holder of QI to the extent QI fails to obtain the documentation set forth below. If QI receives documentation for the account holders or interest holders of an intermediary or flow-through entity, as described in this section 5.07, QI must apply the rules of this section 5 to determine the validity of such documentation.

**(A) Withholdable Payments Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a withholdable payment made to a nonqualified intermediary or flow-through entity—

**(1)** QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity receiving the payment that establishes the chapter 4 status of the intermediary or flow-through entity; and

**(2)** If the payment is not subject to withholding under chapter 4 based on such entity's chapter 4 status (or to the extent the payment is received on behalf of exempt beneficial owners), QI can reliably associate the payment, within the meaning of section 5.13(B) of this Agreement, with a withholding statement that meets the requirements of § 1.1471-3(c)(iii)(B) that includes the account holders or interest holders of the intermediary or flow-through entity in chapter 4 withholding rate pools to the extent permitted or with valid documentation described in this section 5 provided by account holders or interest holders of the intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities and that QI can treat as not subject to withholding under chapter 4.

**(B) Reportable Payments Other than Withholdable Payments Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a reportable payment that is not a withholdable payment made to a nonqualified intermediary or flow-through entity (other than a withholding foreign partnership or withholding foreign trust)—

**(1)** QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity regardless of whether the form includes a chapter 4 status of the nonqualified intermediary or flow-through entity unless such entity provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees; and

**(2)** QI can reliably associate the payment, within the meaning of section 5.13(B) of this Agreement, with a chapter 4 withholding rate pool of U.S. payees or valid documentation described in this section 5 provided by account holders or interest holders of the nonqualified intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities.

**(C) Reportable Payments Made to Qualified Intermediaries and Withholding Foreign Partnerships and Withholding Foreign Trusts.** With respect to a reportable payment made to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust, QI receives a valid Form W-8IMY provided by the qualified intermediary, withholding foreign partnership, or withholding foreign trust that includes the entity's chapter 4 status for a payment that is a withholdable payment and, for those payments for which a qualified intermediary has not assumed primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement.

**(D) Payments Made to Qualified Intermediaries Acting as QDDs.** For payments with respect to potential section 871(m) transactions or underlying securities made to a qualified intermediary acting as a QDD, if QI receives a valid Form W-8IMY provided by the qualified intermediary acting as a QDD that includes the qualified intermediary's chapter 4 status and the required certification that the qualified intermediary is acting as a QDD and assumes primary withholding responsibility for such payments, then QI can reliably associate the payments as made to the qualified intermediary acting as a QDD.

**(E) Private Arrangement Intermediaries.** If QI has an agreement with a PAI

(see section 4.01 of this Agreement), QI obtains from the PAI a Form W-8IMY completed as if the PAI were a QI that is an FFI (with the exception that the PAI must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.01(G) of this Agreement and the information described in this section 5.07 for any account holders of the PAI that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI).

**(F) Partnership or Trusts to which QI Applies the Agency Option.** If QI has an agreement with a partnership or trust under which the partnership or trust agrees to act as an agent of QI (see section 4.06 of this Agreement), QI obtains from the partnership or trust a Form W-8IMY completed as if the partnership or trust were a QI (with the exception that the partnership or trust must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.06(B)(1) of this Agreement and the information described in this section 5.07 for any account holders that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI).

**Sec. 5.08. Documentation for U.S. Exempt Recipients.** QI shall not treat an account holder as a U.S. exempt recipient unless QI obtains from the account holder—

**(A)** A valid Form W-9 on which the account holder includes an exempt payee code to certify that the account holder is a U.S. exempt recipient for purposes of chapter 4 reporting;

**(B)** Documentary evidence that is sufficient to establish that the account holder is a U.S. exempt recipient; or

**(C)** Documentary evidence that is sufficient to establish the account holder's status as a U.S. person and QI can treat the person as an exempt recipient under the rules of §§ 1.6045-2(b)(2)(i) or 1.6049-

4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 5.09. Documentation for U.S. Non-Exempt Recipients.** QI shall not treat an account holder as a U.S. non-exempt recipient unless QI obtains a valid Form W-9 from the account holder, QI knows an account holder is a U.S. non-exempt recipient, or QI must presume a person is a U.S. non-exempt recipient to the extent required under section 5.13(C)(3) or (4) of this Agreement.

**Sec. 5.10. Documentation Validity.**

**(A) In General.** QI may not rely on documentation if QI has actual knowledge, or reason to know as described in section 5.10(B) or 5.10(C) of this Agreement, that there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See § 1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances for chapter 3 purposes. A change in circumstances affecting withholding information, including allocation information or withholding rate pools contained in a withholding statement, will also cause the documentation provided with respect to that information to no longer be reliable. Once QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect to establish foreign status or residency for purposes of claiming benefits under an applicable income tax treaty, it can no longer reliably associate a payment with valid documentation unless QI obtains the additional documentation described in this section 5.10. With respect to a beneficial owner claiming benefits under an applicable income tax treaty, QI cannot rely on the account holder's claim of which limitation on benefits provision it satisfies if QI has actual knowledge that such claim is incorrect. QI will be considered to have reason to know that a claim for treaty benefits is unreliable or incorrect if the documentation provided by the account holder claims benefits under a treaty that does not exist or is not in force (*i.e.*, if the country is not included on the list maintained at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>). The rule in the preceding sentence will apply to

pre-existing accounts for which QI held valid documentation upon a change in circumstances or, with respect to a pre-existing entity account, when it provides a written limitation on benefits statement (as described in section 5.03(B) of this Agreement). For all new accounts, this rule will apply on account opening. For purposes of this section 5.10(A), a "pre-existing account" or "pre-existing entity account" is an account documented by QI prior to January 1, 2017, for a QI with a QI Agreement in effect prior to that date. For a QI that did not have a QI Agreement in effect prior to January 1, 2017, a "pre-existing account" or "pre-existing entity account" means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI Agreement.

In addition, if QI becomes aware of information resulting in the documentation no longer being reliable or correct and QI has not assumed primary withholding responsibility under chapters 3 and 4, QI agrees that it will promptly provide a withholding agent with corrected information (*e.g.*, corrected withholding rate pools, corrected Forms W-9, or corrected U.S. TINs) within 30 days after QI knows or has reason to know that the documentation upon which it has relied is unreliable or incorrect. If QI receives notification from the IRS that documentation provided by an account holder is unreliable or incorrect (*e.g.*, that the U.S. TIN provided by an account holder is incorrect), QI shall follow the procedures set forth in § 31.3406(d)-5. See also QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI or an NFFE's requirements as a withholding agent under sections 1471 and 1472 following a change in circumstances.

**(B) Reason to Know-Direct Account Holders.** If QI is a financial institution as defined in § 1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities, QI shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect only if one or more of the circumstances described in this section 5.10(B)

applies. If an account holder has provided documentation that is unreliable or incorrect under the rules of this section 5.10(B), QI must request new documentation. Notwithstanding the preceding sentence, QI may rely on the documentation originally provided if the rules of this section 5.10(B) permit such reliance and QI obtains the additional statements and documentation described in this section 5.10(B). If QI is an NFFE that is required to collect Forms W-8, see § 1.1441-7(b)(2) for when QI shall be considered to have reason to know that a withholding certificate provided by a direct account holder is unreliable or incorrect.

### **(1) General Rules.**

(i) QI shall not rely on a Form W-9 if it is not permitted to do so under the rules of § 31.3406(h)-3(e) and shall not rely on a Form W-8 if it is not permitted to do so under the rules of § 1.1441-7(b)(4) through (6) except as otherwise provided in this section 5.10(B).

(ii) QI shall not treat documentary evidence provided by an account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an account holder that is a natural person and the photograph on the documentary evidence, if any, does not match the appearance of the person presenting the document.

(iii) QI may not rely on documentation to reduce the withholding rate that would otherwise apply if—

(a) The account holder's documentation is incomplete or contains information that is inconsistent with the account holder's claim;

(b) QI has other account information that is inconsistent with the account holder's claim; or

(c) The documentation lacks the information necessary to establish entitlement to a reduced rate of withholding.

For example, if an account holder is an entity and provides documentary evidence to claim treaty benefits and the documentary evidence establishes the account holder's status as a foreign person and a resident of a treaty country but fails to provide the treaty statement in section

5.03 of this Agreement, the documentary evidence does not establish the account holder's entitlement to a reduced rate of withholding. However, for purposes of establishing an account holder's status as a foreign person or residency under an income tax treaty, documentation shall be considered inconsistent only if it is unreliable or incorrect under the rules of section 5.10(B)(2) or (3) of this Agreement.

### **(2) Rules Regarding Establishment of Foreign Status.**

(i) QI shall not treat documentary evidence provided by an account holder before January 1, 2001, as valid for purposes of establishing an account holder's status as a foreign person if QI has actual knowledge that the account holder is a U.S. person or if it has a current mailing or current residence address for the account holder in the United States.

(ii) QI shall not treat documentation provided by an account holder after December 31, 2000, as valid for purposes of establishing the account holder's foreign status if QI classified the account holder as a U.S. person in its account information, or if it does not have a permanent residence address for the account holder. Further, QI shall not treat documentation provided with respect to an account as valid for purposes of establishing an account holder's status as a foreign person if QI has a current mailing or permanent residence address (whether or not on the documentation) for the account holder in the United States, or if QI has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States (except with respect to a preexisting obligation (as defined in § 1.1441-1(c)(54)) to the extent the QI documented the foreign status of the account holder for purposes of chapter 3 or 61 before July 1, 2014). The limit on reason to know described in the preceding sentence with respect to a preexisting account documented before July 1, 2014, shall not apply, however, if QI is notified of a change in circumstances and as of the date of such notification QI shall not treat such documentation as valid for purposes of establishing the account holder's foreign status.

If QI has classified the account holder as a U.S. person or has an address or sole telephone number for the account holder

in the United States, QI may nevertheless treat an account holder that is an individual as a foreign person if QI—

(a) Has in its possession, or obtains, additional documentary evidence (which does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status (as defined in § 1.1441-7(b)(12));

(b) Obtains a valid Form W-8, and the Form W-8 contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or if a mailing address is inside the United States, the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or

(c) Has classified the account holder as a resident of the country in which the account is maintained; QI is required to report a payment made to the account holder annually on a tax information statement that is filed with the tax authority of the country in which the office that maintains the account is located as part of the country's resident reporting requirements; and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

If QI has classified the account holder as a U.S. person or has an address or sole telephone number for the account holder in the United States, QI may nevertheless treat an account holder that is an entity (other than a flow-through entity) as a foreign person if QI—

(d) Has in its possession, or obtains, documentary evidence that substantiates that the entity is actually organized or created under the laws of a foreign country;

(e) Obtains a valid Form W-8, and the Form W-8 contains a permanent residence outside the United States and a mailing address, if any, outside the United States (or if a mailing address is inside the United States, the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or

(f) Has classified the entity as a resident of the country where the account is maintained; QI is required to report a payment made to the account holder annually on a tax information statement filed with the tax authority of the country in which

the office that maintains the account is located as part of the country's resident reporting requirements; and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

(iii) With respect to an account other than a preexisting obligation (defined in § 1.1441-1(c)(54)) that QI has documented the foreign status of the account holder for purposes of chapter 3 or 6I before July 1, 2014, QI shall not treat documentation as valid for purposes of establishing an account holder's status as a foreign person if it has, either on the documentary evidence or in its current customer account files, an unambiguous indication of place of birth for the individual in the United States. The limit on reason to know described in the preceding sentence with respect to a preexisting obligation documented before July 1, 2014, shall not apply, however, if QI either reviews documentation that contains a U.S. place of birth or is notified of a change in circumstances, and, as of the date of such review or notification, QI shall not treat such documentation as valid for purposes of establishing the account holder's foreign status.

QI may nevertheless treat the account holder with a U.S. place of birth as a foreign person if QI—

(a) Has in its possession, or obtains, documentary evidence evidencing citizenship in a country other than the United States and obtains a copy of the individual's Certificate of Loss of Nationality of the United States; or

(b) Obtains a valid Form W-8BEN that establishes the account holder's foreign status, documentary evidence evidencing citizenship in a country other than the United States, and a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(iv) QI shall not treat documentation as valid for purposes of establishing an account holder's status as a foreign person if the account holder has standing instructions directing QI to pay amounts from its account to an address or an account maintained in the United States. QI may treat documentation as valid for establishing foreign status even though the account

holder has such standing instructions if the account holder provides a reasonable explanation in writing supporting the account holder's foreign status (as defined in § 1.1441-7(b)(12)) or has both a valid Form W-8 establishing foreign status and documentary evidence establishing foreign status.

### **(3) Rules for Establishing Residency Under an Income Tax Treaty.**

(i) QI shall not treat an account holder as a resident under an income tax treaty if the permanent residence address on a Form W-8 is not in the applicable treaty country or if the account holder notifies QI of a new permanent residence address that is not in the treaty country. QI may, however, rely on the Form W-8 if the account holder provides a reasonable explanation for the permanent residence address outside the treaty country or if QI has in its possession, or obtains, documentary evidence that establishes the claim of residency in a treaty country.

(ii) QI shall not treat an account holder as a resident under an income tax treaty if the permanent residence address on a Form W-8 is in the applicable treaty country but the Form W-8 contains a mailing address outside the treaty country or QI has a current mailing address for the account holder outside the applicable treaty country in its account information. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude QI from treating the account holder as a resident of an applicable treaty country if such address is in the applicable treaty country. If QI has a current mailing address for the account holder outside the applicable treaty country (whether or not contained on the Form W-8), QI may nevertheless treat the account holder as a resident of the applicable treaty country if QI—

(a) Has in its possession, or obtains, additional documentary evidence supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(b) Has in its possession, or obtains, documentary evidence that establishes that the account holder is an entity organized in a treaty country (or an entity

managed and controlled in a treaty country, if the applicable treaty so requires);

(c) Knows that the address outside the applicable treaty country (other than a P.O. Box, or in-care-of address) for an entity that is a resident of the applicable treaty country is the address of a branch of such entity; or

(d) Obtains a written statement from the account holder that reasonably establishes entitlement to treaty benefits.

(iii) QI shall not treat documentary evidence as valid for purposes of establishing residency in a treaty country if QI has a current mailing or current permanent residence address for the account holder (whether or not on the documentary evidence) that is outside of the applicable treaty country, or QI has no permanent residence address for the account holder. If QI has a current mailing or current permanent residence address for the account holder outside of the applicable treaty country, QI may nevertheless rely on the documentary evidence if QI—

(a) Has in its possession, or obtains, additional documentary evidence supporting the account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. Box, an in-care-of address, or an address of a financial institution);

(b) Has in its possession, or obtains, documentary evidence that establishes that the account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(c) Obtains a valid Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(iv) QI shall not treat documentation as valid for purposes of establishing an account holder's residence in an applicable treaty country if the account holder has standing instructions for QI to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation in writing establishing the direct account holder's residence in the applicable treaty country or a valid Form W-8 that contains a permanent residence address and a mailing address in

the applicable treaty country, or, if the account holder initially provided a Form W-8, documentary evidence establishing the account holder's residence in the applicable treaty country.

**(C) Reason to Know-Indirect Account Holders.** QI shall be considered to have reason to know that relevant information or statements contained in documentation provided by an indirect account holder is unreliable or incorrect if a reasonably prudent person in the position of a qualified intermediary would question the claims made. QI shall have reason to know that documentation provided by a nonqualified intermediary or a flow-through entity is unreliable or incorrect if the nonqualified intermediary or flow-through entity does not provide QI with, to the extent required, the names of the indirect account holders, their addresses, allocation information allocating payments to each indirect account holder, and sufficient information for QI to report payments on Forms 1042-S and 1099. In addition, QI shall have reason to believe that an indirect account holder is not entitled to a reduced rate of withholding under an income tax treaty if the nonqualified intermediary or flow-through entity has not provided sufficient information so that QI can verify that the indirect account holder has provided a U.S. TIN or foreign TIN, if required, and made the necessary statements regarding limitations on benefits provisions and deriving the income under section 894 and the regulations thereunder. See § 1.1441-7(b)(10) and section 5.03 of this Agreement.

#### **Sec. 5.11. Documentation Validity Period.**

**(A) Documentation Other than Form W-9.** QI may rely on valid documentary evidence obtained from account holders in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until QI knows, or has reason to know, that the information contained in the documentary evidence is incorrect. QI may rely on the representations described in section 5.03 of this Agreement obtained in connection with such documentation for the same period of time as the documentation. For establishing an account holder's chapter 3 sta-

tus (as defined in § 1.1441-1(c)(45)) or foreign status for chapter 61 purposes, QI may rely on a Form W-8 until its validity expires under § 1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under § 1.6049-5(c).

**(B) Form W-9.** QI may rely on a valid Form W-9 as long as it has not been informed by the IRS or another withholding agent that the form is unreliable or incorrect. If QI has primary Form 1099 reporting and backup withholding responsibility, it may rely on a Form W-9 unless one of the conditions of § 31.3406(h)-3(e)(2)(i) through (v) apply.

#### **Sec. 5.12. Maintenance and Retention of Documentation.**

**(A) Maintaining Documentation.** QI shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a scanned copy, a microfiche, or other means that allow reproduction (provided that the QI has recorded receipt of the documentation and is able to produce a hard copy). For a direct account, if QI is not required to retain copies of documentary evidence under its know-your-customer rules, QI may instead retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any) (e.g., a passport number), and whether such documentation contained any U.S. indicia. For direct accounts opened prior to January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid under the rules of section 5.10(B) of this Agreement.

**(B) Retention Period.** QI shall retain a record of the account holder's documen-

tation obtained under this section 5 for as long as the documentation is relevant to the determination of QI's tax liability or reporting responsibilities under sections 871, 881, 1461, 1474(a), and 3406.

#### **Sec. 5.13. Application of Presumption Rules.**

**(A) In General.** QI shall apply the presumption rules of section 5.13(C) of this Agreement if QI cannot reliably associate a payment with valid documentation from an account holder. The presumption rules cannot be used to grant a reduced rate of withholding. For example, the portfolio interest exception of sections 871(h) and 881(c) shall not apply to a person that is presumed to be foreign. Further, QI must apply the presumption rules when required and may not rely on its actual knowledge regarding an account holder's chapter 4 status or status as a U.S. or foreign person to apply a reduced rate of withholding. Notwithstanding the preceding sentence, QI must rely on its actual knowledge regarding an account holder rather than what is presumed under section 5.13(C) of this Agreement if, based on such knowledge, it should withhold an amount greater than the withholding rate under the presumption rules or it should report on Form 1042-S or Form 1099 an amount that would otherwise not be reported. Failure to follow the presumption rules may result in liability for underwithholding, penalties, and interest.

**(B) Reliably Associating a Payment with Documentation.** A payment can be reliably associated with documentation if it is considered reliably associated with documentation under the rules of § 1.1441-1(b)(2)(vii) and, for a withholdable payment, § 1.1471-3(c). Generally, QI can reliably associate a payment with documentation if, for that payment, it holds valid documentation, as described in this section 5, from the account holder; it can reliably determine how much of the payment relates to the valid documentation provided by such account holder; and it has no actual knowledge or reason to know, under the requirements of section 5.10 of this Agreement, that any of the information, certifications, or statements in or associated with the documentation are incorrect. Sections 5.13(B)(1) through (5) of this Agreement describe when a

payment is reliably associated with documentation if the payment is made to an account holder that is an intermediary or flow-through entity (other than a nonparticipating FFI that is not acting on behalf of exempt beneficial owners).

**(1) Reliably Associating a Payment with Documentation Provided by a Nonqualified Intermediary or Flow-Through Entity.** Generally, QI can reliably associate a payment with documentation provided by a nonqualified intermediary or flow-through entity if it can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary or flow-through entity, and it can determine the portion of the payment that relates to valid documentation associated with the Form W-8IMY for an account holder or interest holder of the nonqualified intermediary or flow-through entity that is not itself a nonqualified intermediary or flow-through entity; and the nonqualified intermediary or flow-through entity provides sufficient information for QI to report the payments on Form 1042-S, Form 1099, or Form 8966 if reporting is required.

If the payment is a withholdable payment, the Form W-8IMY must provide the nonqualified intermediary's or flow-through entity's chapter 4 status to the extent required for chapter 4 purposes. In lieu of the nonqualified intermediary or flow-through entity providing documentation for an account holder that is subject to chapter 4 withholding, QI can reliably associate a withholdable payment with valid documentation associated with the Form W-8IMY from the nonqualified intermediary or flow-through entity if it can determine the portion of the payment allocable to a chapter 4 withholding rate pool (to the extent permissible under § 1.1471-3(c)(3)(iii)(B)).

If the payment is a reportable amount, QI can reliably associate such payment with valid documentation provided by a nonqualified intermediary or a flow-through entity that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for its account holders that are U.S. persons, such nonqualified intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and also certifies on a valid Form

W-8IMY that it meets the requirements of § 1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains within the meaning of § 1.1471-5(d)(5) (*i.e.*, a direct account holder) that receives a payment included in this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders.

Notwithstanding the preceding sentences in this section 5.13(B)(1), to the extent a payment is not subject to reporting on Form 1042-S, Form 1099, or Form 8966, QI can reliably associate the payment with valid documentation if it can determine the portion of the payment that is allocable to a group of documented account holders (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required. For example, QI can treat a payment of short term OID allocable to a group of documented foreign account holders as reliably associated with valid documentation. Further, if the documentation attached to a nonqualified intermediary's or flow-through entity's Form W-8IMY is documentation from another nonqualified intermediary or flow-through entity, then QI must apply the rules of this paragraph to that other nonqualified intermediary or flow-through entity.

**(2) Reliably Associating a Payment with a Withholding Certificate Provided by Another Qualified Intermediary that Does Not Assume Primary Chapters 3 and 4 Withholding or Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with documentation provided by another qualified intermediary that does not assume either primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility if it can reliably associate the payment with a valid Form W-8IMY and, if the form is associated with a withholdable payment, it includes the qualified intermediary's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates the withholdable payment among the chapter 4 withholding rate pools (to the extent permissible under § 1.1471-3(c)(3)(iii)(B)),

and with respect to a payment of an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, that allocates such payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another qualified intermediary if the withholding statement allocates the payment to withholding rate pools attributable to U.S. non-exempt recipients and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other qualified intermediary is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate a reportable amount with valid documentation provided by another qualified intermediary that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for each U.S. non-exempt recipient account holder, the qualified intermediary allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification(s) on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(2), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(3) Reliably Associating a Payment with Documentation Provided by a Qualified Intermediary that Assumes Primary Chapters 3 and 4 Withholding Responsibility and Does Not Assume Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes primary chapters 3 and 4 withholding responsibility, but not primary Form 1099 reporting and backup withholding

responsibility, if it can associate the payment with a valid Form W-8IMY from the qualified intermediary and, if the form is associated with a withholdable payment, it includes the qualified intermediary's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment or an amount subject to chapter 3 withholding that is not a withholdable payment among a single withholding rate pool for all account holders with respect to which the qualified intermediary assumes primary chapters 3 and 4 withholding responsibility.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another qualified intermediary if the withholding statement allocates the payment to withholding rate pools attributable to each U.S. non-exempt recipient, as described in section 6.03(D), and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other qualified intermediary is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate such payment with valid documentation provided by another qualified intermediary that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for each U.S. non-exempt recipient account holder, the qualified intermediary allocates the payment made to the U.S. non-exempt recipient to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certifications on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(3), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(4) Reliably Associating a Payment With Documentation Provided by a Qualified Intermediary that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility.**

Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility, but not primary chapters 3 and 4 withholding responsibility, to the extent it can associate the payment with a valid Form W-8IMY from the qualified intermediary that, if the payment is a withholdable payment, includes the qualified intermediary's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment among chapter 4 withholding rate pools (other than a pool of U.S. payees and to the extent permissible under § 1.1471-3(c)(3)(iii)(B)) and, with respect to a payment that is an amount subject to chapter 3 withholding but is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, allocates the payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement, and identifies the portion of the payment for which QI assumes primary Form 1099 reporting and backup withholding responsibility.

**(5) Reliably Associating a Payment with Documentation Provided by a Qualified Intermediary that Assumes Both Primary Chapters 3 and 4 Withholding Responsibility and Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility if QI can associate the payment with a valid Form W-8IMY from the qualified intermediary that, if the payment is a withholdable payment, includes the qualified intermediary's chapter 4 status. Additionally, the Form W-8IMY must also designate the accounts for which the other qualified intermediary is acting as a qualified intermediary and is assuming primary chapters 3 and 4 withholding and primary Form 1099 reporting and backup withholding responsibility. If the other qualified intermediary is acting as a QDD, the

Form W-8IMY (or withholding statement) must also designate those accounts for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD. If the qualified intermediary receiving a payment assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for substitute interest payments as described in section 3.03(A), the Form W-8IMY must indicate that the qualified intermediary is assuming primary withholding responsibility for all such payments.

**(C) Presumption Rules.** With respect to a withholdable payment made to a foreign entity, if QI is an NFFE, it must follow the presumption rules of § 1.1471-3(f) when it cannot reliably associate a withholdable payment with valid documentation. If QI is an FFI, it must follow its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to determine the chapter 4 status of an account holder when it cannot reliably associate a withholdable payment with valid documentation.

With respect to a payment that is an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, the presumption rules are the rules under § 1.1441-1(b)(3) that a withholding agent must follow to determine the status of a beneficial owner (*i.e.*, as a U.S. person or foreign person and as an individual or entity (and the entity's classification)) when it cannot reliably associate a payment with valid documentation. With respect to a reportable payment (including a withholdable payment made to an entity) that is not an amount subject to chapter 3 withholding, the presumption rules are the rules of § 1.6049-5(d) that a payor must follow to determine the status of a payee (*e.g.*, as a non-exempt recipient) when it cannot reliably associate a payment with valid documentation. The presumption rules are as follows:

**(1) Certain Withholdable Payments Made with Respect to an Offshore Obligation.** A withholdable payment paid outside of the United States as defined under § 1.6049-5(e) with respect to an

offshore obligation (as defined in § 1.1471-1(b)(88)) that is made to an entity is presumed made to a nonparticipating FFI for purposes of chapter 4. A withholdable payment that is not an amount subject to chapter 3 withholding, that is paid outside the U.S. with respect to an offshore obligation, and that is treated as made to a payee that is an individual is presumed made to a U.S. person when the payee has any of the indicia of U.S. status that are described in section 5.10(B)(2) of this Agreement. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), see the rules under its FATCA requirements as a participating FFI or registered deemed-compliant FFI for classifying account holders as recalcitrant account holders. If QI is an FFI, see also section 8.06 of this Agreement for whether QI is required to report such payments on Form 1099.

**(2) Amounts Subject to Withholding under Chapter 3 that are Paid with Respect to an Offshore Obligation.** An amount that is subject to chapter 3 withholding that is not a withholdable payment is presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. If QI is an NFFE or an FFI that is not required to withhold on recalcitrant account holders pursuant to the terms of an applicable Model 1 or Model 2 IGA, an amount subject to chapter 3 withholding that is a withholdable payment and that is treated as made to a payee that is an individual is also presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. QI must treat an amount described in this section 5.13(C)(2) as subject to withholding under chapter 3 at a rate of 30 percent on the gross amount of the payment and must report the payment as made to an unknown recipient on Form 1042-S.

**(3) Payments on Certain Short-Term Obligations and Bank Deposit Interest.** An amount of U.S. source original issue discount on the redemption of a short-term obligation or U.S. source bank de-

posit interest not subject to chapter 4 withholding is presumed made to an undocumented U.S. non-exempt recipient account holder regardless of whether paid to an individual or entity. QI must report an amount described in this section 5.13(C)(3) on Form 1099. QI must backup withhold at 28 percent<sup>3</sup> and report such amounts on Form 1099 unless it provides sufficient information to another payor from which it receives such amounts to backup withhold and report the payments and QI does not know that the other payor has failed to backup withhold or report.

**(4) Foreign Source Income, Broker Proceeds, and Certain Other Amounts Made with Respect to an Offshore Obligation.** A payment of an amount that is not a withholdable payment and is not an amount subject to chapter 3 withholding (other than payments of short-term OID and bank deposit interest described in section 5.13(C) of this Agreement) that is paid outside the United States with respect to an offshore obligation and that is made to a payee that is an individual is presumed made to a U.S. non-exempt recipient when the payee has any of the indicia of U.S. status that are described in section 5.10(B) of this Agreement. If the payment is made to a payee that is an entity, QI must apply the principles of § 1.1441-1(b)(3)(ii), § 1.1441-5(d)(2), or § 1.1441-5(e)(6) (as applicable) without regard to § 1.1441-1(b)(3)(ii)(D) for purposes of this paragraph 5.13(C)(4). For a payment of gross proceeds for which QI is a broker under § 1.6045-1, similar rules apply to a payment made with respect to a sale that is effected at an office outside the United States under § 1.6045-1(g)(1)(ii). QI must report an amount described in this section 5.13(C)(3) as paid to a presumed U.S. non-exempt recipient on Form 1099 to the extent required under section 8.06 of this Agreement. Backup withholding shall not be required, however, if the exception provided in § 31.3406(g)-1(e) applies.

**(5) Other Payments.** For any payment not covered in sections 5.13(C)(1), (2), (3), or (4) of this Agreement, see the presumption rules provided in § 1.1441-1(b)(3) or § 1.6049-5(d)(2) (as applicable).

## SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT

Sec. 6.01. Qualified Intermediary Withholding Certificate. QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a qualified intermediary. The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a qualified intermediary, contains QI's QI-EIN, and provides all other information required by the form. If QI is acting as a QDD for payments with respect to potential section 871(m) transactions or underlying securities, it must certify that it is acting as a QDD and assumes primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for payments with respect to potential section 871(m) transactions that it makes as a principal, and it must provide all other information required by Form W-8IMY with respect to the certification, including its QI-EIN. If QI is acting with respect to payments of substitute interest as described in section 3.03(A) of this Agreement, it must certify that it is assuming primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all such payments, in addition to the other certifications it makes and information it provides as a qualified intermediary. If QI receives a withholdable payment, QI must certify to its chapter 4 status, provide its GIIN (if applicable), and provide the other information and certifications required on the form. QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when QI provides a Form W-8IMY that certifies that it meets the requirements of § 1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement.

<sup>3</sup>See section 3406(a) providing that the current applicable rate of backup withholding is the fourth lowest rate of tax applicable under section 1(c).

Except as otherwise provided in section 6.02 of this Agreement, QI also agrees to furnish each withholding agent to whom it provides a Form W-8IMY with the withholding statement described in section 6.02 of this Agreement. QI is not required to disclose, as part of its Form W-8IMY or its withholding statement, any information regarding the identity of a direct or indirect account holder that is a foreign person, or a U.S. exempt recipient or a holder of a U.S. account. To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility under section 3.04 of this Agreement or is not excepted from reporting under section 8.06 of this Agreement, for each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount, QI must provide to a withholding agent the Form W-9, or if any such account holder has not provided a Form W-9, the name, address, and U.S. TIN (if available).

#### **Sec. 6.02. Withholding Statement.**

**(A) In General.** QI agrees to provide to each withholding agent from which QI receives reportable amounts as a qualified intermediary a written statement (withholding statement) described in this section 6.02. A withholding statement shall not be provided to a withholding agent if QI assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all of its accounts. For example, if QI is only acting as a QDD, it does not have to provide a withholding statement. QI may act as a QDD only with respect to payments made and received as a principal with respect to potential section 871(m) transactions and underlying securities. The withholding statement forms an integral part of the Form W-8IMY. The withholding statement may be provided in any manner, and in any form, to which QI and the withholding agent mutually agree. For example, QI and the withholding agent may agree to establish a procedure to furnish withholding statement information electronically provided that the procedure meets the requirements of § 1.1441-1(e)(3)(iv). In addition, QI and the withholding agent must be capable of providing upon request a hard copy of all

withholding statements provided by QI. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406.

**(B) Content of Withholding Statement.** The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments allocable to the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must—

- (1) Designate those accounts for which QI acts as a qualified intermediary;
- (2) Designate those accounts for which QI assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility (including accounts for which QI is acting with respect to payments of U.S. source substitute interest (as described in section 3.03(A) of this Agreement));
- (3) If applicable, designate the accounts for which QI is acting as a QDD; and
- (4) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement.

#### **Sec. 6.03. Chapters 3 and 4 Withholding Rate Pools.**

**(A) In General.** QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its chapters 3 and 4 and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities.

**(B) Chapter 4 Withholding Rate Pools.** If QI receives a withholdable payment on behalf of its account holders, QI may allocate the payment to a chapter 4 withholding rate pool. A chapter 4 withholding rate pool is a payment of a single type of income (*e.g.*, interest or dividends) that is allocated to payees that are nonparticipating FFIs. If QI is a participating FFI or registered deemed-compliant FFI (other than reporting Model 1 FFI), it may also allocate a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders (if applicable). If QI is a participating FFI or registered

deemed-compliant FFI receiving a reportable amount that is excepted from reporting under section 8.06(A) of this Agreement (excluding sections 8.06(A)(2) and (A)(3) of this Agreement when the payment is subject to chapter 4 withholding and section 8.06(A)(4) of this Agreement), QI may allocate the payment to a chapter 4 withholding rate pool of U.S. payees. See section 6.03(D) of this Agreement for the alternative procedures that may be used in this case. Except as otherwise provided in this section 6.03(B), if QI receives a withholdable payment, QI must provide the information required under § 1.1471-3(c)(3)(iii)(B)(2).

Further, if QI elects under its FATCA requirements as a participating FFI or registered deemed-compliant FFI to backup withhold instead of withholding under chapter 4 with respect to certain recalcitrant account holders, QI's withholding statement must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to such account holders and must provide all other information relating to such account holders that is required under chapter 61 for the withholding agent to report with respect to the payment.

If QI has an account holder that is another intermediary (whether a qualified intermediary, a nonqualified intermediary, or a private arrangement intermediary) or a flow-through entity, QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 4 withholding rate pools described in this section 6.03(B). If QI is an NFFE that has an account holder that is another intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI, QI may provide the account holder's chapter 4 withholding rate pools of recalcitrant account holders and U.S. payees to the extent applicable.

**(C) Chapter 3 Withholding Rate Pools.** With respect to any portion of the payment that is attributable to payees for which no chapter 4 withholding is required but is an amount subject to chapter 3 withholding, a chapter 3 withholding rate pool is a payment of a single type of income that is subject to a single rate of

withholding (e.g., 0%, 10%, 15%, or 30%) and that is reported under a single chapter 4 exemption code on Form 1042-S. QI shall determine chapter 3 withholding rate pools based on valid documentation obtained under section 5 of this Agreement or, if a payment cannot be reliably associated with valid documentation, on the presumption rules of section 5.13(C) of this Agreement. If QI has an account holder that is another intermediary (whether a qualified intermediary, a nonqualified intermediary, or a private arrangement intermediary) or a flow-through entity (other than a nonparticipating FFI that is not acting on behalf of any exempt beneficial owners), QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 3 withholding rate pools with respect to the portion of the payment allocable to an account holder to which chapter 4 withholding does not apply.

**(D) U.S. Non-Exempt Recipients Subject to Backup Withholding or Form 1099 Reporting and Alternative Procedures for Allocating Payments on Withholding Statements.** To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility and is not excepted from reporting on Form 1099 under section 8.04 of this Agreement, QI's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that QI is required to report on Form 1099 and has disclosed to the withholding agent. QI may, by mutual agreement with the withholding agent, establish a single withholding rate pool (not subject to backup withholding) for all U.S. non-exempt recipient account holders for whom QI is required to report on Form 1099 and has provided Forms W-9 prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds to which backup withholding does not apply. QI must establish a separate withholding rate pool for all U.S. non-exempt recipient account holders subject to backup withholding prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds.

Alternatively, QI may include U.S. non-exempt recipients in a zero rate withholding pool that includes U.S. exempt recipients and foreign persons for which no withholding is required under chapters 3 and 4 and section 3406 and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees in this pool to the extent permitted to be provided by QI under section 6.03(B) of this Agreement. If QI chooses the alternative procedure of this paragraph, QI must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable amounts and designated broker proceeds, if applicable, are paid in order to allocate to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees (when applicable). Failure to provide such information will result in the application of penalties to QI under sections 6721 and 6722 and shall constitute an event of default under section 11.06 of this Agreement.

## **SECTION 7. TAX RETURN OBLIGATIONS**

### **Sec. 7.01. Form 1042 Filing Requirement.**

**(A) In general.** QI shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 or 4, on or before March 15 of the year following any calendar year in which QI acts as a qualified intermediary and makes a payment of an amount subject to chapter 3 or 4 withholding when acting as a qualified intermediary under this Agreement. A separate Form 1042 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Form 1042 shall be filed at the address indicated on the form, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 1042 electronically. In addition to the information specifically requested on Form 1042 and the accompanying instructions, if QI made any overwithholding or underwithholding adjustments under §§ 1.1461-2 and 1.1474-2 and sections 9.02 and 9.05 of this Agreement, QI must attach a statement setting forth the amounts of any overwithholding or under-

withholding adjustments and an explanation of the circumstances that resulted in the over- or underwithholding.

**(B) Extensions for Filing Returns.** QI may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, on or before the due date of the return.

**(C) QDD Tax Liability Requirements for QDDs.** In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD (other than a foreign branch of a U.S. financial institution) also must report on Form 1042 its QDD tax liability, including separately identifying each part of the QDD tax liability described in section 3.09(A) through (C) of this Agreement. For its section 871(m) amount, a QDD is also required to separately report the amount of dividends on underlying securities associated with potential section 871(m) amounts and dividend equivalent payments it received in its dealer capacity and the amount of dividend equivalent payments and qualifying dividend equivalent offsetting payments that it makes or is contractually obligated to make in its dealer capacity. A QDD must also report any other information required by Form 1042 with respect to its QDD tax liability (including any part thereof).

A QDD must also maintain, and make available to the IRS upon request, a reconciliation schedule that tracks across calendar years the section 871(m) amount for each dividend with respect to each underlying security associated with potential section 871(m) transactions or underlying security referenced by a potential section 871(m) transaction. The reconciliation schedule must separately state total amounts received as a QDD, as well as the dividends, dividend equivalents, and qualifying dividend equivalent offsetting payments for each dividend with respect to each underlying security associated with potential section 871(m) transactions, each dividend that is not with respect to an underlying security associated with potential section 871(m) transactions, or each dividend with respect to each underlying security referenced by a potential section

871(m) transaction received as a QDD or payments that the QDD makes or is contractually obligated to make, and any adjustments thereto, separated by payments made as a dealer and as a non-dealer. The reconciliation schedule may be maintained in any manner or format that permits the IRS to reconcile the amount reported by the QDD for the calendar year.

**Sec. 7.02. Form 945 Filing Requirement.** QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI backup withheld an amount under section 3406. Separate Forms 945 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. The form must be filed at the address specified in the instructions for Form 945, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 945 electronically.

**Sec. 7.03. Retention of Returns.** QI shall retain Forms 945 and 1042 (including, with respect to QI acting as a QDD, its reconciliation schedule) for the applicable statute of limitations on assessment under section 6501.

## SECTION 8. INFORMATION REPORTING OBLIGATIONS

**Sec. 8.01. Form 1042-S Reporting.** Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form 1042-S reporting the pools of income (reporting pools) as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapters 3 and 4 (or in the case of a participating FFI, in the manner required under the FFI Agreement) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Separate Forms 1042-S must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Each QI covered by this Agreement may, however, allow its individual branches to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of

which the branch forms a part and (to the extent required for chapter 4 purposes) the GIIN of the branch. Any Form 1042-S required by this section 8 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, Application for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by (and extent permitted on) Form 8809.

**Sec. 8.02. Recipient Specific Reporting.** QI (whether or not it assumes primary chapters 3 and 4 withholding responsibility) is required to file separate Forms 1042-S for amounts paid to each separate account holder as described in this section 8.02. QI must file separate Forms 1042-S by income code, exemption code, recipient code, chapter 3 or 4 withholding rate pool, and withholding rate.

(A) QI must file a separate Form 1042-S for each account holder that is a qualified intermediary, to the extent such payment is required to be reported under § 1.1461-1, withholding foreign partnership, or withholding foreign trust that receives from QI an amount subject to withholding under chapter 3 or 4, regardless of whether such account holder is a direct or indirect account holder of QI.

(B) QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and that receives an amount subject to chapter 4 withholding from QI that is allocable to each of such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and pool of U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect account holder of QI.

(C) QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is not described in section 8.02(B) of this Agreement (other than a nonparticipating FFI) that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of

whether such intermediary or flow-through entity is a direct or indirect account holder of QI.

(D) QI must file a separate Form 1042-S for each account holder of QI that is a PAI or a partnership or trust to which QI applies the agency option that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is allocable to such entity's chapter 3 withholding rate pools.

(E) QI must file a separate Form 1042-S for each account holder of QI that is a partnership or trust to which QI applies the joint account option that receives from QI an amount subject to chapter 3 withholding and is allocable to such entity's chapter 3 withholding rate pools.

(F) QI must file a separate Form 1042-S for each unknown recipient with respect to an account holder that is a nonqualified intermediary, flow-through entity, or qualified intermediary that does not assume primary chapters 3 and 4 withholding responsibility and that receives an amount subject to chapter 4 withholding from QI that QI must presume is allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs under the presumption rule of § 1.1471-3(f)(5).

(G) QI must file a separate Form 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is a nonparticipating FFI that is receiving a payment on behalf of an exempt beneficial owner (regardless of whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder of QI) to the extent QI can reliably associate such amounts with valid documentation from such nonqualified intermediary or flow-through entity as to the payment allocable to one or more exempt beneficial owners. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or

indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

(H) QI must file separate Forms 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is receiving an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required to the extent QI can reliably associate such amounts with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

(I) QI must file a separate Form 1042-S for each direct account holder that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under § 1.1471-3(d)(12)(iii) unless such information was reported by the withholding agent.

(J) If QI is acting as a QDD, QI must file a separate Form 1042-S for any amount subject to chapter 3 withholding with respect to a potential section 871(m) transaction made to another QDD.

### **Sec. 8.03. Reporting Pools for Form 1042-S Reporting.**

(A) Chapter 4 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement, if QI is an FFI, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 4 reporting pool is a payment of a single type of income (e.g., interest, dividends), determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of either recalcitrant account holders or payees that are nonpar-

ticipating FFIs. QI must report recalcitrant account holders in pools based upon a recalcitrant account holder's particular status described in § 1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool.

If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is both excepted from Form 1099 reporting and not subject to withholding under chapter 4.

If QI is an NFFE, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

(B) Chapter 3 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement, QI shall report an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI or to direct account holders of a PAI of QI or a partnership or trust described in section 4 of this Agreement. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code, and, if the payment is a withholdable payment, chapter 4 exemption code as determined on Form 1042-S. QI may use a single chapter 3 pool reporting code (e.g., QI- withholding rate pool-general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., QI- withholding rate pool- exempt organization) must be used. For this purpose, a foreign tax-exempt

recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government.

(C) Qualifying Dividend Equivalent Offsetting Payment Reporting Pools. In addition to the reporting required under sections 8.02 and 8.03 of this Agreement for dividend equivalents that are amounts subject to chapter 3 or 4 withholding, a QI acting as a QDD shall report on separate Forms 1042-S (as required by the form and its accompanying instructions) the amount of the qualifying dividend equivalent offsetting payments that represent (a) payments made to U.S. persons that would be dividend equivalent payments if made to foreign persons and (b) the effectively connected income (described in section 2.70(A)(2) of this Agreement). For purposes of determining when a qualifying dividend equivalent offsetting payment is made, apply the timing rule in § 1.1441-2(e)(4) (substituting "qualifying dividend equivalent offsetting payment" for "dividends" and "dividend payment date" for "payment date" in the first sentence).

A QI acting as a QDD must also provide, upon request by the IRS, the name, address, and TIN of any U.S. non-exempt recipient to whom the QI acting as a QDD makes a qualifying dividend equivalent offsetting payment described in section 2.70(A)(1) and shall require such person to waive any prohibition on disclosure of such information to the IRS. If a QI acting as a QDD does not obtain a waiver or collect and maintain such information for any U.S. non-exempt recipient described in the preceding sentence, any payment made to such person is not a qualifying dividend equivalent offsetting payment. A QI acting as a QDD shall report those payments made to U.S. non-exempt recipients that are not qualifying dividend equivalent offsetting payments in a pool on a separate Form 1042-S (as required by the form and its accompanying instructions).

### **Sec. 8.04. FATCA U.S. Account Reporting.**

(A) QI that is an FFI. If QI is an FFI, QI is required to report each U.S. account

(or, in the case of an FFI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains and for whom QI is acting consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. See QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to report each account that is a U.S. account (or U.S. reportable account) that it maintains. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI), QI must report its U.S. accounts on Form 8966, FATCA Report, in the time and manner required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI except to the extent QI is reporting under § 1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If QI is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, QI must report each U.S. reportable account on Form 8966 as required under the applicable Model 1 IGA. QI cannot delegate to its withholding agent its requirements to report U.S. accounts (or U.S. reportable accounts) under its applicable FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (regardless of whether QI does or does not assume primary Form 1099 reporting and backup withholding responsibility under section 3 of this Agreement). See section 8.06 of this Agreement for when the reporting described in this section 8.04 satisfies QI's Form 1099 reporting responsibilities with respect to reportable payments under chapter 61.

**(B) QI that is an NFFE.** If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, QI shall file Forms 8966 to report information about any substantial U.S. owners of QI. QI must report on Form 8966 to the extent required of a direct reporting NFFE in the time and manner provided in the instructions to the form. Such report must include the name, address, and U.S. TIN of each substantial U.S. owner of QI; the

total of all payments made to each substantial U.S. owner (including gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the QI during the calendar year, which includes payments in redemption or liquidation (in whole or in part) of the substantial U.S. owner's equity interest in QI); and any other information as required by the form and its accompanying instructions.

If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, QI shall file Form 8966 to report withholdable payments made to an account holder that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by QI. See § 1.1471-1(b)(8) for the definition of beneficial owner. QI must report on Form 8966 in accordance with the form and its accompanying instructions. Such report must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions. If QI is acting as a sponsoring entity on behalf of an NFFE for chapter 4 purposes, QI is not required to report as described in this paragraph if QI reports the NFFE as part of QI's requirements as a sponsoring entity. See section 1.1472-1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

**Sec. 8.05. Form 8966 Reporting for Payees that are NFFEs.** QI shall file Form 8966 to report withholdable payments made to an intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE other than an excepted NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA). QI must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person); the name, address, and U.S. TIN of each substantial U.S.

owner; the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions. QI is not required to report, however, if such information is reported pursuant to section 8.04 of this Agreement or if the intermediary or flow-through entity certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**Sec. 8.06. Form 1099 Reporting Responsibility.** QI shall file Forms 1099 and, unless filing magnetically, Form 1096, Annual Summary and Transmittal of U.S. Information Returns, for reportable payments made to persons described in this section 8.06. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 and in the manner required by regulations under chapter 61 and the instructions to the forms (including the requirements for filing the forms magnetically or electronically). Extensions of the time to file Forms 1099 may be requested by submitting Form 8809 in the manner required by the form. If QI is required to file Forms 1099, it must file the appropriate form for the type of income paid (*e.g.*, Form 1099-DIV for dividends, Form 1099-INT for interest, Form 1099-B for broker proceeds). QI must file Forms 1099 to report a reportable payment other than in the situations listed in sections 8.06(A) and (B) of this Agreement.

**(A) Reportable Amount.** QI must file a Form 1099 in accordance with the instructions to the form for the aggregate amount of a particular type of reportable amount paid to an account holder that is (or is presumed) a U.S. non-exempt recipient (whether a direct or indirect account holder). However, QI is not required to file a Form 1099 on a reportable amount if—

(1) QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and

the other conditions of § 1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of § 1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of § 1.6049-4(c)(4)(ii) are satisfied;

(4) QI has not assumed primary Form 1099 reporting and backup withholding responsibility with respect to the account holder's account and has provided a Form W-9 to a withholding agent or has provided withholding rate pool information with respect to such account holder to a withholding agent to apply backup withholding and QI does not know that the withholding agent has failed to report or backup withhold as required;

(5) With respect to an account holder of an intermediary or flow-through entity (other than a qualified intermediary) that is a direct or indirect account holder of QI, the intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides a Form W-8IMY containing a certification that the entity meets the requirements of § 1.6049-4(c)(4)(iii); or

(6) With respect to an account holder of another qualified intermediary that is a direct or indirect account holder of QI, the qualified intermediary allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification on a valid Form W-8IMY for allocating the payment to this pool.

**(B) Reportable Payments other than Reportable Amounts.** QI must file a Form 1099 for a reportable payment (other than a reportable amount) paid to each U.S. non-exempt recipient (whether a direct or indirect account holder), or to

any account holder that is presumed to be a U.S. non-exempt recipient under section 5.13(C) of this Agreement. Notwithstanding the previous sentence, QI is not required to file a Form 1099 for a reportable payment (other than a reportable amount) paid to a direct account holder that is (or is presumed) a U.S. non-exempt recipient if—

(1) QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of § 1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of § 1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of § 1.6049-4(c)(4)(ii) are satisfied; or

(4) With respect to a reportable payment that is broker proceeds paid to a U.S. non-exempt recipient, QI has applied the procedures of section 3.05(C) of this Agreement and QI does not know that the other payor has failed to report or backup withhold on the payment as required.

## **SECTION 9. ADJUSTMENTS FOR OVER- AND UNDER-WITHHOLDING; REFUNDS**

**Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does Not Assume Primary Withholding Responsibility.** QI may request that a withholding agent make an adjustment for amounts paid to QI when the withholding agent has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 9.01(A) of this Agreement or the set-off procedure described in section 9.01(B)

of this Agreement within the time period prescribed for those procedures. Nothing in this section shall be interpreted to require a withholding agent to apply the reimbursement or set off procedures under sections 9.01(A) or (B) of this Agreement. See § 1.1474-2(a)(2) for the definition of overwithholding that applies for purposes of this section 9 with respect to an amount withheld under chapter 4.

**(A) Reimbursement Procedure.** QI may request a withholding agent to repay QI for any amount overwithheld and for the withholding agent to reimburse itself under the reimbursement procedures described in §§ 1.1461-2(a)(2)(i) and 1.1474-2(a)(3) by making the request before the earlier of the due date (without regard to extensions) for the withholding agent to file Form 1042 and Form 1042-S for the calendar year of overwithholding or the date the Form 1042-S is actually filed with the IRS.

**(B) Set-off Procedure.** QI may request a withholding agent to repay QI by applying the amount overwithheld against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to QI under the set-off procedures of §§ 1.1461-2(a)(3) and 1.1474-2(a)(4). QI must make the request before the earlier of the due date (without regard to extensions) for the withholding agent to file Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS.

**Sec. 9.02. Adjustments for Overwithholding by QI Assuming Primary Withholding Responsibility.** QI may make an adjustment for amounts paid to its account holders when QI has overwithheld by applying either the reimbursement or set-off procedures described in this section 9.02 within the time period prescribed for those procedures.

**(A) Reimbursement Procedure.** QI may repay its account holders for an amount overwithheld under chapter 3 or 4 and reimburse itself by reducing, by the amount of tax actually repaid to the account holders, the amount of any subsequent deposit of tax required to be made by QI under section 3.08 of this Agreement. For purposes of this section 9.02(A), an amount that is overwithheld shall be applied in order of time (*i.e.*,

sequentially) to each of the QI's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if:

(1) The repayment occurs before the earlier of the due date (without regard to extensions) for filing Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed by QI with the IRS;

(2) QI states on a Form 1042-S (issued, if applicable, to the account holder or otherwise to a chapter 3 or 4 reporting pool), filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

(3) QI states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

**(B) Set-Off Procedure.** QI may repay its account holders by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from a payment made by QI to the account holders before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 or 4.

**Sec. 9.03. Repayment of Backup Withholding.** If QI erroneously withholds, as defined under § 31.6413(a)-3, an amount under section 3406 from an account holder, QI may refund the amount erroneously withheld as provided in § 31.6413(a)-3.

**Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.** If there has been overwithholding on

amounts subject to chapter 3 or 4 withholding paid to QI's account holders during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures as described in section 9.01 or 9.02 of this Agreement, QI may request a credit or refund of the total amount overwithheld by following the procedures of this section 9.04. QI shall follow the procedures set forth under sections 6402 and 6414, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511. If there has been an overwithholding and QI does not apply for a collective refund, it must provide a Form 1042-S for the payment that was subject to the overwithholding if requested by the account holder receiving the payment.

**(A) Payments for which a Collective Refund is Permitted.** Except as otherwise provided in this section 9.04, QI may use the collective refund procedures with respect to all amounts subject to chapters 3 and 4 withholding. With respect to amounts withheld under chapter 3 or 4, QI shall not include in its collective refund claim tax withheld on payments made to an indirect account holder or a direct account holder of QI that is a nonqualified intermediary or flow-through entity, and with respect to amounts withheld under chapter 4, if QI is a participating FFI or registered deemed-compliant FFI, QI shall not include in its collective refund claim tax withheld on payments made to any account holder described in the FFI agreement or in § 1.1471-4(h)(2).

**(B) Requirements for Collective Refund.** QI may use the collective refund procedures under this section 9.04 only if the following conditions are met:

(1) QI must not have issued Forms 1042-S to the account holders that received the payment that was subject to overwithholding;

(2) QI must submit together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and claims a credit or refund, a copy of the Form 1042-S furnished to QI by its withholding agent reporting the taxes withheld to which the claim relates (if applicable) and a statement that includes the following information and representations—

(i) The reason(s) for the overwithholding;

(ii) QI deposited the tax for which a refund is being sought under section 6302 or received a Form 1042-S from its withholding agent showing the amount of tax withheld, and neither QI nor its withholding agent has applied the reimbursement or set-off procedure of §§ 1.1461-2 and 1.1474-2 to adjust the tax withheld to which the claim relates;

(iii) QI has repaid or will repay the amount for which refund is sought to the appropriate account holders;

(iv) QI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by QI, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each account holder and also showing the repayment (if applicable) to such account holders for the amount of tax for which a refund is being sought;

(v) QI retains valid documentation that meets the requirements of chapter 3 or 4 (as applicable) to substantiate the amount of overwithholding with respect to each account holder for which the refund is being sought; and

(vi) QI has not issued and will not issue a Form 1042-S (or such other form as the IRS may prescribe) to any account holder with respect to the payments for which the refund is being sought.

**Sec. 9.05. Adjustments for Underwithholding.** If QI knows that an amount should have been withheld under chapter 3 or 4 from a previous payment made to an account holder but was not withheld, QI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property over which it has control. The additional withholding or satisfaction of the tax owed described in the previous sentence must be made before the due date (not including extensions) of the Form 1042 for the calendar year in which the underwithholding occurred. QI's responsibilities under this section 9.05 will be met if it informs a withholding agent from which it received the payment of the underwithholding and the withholding agent satisfies the underwithholding.

**Sec. 9.06. Underwithholding After Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, QI, QI's reviewer, or the IRS determines that QI has underwithheld tax for such year, QI shall file an amended Form 1042 to report and pay the underwithheld tax. QI shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing the amended Form 1042. If QI fails to file an amended return, the IRS shall make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## **SECTION 10. COMPLIANCE PROCEDURES**

### **Sec. 10.01.**

(A) In General. QI is required to adopt a compliance program under the authority of a responsible officer or, if QI adopts a consolidated compliance program, under the authority of a responsible officer of a Compliance QI (as described in section 10.02(B) of this Agreement). QI's compliance program must include policies, procedures, and processes sufficient for QI to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for a responsible officer of QI (or Compliance QI) to make the certifications required under section 10.03 of this Agreement. If QI is acting as a QDD, QI's compliance program must also include policies, procedures, and processes sufficient for it to satisfy and report its QDD tax liability and other reporting required as a condition of its status as a QDD. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, QI must provide to the IRS the factual information referenced in sections 10.04 and 10.05 of this Agreement and in Appendix I to this Agreement. QI must also satisfy the requirements of section 10.06 of this Agreement with respect to the report covering the periodic review, and must comply with the IRS review described in section 10.08 of this Agreement. With respect to QI that, prior to January 1, 2017, was a limited FFI (as defined in § 1.1471-1(b)(77) (or a limited

branch, as defined in § 1.1471-1(b)(76)), references in this section 10 (and in Appendix I to this Agreement) to QI's FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI include its requirements under § 1.1471-4(e)(4) for purposes of its initial certification period.

**(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI and, for a Direct Reporting NFFE, the Requirements of § 1.1472-1(c)(3).** As a condition for maintaining QI status, QI must comply with its FATCA requirements as applicable to its chapter 4 status (including any applicable compliance procedure) with respect to each branch of QI operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 (including in conducting the periodic review described in section 10.04 of this Agreement and in making the periodic certification described in section 10.03 of this Agreement) determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), with respect to accounts for which it acts as a qualified intermediary. See the compliance procedures, if any, applicable to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE with respect to all accounts that it maintains or all of its shareholders. If QI is a participating FFI or direct reporting NFFE, QI will be able to make the certification described in section 10.03 of this Agreement, and the certification described in the FFI Agreement, to the extent provided in future published guidance or other instructions.

**10.02. Responsible Officer.** QI must appoint an individual as a responsible officer as defined in section 2.78 of this Agreement. The responsible officer must be identified on the FATCA registration website as QI's responsible party, and such person may, but is not required to, be

the same responsible officer for purposes of compliance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). The responsible officer (or the responsible officer's designee) must establish a compliance program that meets the requirements of this section 10.02 and must make the periodic certifications to the IRS described in section 10.03 of this Agreement. The responsible officer of QI must be an officer of QI with sufficient authority to fulfill the duties of a responsible officer described in this section 10. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 10.07 of this Agreement.

**(A) Compliance Program.** The responsible officer (or the responsible officer's designee) must establish a program for QI to comply with the requirements of this Agreement that includes the following—

**(1) Written Policies and Procedures.** The responsible officer (or designee) must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for QI to satisfy the documentation, withholding, reporting, and other obligations of this Agreement, including, with respect to QI that is acting as a QDD, its QDD tax liability. Such written policies and procedures must include a process for employees of QI to raise issues to the responsible officer (or the responsible officer's designee) that concern QI's compliance with this Agreement.

**(2) Training.** The responsible officer (or designee) must communicate such policies and procedures to any line of business of QI that is responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; reporting payments and accounts as required under sections 7 and 8 of this Agreement; or entering into potential section 871(m)

transactions in the case of QI that is acting as a QDD.

**(3) Systems.** The responsible officer (or designee) must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement. For example, in order to fulfill QI's obligations to report on Forms 1042-S, 1099, and 8966 under section 8 of this Agreement, QI must establish systems for documenting account holders and for recording the information with respect to each such account that QI is required to report under that section.

**(4) Monitoring of Business Changes.** The responsible officer (or designee) must monitor business practices and arrangements that affect QI's compliance with this Agreement, including, for example, QI's acquisition of lines of businesses or accounts that give rise to documentation, withholding, or reporting obligations under this Agreement.

**(5) QDD Tax Liability Determinations.** If QI is acting as a QDD, the responsible officer must ensure that the QDD has appropriate systems in place to make the necessary determinations and calculations to identify section 871(m) transactions, potential section 871(m) transactions, underlying securities associated with potential section 871(m) transactions, the amount of dividend or dividend equivalent payments received, and the amount of dividend equivalent or qualifying dividend equivalent offsetting payments made and contractually obligated to be made by the QDD, as well as whether a transaction is as a principal or non-principal and in a dealer or non-dealer capacity. This includes appropriate systems to, where required, calculate the delta for a potential section 871(m) transaction, perform the substantial equivalence test described in § 1.871-15(h), calculate the amount of a dividend equivalent or qualifying dividend equivalent offsetting payment, determine any QDD tax liability amount (or part thereof) and its timing, and determine what payments are received, made, or contractually obligated to be made with respect to potential section 871(m) transactions, underlying securities associated with potential section 871(m) transactions, and other underlying securities as a principal and whether in its dealer capacity or non-dealer capacity.

The systems must also take into account information received pursuant to § 1.871-15(p).

**(6) Periodic Review.** Unless QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), the responsible officer (or designee) must designate a reviewer that meets the qualifications described in section 10.04(A) of this Agreement to perform the periodic review as described in section 10.05 of this Agreement, to the extent required by that section.

**(7) Certification of Internal Controls.** The responsible officer (or designee) must make the periodic certification as described in section 10.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures (as defined in section 10.03(D) of this Agreement) of QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). The responsible officer may rely on any reasonable procedure, process, or review that enables the responsible officer to make the certification described in this section 10.03.

**(B) Consolidated Compliance Program.** The IRS, in its discretion, may permit a consolidated compliance program that includes two or more QIs that are members of a group of entities under common ownership when the QIs: (i) operate under a uniform compliance program for purposes of this Agreement; (ii) share practices, procedures, and systems subject to uniform monitoring and control; and (iii) are subject to a consolidated periodic review that includes a review of internal controls and testing of transactions relevant to this Agreement with respect to each QI in the consolidated compliance program. Each QI that is a member of a consolidated compliance program must designate a Compliance QI to act on its behalf, and the responsible officer of the Compliance QI must identify itself as such when making its periodic certification and must comply with the identification, certification of internal controls, and periodic review requirements for the QI consolidated compliance

program as the IRS may prescribe. The Compliance QI must also agree to be jointly and severally liable for the obligations and liabilities of any QI in its consolidated compliance program relating to the QI's obligations under this Agreement.

**10.03. Certification of Internal Controls by Responsible Officer.** On or before July 1 of the calendar year following the certification period, QI must make the certification described in either section 10.03(A) or (B) of this Agreement. The initial certification period is the period ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods will be every three calendar years following the initial certification period (including renewals of this Agreement). The certification of internal controls required by this section 10.03 applies only to the internal controls related to QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), with respect to accounts for which it acts as a qualified intermediary, and does not relate to any other obligations or requirements. The responsible officer may rely on any reasonable procedure, process, or review that enables the responsible officer to make the certification described in this section 10.03. If the responsible officer relies on an internal or external review for this purpose, the internal or external reviewer must be independent, as described in section 10.04 of this Agreement. The responsible officer must document the procedure, process, or review relied upon in making the certification. QI (or its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe.

**(A) Certification of Effective Internal Controls.** The responsible officer must certify to the following and disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by QI to the IRS—

(1) QI has established a compliance program that meets the requirements described in section 10.02(A) or (B) (if applicable) of the QI Agreement that is in effect as of the date of the certification and during the certification period;

(2) Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a qualified intermediary, and, if QI is acting as a QDD, it maintains effective internal controls over its computation and tax obligations under the QI Agreement and the regulations under section 871(m);

(3) Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate such failures and to prevent their reoccurrence by the date of this certification;

(4) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or, with respect to QI that is acting as a QDD, any failure to pay its QDD tax liability, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return);

(5) All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI Agreement) documentation and other necessary information for inclusion in QI's periodic review or (b) provided the re-

sponsible officer of QI with a certification of effective internal controls meeting the requirements of this section 10.03(A) of the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI together with the actions taken by the PAI, partnership, or trust to remediate such failures;

(6) QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable);

(7) If QI is acting as a QDD, it has acted as a QDD for all payments with respect to potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and no other transactions or underlying securities;

(8) If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI Agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement;

(9) A periodic review was conducted for the certification period in accordance with section 10.04 of the QI Agreement, and the results of such review are reported to the extent required in sections 10.05 and 10.06 of the QI Agreement.

**(B) Qualified Certification.** If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(1) The responsible officer (or designee) has identified an event of default as defined in section 11.06 of the QI Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 10.03(D) of the QI Agreement with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option and that appropriate actions will be

taken to prevent such failures from reoccurring;

(2) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or with respect to QI that is acting as a QDD, a failure to pay its QDD tax liability, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(3) The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through QI) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

**(C) PAIs and Partnership or Trust to which QI applies the Agency Option.** Unless QI has received a waiver of the periodic review requirement, any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide its documentation and other information to QI for inclusion in QI's periodic review or conduct an independent periodic review and provide a written certification to QI as described in section 10.03 of this Agreement regarding its compliance with the requirements of the PAI or agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.07 of this Agreement (with a certified translation into English if the certification is not in English).

**(D) Material Failures.**

**(1) Material Failures Defined.** A material failure is generally a failure of QI to fulfill the requirements of this Agreement or its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). For purposes of the certifications described in section 10.03(A) and (B) of this Agreement, a material failure is limited to the following:

(i) QI's establishing of, for financial statement purposes, a tax reserve or pro-

vision for a potential future tax liability related to QI's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, or, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

(ii) QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under this Agreement, including, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), or if QI is acting as a QDD, its obligations as a QDD under this Agreement or pursuant to section 871(m) and the regulations under that section.

(iii) A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.

(iv) A finding (including a finding noted in the periodic review report described in section 10.06 of this Agreement) for one or more years covered by this Agreement that QI failed to—

(a) Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of this Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

(b) Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

(c) Provide allocation information as described in section 6.03(D) of this Agreement (regarding U.S. non-exempt

recipient account holders) by January 15 as required by that section when QI applies the alternative withholding rate pool procedures;

(d) Make deposits in the time and manner required by section 3.08 of this Agreement or make adequate deposits to satisfy its withholding obligations, or, if QI is acting as a QDD, satisfy its QDD tax liability, taking into account the procedures under section 9 of this Agreement;

(e) Report or report accurately on Forms 1099 as required under section 8.06 of this Agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

(f) Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of this Agreement, or, if QI is acting as a QDD, obtain any necessary waiver from reporting or maintain the name, address, and TIN of a significant number of U.S. non-exempt recipients to whom the QDD makes a payment that otherwise would be a qualifying dividend equivalent offsetting payment but for the limitation in section 2.70(B) of this Agreement; or

(g) Report or report accurately on Form 8966 under sections 8.04 and 8.05 of this Agreement.

**(2) Limitations on Material Failures.** A failure described in section 10.03(D)(1)(iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of one or more employees of QI to avoid the requirements of this Agreement with respect to one or more account holders of QI, or was an error attributable to a failure of QI to establish or implement internal controls sufficient for QI to meet the requirements of this Agreement. Regardless of these limitations for certification purposes, QI is required to correct a failure to withhold or deposit tax under section 3 of this Agreement, or to report under section 7 or 8 of this Agreement, or, for a QI that is acting as a QDD, to pay its QDD tax liability, by depositing the amount of tax required to have been withheld and by filing the appropriate return (or amended return).

**Sec. 10.04. Periodic Review Absent Waiver.** Unless the QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), at

the time QI provides the certification of internal controls, provided in section 10.03 of this Agreement, QI must also provide certain factual information regarding its accounts, withholdable payments, amounts subject to chapter 3 withholding, and, if QI is acting as a QDD, section 871(m) transactions, potential section 871(m) transactions, and its QDD tax liability based on the results of a periodic review. The factual information requested is included in Appendix I to this Agreement. The IRS will prescribe the manner in which the information must be reported in additional published guidance or other instructions.

**(A) Independent Reviewer.** The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of QI ("internal reviewer"), an internal reviewer that is an employee of a Compliance QI in the case of a consolidated compliance program, or a certified public accountant, attorney, or third-party consultant ("external reviewer"), or any combination thereof.

**(1) Internal Reviewer.** QI may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (e.g., the internal reviewer, in reviewing QI's documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer's reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by QI was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

**(2) Internal Reviewer of the Compliance QI.** The Compliance QI may designate an internal reviewer to perform the

consolidated periodic review (or a portion of the consolidated periodic review). See section 10.02(B) of this Agreement. The internal reviewer of the Compliance QI must meet the requirements of section 10.04(A)(1) of this Agreement with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

**(3) External Reviewer.** QI may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant). The external reviewer is not required to make an attestation or render an opinion regarding QI's compliance with this Agreement or QI's compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), but the reviewer must be able to perform the periodic review as specified in section 10.05 of this Agreement. QI must permit the external reviewer to have access to all relevant records of QI for purposes of performing the review, including information regarding specific account holders. Additionally, the engagement between the external reviewer and QI must impose no restrictions on QI's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of QI's account holders to the IRS, except as otherwise provided under QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. QI must permit the IRS to communicate directly with the external reviewer, and any legal prohibitions that

prevent the IRS from communicating directly with the reviewer must be waived.

**Sec. 10.05. Scope and Timing of Review.** The responsible officer of QI (or of the Compliance QI) must require the reviewer to test accounts related to QI's documentation, withholding, reporting, and other obligations under this Agreement, including its QDD tax liability with respect to QI that is acting as a QDD, and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3) for accounts for which it is acting as a qualified intermediary, and to identify deficiencies in meeting these obligations. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide the information necessary for QI to test accounts and transactions of such entity as part of QI's periodic review unless such entity conducts an its own periodic review and provides QI with the report documenting the results of such review as described in section 10.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) of this Agreement.

QI is required to arrange for the performance of one review for the certification period to evaluate QI's documentation, withholding, and reporting practices. If QI is acting as a QDD, this should also include a review of its determination as to whether transactions are section 871(m) transactions, its computations and determinations of dividend equivalent amounts and qualifying dividend equivalent offsetting payments, and its calculation of its QDD tax liability. The review may be conducted for any calendar year covered by the certification period. However, all results of the review must relate to one calendar year. If QI is acting as a QDD and has an initial certification period ending December 31, 2017, it must use calendar year 2017 for its review of its QDD accounts and activities for the initial certification period. QI may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of this Agreement), there

are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the QI's submits, upon request, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of this Agreement.

QI may use a sample to test accounts if there are more than 50 accounts to review. If QI has fewer than 50 accounts, it must review all accounts and cannot use a sample to test accounts. To the extent applicable, the reviewer must separately review its QI activities (when not acting in its QDD capacity), QI acting as a QDD activities, and substitute interest payments for which QI assumed primary withholding responsibility (as described in section 3.03(A) of this Agreement). The reviewer is required to record its sampling procedures and to maintain the ability to reconstruct the sample. Further, the review is not required to include statistical sampling procedures for testing transactions, but the reviewer must document its methodology for sampling determinations. A safe harbor methodology and additional information on the use of statistical sampling is provided in Appendix II to this Agreement.

If the reviewer determines that underwithholding has occurred, QI shall report and pay any amount due. QI must also notify the IRS Foreign Intermediaries Team at the address provided in section 12.06 of this Agreement of the underwithholding discovered as a result of the review. If the reviewer used a sampling method for its review, see Appendix II to this Agreement for an allowance in certain cases to use a projection method to determine the amount of underwithholding.

**(A) Documentation.** The reviewer must—

**(1)** Review QI's accounts, to ensure that QI obtained documentation that meets the requirements described in sections 5.01 through 5.09 of this Agreement;

**(2)** Review QI's accounts for which treaty benefits are claimed, to ensure that QI obtained the treaty statements and limitation on benefits information required by section 5.03(B) of this Agreement;

(3) Review information contained in account holder files to determine if the documentation validity standards of section 5.10 of this Agreement have been met. For example, the reviewer must verify that changes in account holder information (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S. or a change in chapter 4 status from participating FFI to non-participating FFI) are being conveyed to QI's withholding agents;

(4) Review the accounts for which QI is acting as a QI to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3);

(5) Review accounts held by U.S. non-exempt recipient account holders, to determine if QI obtained Forms W-9, and, if QI does not assume primary Form 1099 reporting and backup withholding responsibility, that QI transmitted those forms to a withholding agent consistent with this Agreement;

(6) For a QI that is a QDD, review accounts for which QI is acting as a QDD and that received a reportable payment or a qualified dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement) to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement; and

(7) For a QI that makes payments of U.S. source substitute interest and assumes primary chapters 3 and 4 withholding responsibility for such amounts, review accounts of persons to which QI pays U.S. source substitute interest to determine whether QI has documented the status of such persons under the requirements described in sections 5.01 through 5.09 of this Agreement.

**(B) Withholding Rate Pools.** The reviewer must—

(1) Perform checks using account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by, or the presumption rules applied to, the account

holder, the type of income earned, and the withholding rate applied;

(2) Verify, if QI is using the procedure for U.S. non-exempt recipients described in section 6.03(D) of this Agreement, that QI is providing sufficient and timely information to withholding agents that allocates reportable payments to U.S. non-exempt recipients; and

(3) With respect to a partnership or trust described in section 4.05 of this Agreement, if applicable, perform test checks, using account holder documentation for the selected partners, beneficiaries, or owners and records of each type of reportable amount paid by QI to the entity, to determine whether the highest rate of withholding applicable to each type of reportable amount was applied.

**(C) Withholding Responsibilities.** The reviewer must—

(1) To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using recalcitrant account holders and nonparticipating FFIs, to verify that QI withheld the proper amounts under chapter 4;

(2) To the extent QI has assumed primary chapters 3 and 4 withholding responsibility, perform test checks, using foreign account holders for which no withholding is required under chapter 4 based on the payees chapter 4 status, to verify that QI withheld the proper amounts under chapter 3 and properly applied the exemptions from chapter 4 withholding;

(3) To the extent QI has not assumed primary chapters 3 and 4 withholding responsibility, verify that QI has fulfilled its responsibilities under section 3.02 of this Agreement (including withholding if QI failed to provide the required information to a withholding agent to withhold on payments);

(4) To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility, perform checks using U.S. non-exempt recipient account holders to verify that QI backup withheld when required;

(5) To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using U.S. non-exempt account holders to verify that QI fulfilled its backup withholding responsibilities under

sections 3.04 through 3.06 of this Agreement;

(6) Verify that amounts withheld by QI were timely deposited in accordance with section 3.08 of this Agreement;

(7) To the extent that QI is acting as a QDD, determine that QI withheld when required on payments that it made with respect to potential section 871(m) transactions; and

(8) To the extent that QI makes payments of U.S. source substitute interest and assumes chapter 3 and 4 withholding responsibility for such amounts, determine that QI withheld when required on such payments.

**(D) Return Filing and Information Reporting.** The reviewer must—

(1) Obtain copies of original and amended Forms 1042 and 945, and any schedules, statements, or attachments required to be filed with those forms, verify that the forms have been filed, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing copies of Forms 1042-S that withholding agents have provided QI to determine whether QI properly reported the amount of taxes withheld by other withholding agents on Form 1042;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by QI for refund or credit) properly reflect the adjustments to withholding made by QI using the reimbursement or set off procedures under section 9.02 of this Agreement and are supported by sufficient documentation;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

(v) If QI is acting as a QDD, reviewing the reconciliation schedule described in section 7.01(c) of this Agreement and any information used to prepare such schedule or compute its QDD tax liability, including information received pursuant to § 1.871-15(p), reviewing the amounts required to determine its section 871(m) amounts and its QDD tax liability over the applicable period, and reviewing such information to determine whether the sec-

tion 871(m) amounts and QDD tax liability have been properly calculated;

(vi) If QI is acting as a QDD, reviewing amounts shown on Forms 1042 (including the reconciliation schedule) and Forms 1042-S, as well as any information received pursuant to § 1.871-15(p), to determine whether the QDD properly took the information into account (*e.g.*, to calculate its QDD tax liability);

(vii) In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, determine whether those forms are accurate, and—

(a) Determine the causes of any over-withholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund;

(b) Determine that QI repaid the appropriate account holders and that the amount of the claim is accurate and supported by adequate documentation; and

(c) Determine that QI did not include payments made to a partnership or trust described in section 4.05 of this Agreement.

(2) Obtain copies of original and corrected Forms 1042-S and Forms 1099 filed by QI together with the work papers used to prepare those forms, and determine whether the amounts reported on those forms are accurate by—

(i) Reconciling payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by QI as withheld on Forms 1042-S and determining the reason(s) for any variance;

(ii) Reviewing the Forms W-8IMY, and the associated withholding statements, that QI has provided withholding agents;

(iii) Reviewing account statements issued by QI to account holders;

(iv) Determining, in the case in which QI utilized the reimbursement or set-off procedure, that QI satisfied the requirements of section 9.02 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Forms 8966 of accounts for which QI is acting as a qualified interme-

diary, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing U.S. accounts (or U.S. reportable accounts for which QI acts as a qualified intermediary) to determine that such accounts were reported in accordance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, confirming that any direct or indirect shareholders that are substantial U.S. owners were reported in accordance with § 1.1472-1(c)(3);

(iii) If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, confirming that if QI is acting on behalf of a passive NFFE with substantial U.S. owners, withholdable payments made to the passive NFFE and the information regarding its substantial U.S. owners were reported;

(iv) Confirming with respect to any nonqualified intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 8.04(B) of this Agreement;

(v) Reviewing the documentation provided by a PAI or a partnership or trust to which QI applied the agency option to determine that QI reported on Form 8966 to the extent required under section 4 of this Agreement; and

(vi) Reviewing work papers used to prepare these forms.

(4) If QI is acting as a QDD, the reviewer must also review accounts designated as accounts for which QI acted as a QDD to determine whether QI is acting as a QDD with respect to all potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and not any other transactions or underlying securities and whether the section 871(m) amount includes the amounts in its dealer capacity and not amounts in its non-dealer capacity.

(E) **Significant Change in Circumstances.** The reviewer must verify that in the course of the review it has not discov-

ered any significant change in circumstances, as described in section 11.04(A), (D), (E), or (J) of this Agreement.

## Sec. 10.06 Periodic Review Report.

(A) **In General.** The results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 10.05(A) through (E), including the methodology for sampling determinations. The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by QI that is set forth in Appendix I.

In addition to the findings of section 10.05 of this Agreement, the periodic review report should also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in Appendix I) should report the results upon initial review (*i.e.*, not reflecting the results after curing) and the curing process should not delay certification of internal controls or factual information required in Appendix I to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for accounts with respect to which the reviewer determined that underwithholding had occurred, the number of accounts for which curative documentation was obtained and a revised calculation of the underwithholding or additional backup withholding.

(B) **Periodic Review Report for QDDs.** If QI is acting as a QDD, the periodic review report should also include the number of accounts that were not correctly treated as (i) principal accounts (except accounts that are effectively connected with the conduct or a trade or

business within the United States within the meaning of section 864), (ii) non-principal accounts, (iii) principal accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864, (iv) dealer accounts, and (v) non-dealer accounts. The report should also include any other issues related to the QDD tax liability (e.g., incorrect determination of whether an account is a potential section 871(m) transaction or a section 871(m) transaction, the dividend equivalent payment amount, the qualifying dividend equivalent offsetting payment amount, the amount of such payments made or contractually obligated to be made, or any other amounts subject to tax (or required to compute the tax liability) under section 871(a) and 881 (including the QDD tax liability)).

**(C) PAI Certification and Partnership or Trust to which QI Applies the Agency Option.** Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option that does not provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement, must conduct an independent periodic review in accordance with the compliance procedures described in section 10.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English).

**(D) Retention of Report and Certifications.** The report and certifications described in this section 10.06 must be retained by QI (or the Compliance QI) for as long as this Agreement is in effect.

#### **Sec. 10.07. Waiver of Periodic Review Requirement.**

**(A) In General.** A QI that is not acting as a QDD and that is an FFI that meets the requirements of section 10.07(B) may apply for a waiver of the periodic review requirement. QI must request a waiver of the periodic review requirement under this section 10.07 at the time the responsible officer makes the periodic certification of internal controls described in section

10.03 of this Agreement. QI's application for such a waiver must be approved by the IRS, and the waiver does not apply automatically. QI must apply for a waiver for each certification period for which a waiver is requested. If QI's request for a waiver of the periodic review requirement is granted, such approval is only to waive QI's obligations under sections 10.04 and 10.05 of this Agreement. The approval does not relieve QI of making the certification of internal controls described in section 10.03 of this Agreement. The approval also does not preclude the IRS from requesting information or conducting a correspondence review as described in section 10.07 of this Agreement. QI must include the information of any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option in its waiver application which is set forth in Part III of Appendix I to this Agreement.

**(B) Eligibility.** QI is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

**(1)** QI must be an FFI that is not also acting as a QDD;

**(2)** QI cannot be part of a consolidated compliance program;

**(3)** For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed \$5 million;

**(4)** QI must have timely filed its Forms 1042, 1042-S, 945, 1099, and 8966, as applicable, for all calendar years covered by the certification period, including for the year to which the periodic review would be applied;

**(5)** QI must have made all periodic certifications and reviews required by sections 10.02 and 10.03 of this Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and

**(6)** QI must have made the certification of effective internal controls in section 10.02(A).

**(C) Documentation Required with Waiver Application.** When applying for a waiver under this section 10.07, QI must include the information described in Appendix I to this Agreement using the most

recent calendar year covered by the certification period and reporting such results as of QI's initial review (not following any subsequent remediation).

**(D) Approval.** If QI's request for a waiver of the periodic review requirement is approved, the IRS will notify QI. If QI requests a waiver but such request is not approved, QI will be granted a six month extension from the date of denial of the waiver to complete the periodic review. Such extension will not be granted if QI has made the request for waiver in bad faith.

#### **Sec. 10.08. Periodic Review.**

**(A) In General.** Based upon the certifications made by the responsible officer and the disclosure of material failures, the information reported on Forms 945, 1042, 1042-S, 1099, and 8966 filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.08. The IRS may preemptively request remediation or the conduct of a limited periodic review earlier than the time period provided in section 10.03 of this Agreement if, based upon the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by QI. The IRS may also request that QI designate a replacement responsible officer if QI's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

**(B) Periodic Review Report.** The IRS may request, through written correspondence to the responsible officer of QI (or the Compliance QI), a copy of the results of QI's periodic review for any prior certification period or the periodic review report of any PAI or partnership or trust to which QI applied the agency option that QI has an agreement during the current certification period (with a certified translation into English if the report is not in English). QI is required to provide the results within 30 calendar days of such request.

**(C) Correspondence Review.** The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of QI (or the Compliance QI) in writing and request information about QI's compliance with this Agreement or the compliance of a PAI or a partnership or trust to which QI applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with employees of QI (and the Compliance QI), PAI, or a partnership or trust to which QI applied the agency option as part of the IRS's correspondence review. QI is required to respond in a reasonable time to any such requests.

**(D) Additional Review Procedures.** In limited circumstances, the IRS may direct QI (or the Compliance FFI) or any PAI, partnership, or trust described in section 4 of this Agreement with which QI has an agreement to perform additional, specified review procedures. The IRS reserves the right to require QI (or the Compliance QI) or a PAI, or a partnership or trust to which QI applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of the QI with a written plan describing the additional review procedures and will provide a due date of not more than 120 days for the QI to provide to the IRS a report covering the reviewer's findings.

## **SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT**

**Sec. 11.01. Term of Agreement.** This Agreement begins on the effective date of the QI Agreement and expires at the end of the third full calendar year the Agreement is in effect, unless terminated under section 11.02 of this Agreement. This Agreement may be renewed as provided in section 11.08 of this Agreement.

**Sec. 11.02. Termination of Agreement.** This Agreement may be terminated

by either the IRS or QI prior to the end of its term by delivery of a notice, in accordance with section 12.06 of this Agreement, of termination to the other party. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 11.04 of this Agreement, or an event of default has occurred, as defined in section 11.06 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. The IRS shall not terminate this Agreement if QI can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify QI, in accordance with section 11.06 of this Agreement, that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures the default or establishes that no event of default occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated.

The termination of the Agreement shall not affect any of QI's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years and portion of the calendar year in which termination is requested and for which this Agreement was in effect. The IRS shall revoke QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

**Sec. 11.03. Loss of QDD Status.** If QI is acting as a QDD and fails to qualify as an eligible entity during the term of this Agreement, QI shall lose its QDD status immediately upon QI failing to qualify as an eligible entity and as of that date can no longer act as a QDD. QI is required to notify its withholding agent of the date that it failed to qualify as an eligible entity and no longer was permitted to act as a QDD. QI's loss of QDD status shall not affect any of QI's QDD reporting, tax filing, withholding, depositing, or payment responsibilities for the period QI

was acting as a QDD as provided in this Agreement, including paying its QDD tax liability.

**Sec. 11.04. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

**(A)** An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity;

**(B)** A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects QI's ability to perform its obligations under this Agreement;

**(C)** A ruling of any court that affects the validity of any material provision of this Agreement;

**(D)** A material change in the know-your-customer rules and procedures set forth in any Attachment to this Agreement;

**(E)** A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement;

**(G)** If QI is an FFI, QI fails to maintain its status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(H)** If QI is an NFFE acting as a QI on behalf of its shareholders, if it fails to meet its requirements as a direct reporting NFFE under § 1.1472-1(c)(3);

**(I)** If QI is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, if it fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity; or

**(J)** If QI is acting as a QDD, QI ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status (see section 11.02).

**Sec. 11.05. Merger.** If QI merges with or is acquired by another QI and the successor QI assumes all the rights, debts, and obligations of the predecessor QI as it relates to such QI's QI agreement, the predecessor or acquired QI must notify the IRS that it intends to terminate this Agreement prior to the end of its term by delivery of a notice of termination and merger, in accordance with section 12.06

of this Agreement. A notice of termination and merger shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated and designate the successor QI to receive payments in its capacity as a QI for any accounts previously covered by predecessor QI's QI Agreement.

The successor QI must ensure that all reporting and tax filing obligations are fulfilled and any withholding is deposited, in accordance with the procedures outlined in Rev. Proc. 99-50, 1999-2 C.B. 757, when applicable, that arose in the calendar years and portion of the calendar year in which termination is requested and for which this Agreement was in effect (including for Form 1042-S filed to report withholding under chapter 4). To the extent QI is acting as a QDD, it must use the standard procedure outlined in Rev. Proc. 99-50 and cannot use the alternative procedures. See QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for the procedures, if any, for reporting on Form 8966 in the case of a merger or acquisition. The IRS shall revoke QI's QI-EIN within a reasonable time after once the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences

**Sec. 11.06. Event of Default.** For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement and the responsible officer had actual knowledge or should have known of the facts relevant to the failure to perform any material duty. An event of default includes, but is not limited to, the occurrence of any of the following:

(A) QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

(B) QI underwithholds a material amount of tax that QI is required to withhold under chapter 3 or 4 or backup withhold under section 3406 and fails to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

(C) QI makes excessive refund claims;

(D) Documentation described in section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of direct account holders;

(E) QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;

(F) If QI is an FFI, QI fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(G) If QI is an NFFE acting as a QI on behalf of its shareholders, QI fails to materially comply with its requirements as a direct reporting NFFE under § 1.1472-1(c)(3); or if QI is a sponsoring entity, QI fails to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

(H) QI fails to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any account for which QI does not act as a QI.

(I) QI fails to perform a periodic review when required or document the findings of such review in a written report;

(J) QI fails to cooperate with the IRS on its compliance review described in section 10.08 of this Agreement;

(K) QI fails to inform the IRS of any change in the know-your-customer rules described in any Attachment to this Agreement within 90 days of the change becoming effective;

(L) QI fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under this Agreement;

(M) QI fails to inform the IRS of any PAI of QI, as described in section 4 of this Agreement;

(N) QI fails to cure a material failure identified in the qualified certification described in section 10.03 of this Agreement or identified by the IRS;

(O) QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or QI's reviewer;

(P) The IRS determines that QI's reviewer is not sufficiently independent, as described in this Agreement, to ade-

quately perform its review function, and QI fails to arrange for a periodic review conducted by a reviewer approved by the IRS;

(Q) An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.04 of this Agreement;

(R) A partnership or trust to which QI applies the agency option is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.06 of this Agreement; and

(S) If QI is acting as a QDD, QI fails to timely pay a material amount of its QDD tax liability and fails to correct the underpayment and pay the appropriate tax amount.

**Sec. 11.07. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to QI a notice of default specifying each event of default. QI must respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which to cure or shall state why QI believes that no event of default occurred. If QI does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 11.02 of this Agreement. If QI provides a 60-day response, the IRS shall either accept or reject QI's statement that no default has occurred or QI's proposal to cure the event of default. If the IRS rejects QI's contention that no default has occurred or rejects QI's proposal to cure the event of default, the IRS may offer a counter-proposal to cure the event of default with which QI will be required to comply within 30 days. If QI fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 11.02 of this Agreement to QI, which QI may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 12.06 of this Agreement. If QI appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of a review, the QI may cure the default, without following the procedures of this section 11.07, if

the external reviewer's report describes the default and the actions that QI took to cure the default and the IRS determines that the cure procedures followed by QI were sufficient. If the IRS determines that QI's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 11.07 shall be followed.

**Sec. 11.08. Renewal.** If QI (including a QI that is renewing its QDD status) is an FFI, an NFFE acting on behalf of its shareholders, or an NFFE that is a sponsoring entity and intends to renew this Agreement, it must submit a registration for renewal to the IRS on the FATCA registration website in accordance with the instructions to Form 8957 or as otherwise provided in published guidance. This Agreement will be renewed only upon the agreement of both QI and the IRS. A QI that seeks to renew its QI agreement and also seeks to become a QDD must supplement the renewal request by providing a statement containing all information required by Form 14345 relating to a QDD.

A QI not described in the preceding paragraph must renew its QI agreement by submitting a request for renewal to the Foreign Intermediaries Program at the address provided in section 12.06 of this Agreement.

## SECTION 12. MISCELLANEOUS PROVISIONS

**Sec. 12.01.** QI's application to become a qualified intermediary, all Appendices and Attachments to this Agreement, and the following are hereby incorporated into and made an integral part of this Agreement:

(a) If QI is an FFI, its FATCA requirements as a participating FFI, registered

deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; or (b) If QI is an NFFE acting as a QI on behalf of its shareholders, its requirements as a direct reporting NFFE under § 1.1472-1(c)(3).

This Agreement, QI's application, and the Appendices and Attachments to this Agreement constitute the complete agreement between the parties.

**Sec. 12.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 12.03.** Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

**Sec. 12.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, QI agrees to submit to the jurisdiction of such United States court.

**Sec. 12.05.** QI's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 12.06.** Except as otherwise provided in the instructions to Form 8957, notices provided under this Agreement shall be mailed registered, first class airmail. All notices sent to the IRS must include the QI's name, QI-EIN, GIIN (if applicable), and the name of its responsible officer. Such notices shall be directed as follows:

To the IRS:

Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12th Floor NW  
New York, New York 10007-1867

To the QI:

The QI's responsible officer. Such notices shall be sent to the address indicated in the QI's registration or application (as may be amended).

**Sec. 12.07.** QI, acting in its capacity as a qualified intermediary or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

## SECTION 5. EFFECTIVE DATE

The effective date of the QI agreement contained in section 4 of this notice (as modified and superseded by any future published guidance) is January 1, 2017.

## SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Leni C. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Perkins at (202) 317-6942 (not a toll free call) or, with respect to QDDs, Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free call).

## APPENDIX I

General Instructions: QIs must provide the information and certifications described in this Appendix as applicable to their QI status and activities. The following Parts must be completed by the specified QIs:

- Part I: All QIs.
- Part II: All QIs.
- Part III: QIs eligible pursuant to section 10.07(A) and (B) of the QI Agreement to apply for a waiver of the periodic review requirement (as described in section 10.07 of the QI Agreement) and who wish to apply for such a waiver. Under section 10.071(A) and (B) of the QI Agreement, the following QIs are not eligible for a waiver: (a) QIs that are NFFEs, (b) QIs that are acting as QDDs, and (c) QIs that are part of a consolidated compliance program.
- Part IV.A: All QIs that have not applied for or have not been approved for a waiver.
- Part IV.B-F: All QIs, excluding QIs that are only acting as QDDs and have no other QI activities, that have not applied for or have not been approved for a waiver.
- Part V: All QIs that are acting as QDDs.
- Part VI: All QIs that assume primary withholding responsibility for payments of substitute interest.

A Compliance QI may complete Parts I and II for the QI members of its consolidated compliance group. However, the factual information provided in Parts IV through VI must be completed separately for each QI member in the consolidated compliance group.

### PART I. GENERAL INFORMATION

- A. Did QI assume primary chapters 3 and 4 withholding responsibility for any calendar year covered by the certification period? Y/N
- B. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any calendar year covered by the certification period? Y/N
- C. Is QI the Compliance QI for a consolidated compliance program? Y/N
  - 1. If yes, provide the names and QI-EINs of the members of the consolidated compliance group.
- D. PAIs and partnerships and trusts to which QI applied the joint account or agency option during any time within the certification period:
  - 1. The number of PAIs with whom QI has a PAI Agreement (if none enter 0).
    - a. Provide the names and addresses of those PAIs.
    - b. Each PAI has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) for the certification period, as required under section 4.01 of the QI Agreement. Y/N
    - c. Each PAI has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.01(F) of the QI Agreement) or (2) a periodic certification as described under section 10.03 of the QI Agreement and a periodic review report as described under section 10.06 of the QI Agreement for the certification period. Y/N
  - 2. The number of partnerships or trusts to which QI applies the agency option (if none enter 0).
    - a. Provide the names and addresses of those partnerships or trusts.
    - b. Each partnership or trust to which QI applies the agency option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an NFFE, or an exempt beneficial owner, or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471-5(a), as required under section 4.06(A)(2) of the QI Agreement. Y/N
    - c. Each partnership or trust to which QI applies the agency option pursuant to section 4.06 of the QI Agreement has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.06(A)(5) of the QI Agreement) or (2) a periodic certification required under section 10.03 of the QI Agreement and a periodic review report as required under section 10.06 of the QI Agreement for the certification period. Y/N
  - 3. The number of partnerships or trusts to which QI applies the joint account option (if none enter 0).
    - a. Provide the names and addresses of those partnerships or trusts.
    - b. Each partnership or trust to which QI applies the joint account option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471-5(a), as required under section 4.05(A)(1) of the QI Agreement. Y/N

**PART II: CERTIFICATION OF INTERNAL CONTROLS AND GENERAL INFORMATION** —To be Completed by All QIs.  
Complete Either A (Certification of Effective Internal Controls) or B (Qualified Certification).

*A. Certification of Effective Internal Controls*

If the responsible officer has identified: (1) an event of default or (2) a material failure that QI has not corrected as of the date of this certification (or such an event of default or material failure has otherwise been identified), QI cannot make the certification of effective internal controls under this Part A and must make the qualified certification under Part B, below.

The responsible officer certifies to the following, check each statement to confirm:

1. QI has established a compliance program that meets the requirements described in section 10.02(A) or 10.02(B) (if applicable) of the QI Agreement that is in effect as of the date of the certification and during the certification period.
2. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a qualified intermediary, and, if QI is acting as a QDD, it maintains effective internal controls over its computation and tax obligations under the QI Agreement and the regulations under section 871(m).
3. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate them and to prevent their reoccurrence by the date of this certification. See Part II.D.3.A.
4. With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or, with respect to QI that is acting as a QDD, any failure to pay its QDD tax liability, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
5. All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI Agreement) documentation and other necessary information for inclusion in the QI's periodic review or (b) provided the responsible officer of QI with a certification of effective internal controls meeting the requirements of section 10.03(A) of the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI together with the actions taken by the PAI, partnership, or trust to remediate such failures.
6. QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable).
7. If QI is acting as a QDD, it has acted as a QDD for all payments with respect to potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and no other transactions or underlying securities.
8. If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI Agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement.
9. A periodic review was conducted for the certification period in accordance with section 10.04 of the QI Agreement, and the results of such review are reported to the extent required in sections 10.05 and 10.06 of the QI Agreement.

*B. Qualified Certification*

If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of this certification, check the applicable statements to confirm:

1. The responsible officer (or designee) has identified an event of default, as defined in section 11.06 of the QI Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 10.03(D) of the QI Agreement with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option and that appropriate actions will be taken to prevent such failures from reoccurring.
2. With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or with respect to QI that is acting as a QDD, a failure to pay its QDD tax liability, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
3. The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through QI) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure

### C. Amended Form 1042

1. QI filed an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review undertaken by the responsible officer in preparation for his or her certification of internal controls. Y/N

a. If Yes, QI used a projection method in determining the amount of the additional tax liability. Y/N

Note: If QI is acting as a QDD, it may not use a projection method in determining the amount of any additional QDD tax liability.

i. If Yes, QI used the safe harbor projection method under Appendix II to the QI Agreement. Y/N

ii. If No, describe the projection method used.

### D. Material Failures or Event of Default

Check the applicable statements to confirm. If QI is a compliance QI and identifies a material failure or event of default, it should also indicate which QI in the consolidated compliance group is associated with the material failure or event of default.

1. The responsible officer has determined that as of the date of the review, there are no material failures with respect to QI's compliance with the QI Agreement.

2. The responsible officer has determined that as of the date of the review, there are one or more material failures with respect to QI's compliance with the QI Agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring.

a. The following material failures were identified:

i. QI's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with the QI Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, or, in the case of direct reporting NFFE, its requirements under Treas. Reg. § 1.1472-1(c)(3), and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

ii. QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under the QI Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, or, in the case of a direct reporting NFFE, its requirements under Treas. Reg. § 1.1472-1(c)(3), or if QI is acting as a QDD, its obligations as a QDD under the QI Agreement and pursuant to section 871(m) and the regulations under that section.

iii. A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.

iv. A finding (including a finding noted in the periodic review report described in section 10.06 of the QI Agreement) that, for one or more years covered by the QI Agreement, QI failed to:

1. Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of the QI Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

2. Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

3. Provide allocation information as described in section 6.03(D) of the QI Agreement (regarding U.S. non-exempt recipient account holders) by January 15, as required by that section when QI applies the alternative withholding rate pool procedures;

4. Make deposits in the time and manner required by section 3.08 of the QI Agreement or make adequate deposits to satisfy its withholding obligations or, if QI is acting as a QDD, satisfy its QDD tax liability, taking into account the procedures under section 9 of the QI Agreement

5. Report or report accurately on Forms 1099 as required under section 8.06 of the QI Agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

6. Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of the QI Agreement or, if QI is acting as a QDD, obtain any necessary waiver from reporting or maintain the name, address, and TIN of a significant number of U.S. non-exempt recipients to whom the QDD made a payment that otherwise would be a qualifying dividend equivalent offsetting payment but for the limitation in section 2.70(B) of the QI Agreement ; or

7. Report or report accurately on Form 8966 under sections 8.04 and 8.05 of the QI Agreement.

v. Other (include a detailed explanation).

3. The material failure identified in the review has been corrected by the time of this certification. Y/N/NA
  - a. If yes, describe the steps taken to correct the material failure.
  - b. If no, describe the proposed steps to be taken to correct the material failure and the time frame for completing such steps.
4. Did any PAI of QI inform QI that it has had a material failure with respect to its agreement with QI? Y/N/NA
  - a. If yes, provide name of PAI and, based on the information provided by PAI, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
5. Did any partnerships or trusts to which QI applies the agency and/or joint account option inform QI that it has had a material failure with respect to its obligations as described in the QI Agreement? Y/N/NA
  - a. If yes, provide name of the partnership or trust and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
6. An event of default as defined in section 11.06 of the QI Agreement has been identified. Y/N
  - a. If yes, identify the event of default:
    - i. QI failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the QI Agreement;
    - ii. QI underwithheld a material amount of tax that QI was required to withhold under chapter 3 or 4 or backup withhold under section 3406 and failed to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;
    - iii. QI made excessive refund claims;
    - iv. Documentation described in section 5 of the QI Agreement was lacking, incorrect, or unreliable for a significant number of direct account holders;
    - v. QI filed Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;
    - vi. If QI is an FFI, QI failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
    - vii. If QI is an NFFE acting as a QI on behalf of its shareholders, QI failed to materially comply with its requirements as a direct reporting NFFE under § 1.1472-1(c)(3); or if QI is a sponsoring entity, QI failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;
    - viii. QI failed to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any account for which QI does not act as a QI;
    - ix. QI failed to perform a periodic review when required or document the findings of such review in a written report;
    - x. QI failed to cooperate with the IRS on its compliance review described in section 10.08 of the QI Agreement;
    - xi. QI failed to inform the IRS of any change in the know-your-customer rules described in any Attachment to the QI Agreement within 90 days of the change becoming effective;
    - xii. QI failed to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under the QI Agreement;
    - xiii. QI failed to inform the IRS of any PAI of QI, as described in section 4 of the QI Agreement;
    - xiv. QI failed to cure a material failure identified in the qualified certification described in section 10.03 of the QI Agreement or identified by the IRS;
    - xv. QI made any fraudulent statement or a misrepresentation of material fact with regard to the QI Agreement to the IRS, a withholding agent, or QI's reviewer;
    - xvi. The IRS determined that QI's reviewer is not sufficiently independent, as described in the QI Agreement, to adequately perform its review function, and QI failed to arrange for a periodic review conducted by a reviewer approved by the IRS;
    - xvii. An intermediary with which QI has a PAI agreement was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.04 of the QI Agreement;
    - xviii. A partnership or trust to which QI applied the agency option was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.06 of the QI Agreement;
    - xix. If QI is acting as a QDD, QI failed to timely pay a material amount of its QDD tax liability and failed to correct the underpayment and pay the appropriate tax amount; or
    - xx. Other (please describe).

#### *E. Significant Change in Circumstances*

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review has not identified any significant change in circumstances, as described in section 11.04(A), (D), (E), or (J) of the QI Agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:

- a. An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity.
- b. A material change in the know-your-customer rules and procedures set forth in any attachment to the QI Agreement.
- c. A significant change in QI's business practices that affects QI's ability to meet its obligations under the QI Agreement.
- d. If QI is acting as a QDD, QI ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status.
- e. Other.

3. Describe any significant changes in circumstances identified in Question 2 (and, if 2.d is selected, include the date on which the QI ceased to qualify as an eligible entity).

#### *F. Chapter 4 Status*

Complete the applicable section and check the applicable statement to confirm.

#### Participating FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has obtained status as a participating FFI and made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one). Note: You may only check N/A if, during the certification period, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI.
  - a. Certification of Effective Internal Controls
  - b. Qualified Certification
  - c. N/A

#### Registered Deemed-Compliant FFIs

1. For the most recent certification period under the QI Agreement, QI certified as required under Treas. Reg. § 1.1471-5(f)(1)(ii)(B) or Annex II of an applicable Model 2 IGA that it has satisfied the requirements for the deemed-compliant FFI status claimed.

#### Registered Deemed-Compliant Model 1 IGA FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States (or in the case of a branch of QI, the branch operates in the jurisdiction) and has met the requirements under the IGA to be treated as a deemed-compliant FFI.

#### Direct Reporting NFFEs

1. For the most recent certification period under the QI Agreement, QI has been a direct reporting NFFE and has met the requirements of Treas. Reg. § 1.1472-1(c)(3).

### **PART III. WAIVER OF PERIODIC REVIEW**

**For Parts B.1 through 6, while the curing of inadequate documentation is permissible, the information reported in this section of the Appendix must be based on the initial review and not the results obtained after curing.**

Note: In order to be eligible for a waiver, QI must be able to confirm all of the eligibility requirements in Part A are met. For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI.

#### A. Eligibility for Waiver (check each statement to confirm)

1. QI is an FFI that is not also acting as a QDD.
2. QI is not part of a consolidated compliance program.
3. For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed \$5 million.
4. QI timely filed its Forms 1042, 1042-S, 945, 1099, and 8966 (as required for chapter 4 purposes or the reporting required under an applicable IGA), as applicable, for all calendar years covered by the certification period.
5. QI made all periodic certifications and reviews required by sections 10.02 and 10.03 of the QI Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI or registered deemed-compliant FFI.
6. QI made the certification of internal controls in Part II.A.

B. Information required (provided for the most recent calendar year within the certification period)

1. The total number of accounts
  - a. Total number of direct account holders
    - i. Foreign persons
    - ii. U.S. exempt recipients
    - iii. U.S. non-exempt recipients
    - iv. Intermediaries and flow-through entities
  - b. Total number of indirect account holders
    - i. Foreign persons
    - ii. U.S. exempt recipients
    - iii. U.S. non-exempt recipients
    - iv. Intermediaries and flow-through entities
2. The total number of account holders that received reportable payments.
3. The total number of account holders that received reportable amounts.
4. The total number of such accounts that have valid documentation.
5. The total number of accounts that have no documentation or invalid documentation.
6. The total number of Forms 1042-S filed by QI.
7. The aggregate amount of tax withheld under chapter 3 and chapter 4 (by QI or QI's withholding agent(s)).
8. The total number of Forms 1099 filed by QI.
9. The aggregate amount of backup withholding under section 3406 by QI or QI's payor(s).

**PART IV. PERIODIC REVIEW: QI FACTUAL INFORMATION—To be Completed by All QIs that have not Applied for or Obtained a Waiver. If QI acts solely as a QDD and has no other QI activities, QI is not required to complete Part IV.B through F.**

*A. General Information*

1. Did QI use an external reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide name(s) of reviewer(s).
2. Did QI use an internal reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to the QI's QI activities.
3. Calendar year reviewed for periodic review.

*Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of the QI Agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted or the QI must submit, upon request by the IRS, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of the QI Agreement.*

*B. General Information on Accounts and Review of Accounts*

***For Parts B through F, while the curing of inadequate documentation is permissible, unless otherwise indicated, the information reported shall be based on the initial review and not the results obtained after curing. For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI. However, do not include accounts for which QI is acting as a QDD or accounts receiving substitute interest payments for which QI has assumed primary withholding responsibility.***

1. Did QI assume primary chapters 3 and 4 withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
2. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
3. Total accounts reviewed for periodic review.
4. Did QI use a statistical sampling method in conducting the review of its accounts? Y/N/NA
  - a. If yes, was it the safe harbor method under Appendix II to the QI Agreement?
  - b. If no, describe the method used.
5. Total accounts reviewed that received reportable amounts.
6. Total accounts reviewed that received withholdable payments that are not reportable amounts.

### *C. Documentation*

1. Total accounts reviewed held by direct account holders.
2. Total accounts reviewed held by indirect account holders.
3. Total accounts reviewed with valid documentation.
4. Total accounts reviewed with invalid documentation or no documentation.
5. Total accounts reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after initial review.
6. Total accounts reviewed for which treaty benefits were claimed.
7. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
8. Total accounts reviewed held by U.S. non-exempt recipient account holders.
9. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.
10. If QI has not assumed primary Form 1099 reporting and backup withholding responsibility, total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has transmitted Forms W-9 to a withholding agent.
11. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools.
12. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools where QI did not correctly report withholding rate pool information to a withholding agent.
13. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable) or, in the case of an NFFE acting on behalf of its shareholders, held by substantial U.S. owners.
14. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable) for which QI has obtained a valid Form W-9 or, if applicable, self-certification.
15. If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, total accounts reviewed held by passive NFFEs with substantial U.S. owners.

### *D. Withholding*

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S.
2. Number of accounts for which amounts were withheld under chapter 3.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S.
4. Number of accounts for which amounts were withheld under chapter 4.
5. The aggregate amount reported as withheld by QI on Forms 1099.
6. Number of accounts for which amounts were backup withheld under section 3406.
7. Additional withholding required under chapter 4 based on results of periodic review.
8. Additional withholding required under chapter 3 based on results of periodic review.
9. Additional backup withholding required under section 3406 based on results of periodic review.
10. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement.
11. Number of partnerships or trusts to which the joint account treatment of section 4.05 of the QI Agreement was applied (if applicable).
  - a. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.
  - c. Total accounts to which joint account treatment applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
  - d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to an account to which the joint account treatment applied.

### *E. Reconciliation of Reporting on Payments of Reportable Amounts*

1. The aggregate amount reported paid to QI on all Forms 1042-S issued to QI.
2. The aggregate amount reported paid to QI on the Forms 1099 issued to QI (unknown recipient).
3. Total of Questions 1 and 2.
4. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a PAI or a partnership or trust to which QI applies the agency option).
5. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pool- U.S. payee pool.

6. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 3 reporting pools (including chapter 3 reporting pools of a PAI or partnership or trust to which QI applies the joint account or agency option).
7. The aggregate amount reported paid by QI on Forms 1042-S to other QIs (excluding QIs that are acting as QDDs) and WPs and WTs as a class.
8. The aggregate amount reported paid by QI on Forms 1042-S to QIs that are acting as QDDs.
9. The aggregate amount reported paid by QI on Forms 1042-S to participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are intermediaries or flow-through entities as a class and with respect to their chapter 4 reporting pools.
10. The aggregate amount reported paid by QI on Forms 1042-S to indirect account holders (not included in Question 9 above and including an account holder of an intermediary or flow through entity reported by QI as made to an unknown recipient on Form 1042-S).
11. The aggregate amount paid by QI to U.S. non-exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
12. The aggregate amount paid by QI to U.S. exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
13. Total of questions 4 through 12
14. The amount of any unreconciled variances (if Question 3 minus Question 13 is other than 0)
15. The aggregate amount paid by QI to its direct account holders (including account holders of any PAI or partner, beneficiary, or owner of a partnership or trust to which QI applies the joint account or agency option) that requested individual Form(s) 1042-S.

*F. Reconciliation of Withholding on Reportable Amounts*

1. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI.
2. The aggregate amount reported as backup withheld by another withholding agent on Forms 1099 issued to QI (unknown recipient).
3. The aggregate amount reported by QI as amounts it withheld on Forms 1042-S.
4. The aggregate amount reported by QI as amounts it backup withheld on Forms 1099.
5. If QI did not assume primary withholding responsibility and amounts are entered for questions 3 or 4, explain any underwithholding that occurred by the withholding agent.
6. If QI assumed primary withholding responsibility and amounts are entered for questions 1 or 2, explain the amount withheld by others.
7. The aggregate amount of any collective claims for refund or credit made by QI.

**Part V. Qualified Derivatives Dealers**

Complete only if QI is acting as a QDD and only for accounts for which QI is acting in its QDD capacity. See section 2.01 of the QI Agreement for the definition of "account" with respect to QI acting as a QDD. If QI is acting as a QDD and is a foreign branch of a U.S. financial institution, it is not required to complete questions in this Part relating to the QDD tax liability (Parts A.3, A.5, and D).

*A. General Information-Check to Confirm*

1. QI has established procedures to ensure that it is acting as a QDD for all payments received by QI with respect to potential section 871(m) transactions and underlying securities when acting as a principal and for all payments made by QI with respect to potential section 871(m) transactions when acting as a principal, except payments specifically excluded from QDD activities in the QI Agreement, and that it is not acting as a QDD for any other payments.
2. QI has established procedures to determine whether a payment is a dividend equivalent payment and the amount of the dividend equivalent, including taking into account information received pursuant to Treas. Reg. § 1.871-15(p), where appropriate.
3. QI has established procedures to determine its QDD tax liability, including whether a transaction is a dealer or non-dealer transaction.
4. QI has properly filed Form 1042 (including all information required to be reported by a QDD).
5. QI has satisfied its QDD tax liability.
6. Did QI use a statistical sampling method in conducting the review of its accounts for which QI acted as a QDD? Y/N/NA
  - a. If yes, was it the safe harbor method under Appendix II to the QI Agreement?
  - b. If no, describe the method used.
7. Total number of accounts for which QI acted as a QDD.
8. Total number of accounts for which QI acted as a QDD reviewed as part of the periodic review.

## *B. Documentation*

1. Total accounts reviewed with valid documentation.
2. Total accounts reviewed with invalid documentation or no documentation.
3. Total accounts reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the initial review.
4. Total accounts reviewed for which treaty benefits were claimed.
5. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
6. Total accounts reviewed held by U.S. non-exempt recipient account holders.
7. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.

## *C. Withholding*

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S for payments with respect to potential section 871(m) transactions it made when acting as a QDD.
2. Number of accounts for which amounts were withheld under chapter 3 for payments with respect to potential section 871(m) transactions it made when acting as a QDD.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S for payments with respect to potential section 871(m) transactions it made when acting as a QDD.
4. Number of accounts for which amounts were withheld under chapter 4 for payments with respect to potential section 871(m) transactions it made when acting as a QDD.
5. Aggregate amount reported as withheld on Forms 1099 for payments with respect to potential section 871(m) transactions made to U.S. persons.
6. Number of accounts for which amounts were backup withheld under section 3406 for payments with respect to potential section 871(m) transaction made to U.S. persons.
7. Additional withholding required under chapter 4 based on results of periodic review.
8. Additional withholding required under chapter 3 based on results of periodic review.
9. Additional backup withholding required based on results of periodic review.
10. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement with respect to payments made when acting as a QDD.

## *D. Reconciliation of QDD Tax Liability*

1. Total amount of dividend and dividend equivalent payments received in a dealer capacity.
2. Total amount of dividend equivalent payments made by QI acting as a QDD in its dealer capacity.
3. Total amount of qualifying dividend equivalent offsetting payments made by QI acting as a QDD in its dealer capacity.
4. Total amount of dividend equivalent payments or qualifying dividend equivalent offsetting payments made or contractually obligated to be made by QI acting as a QDD in its dealer capacity.
5. Total amount of dividend and dividend equivalent payments received by QI acting as a QDD in its non-dealer capacity.
6. Total amount of dividend equivalent payments made by QI acting as a QDD in its non-dealer capacity.
7. Total section 871(m) amount (difference between line 1 and the sum of lines 2-4).
8. Total amount of payments with respect to potential 871(m) transactions and underlying securities received as a principal.
9. Total amount of other payments received with respect to potential section 871(m) transactions and underlying securities as a principal that are not dividend or dividend equivalent payments received in a dealer capacity (difference between line 8 and line 1)

## *E. Reporting*

1. Total amount of dividend equivalent payments reported on Form 1042-S.
2. Total amount of payments that are not dividend equivalent payments reported on Form 1042-S.
3. Total amount of payments of qualifying dividend equivalent offsetting payments made to U.S. persons, as described in section 2.70(A)(1) of the QI Agreement, reported in a pool on Form 1042-S.
4. Total amount of payments of qualifying dividend equivalent offsetting payments that are effectively connected with the conduct of a trade or business in the United States, as described in section 2.70(A)(2) of the QI Agreement, reported in a pool on Form 1042-S.

5. Total amount of payments of amounts that otherwise would be qualifying dividend equivalent offsetting payments but for the limitation in section 2.70(B) of the QI Agreement.
6. Total amount of payments reported on Form 1099.
7. Aggregate amount of any claims for credit or refund made by QI acting as a QDD with respect to payments with respect to potential section 871(m) transactions.

## **Part VI. Substitute Interest**

Complete only if a qualified intermediary that has assumed primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of the QI Agreement).

### *A. General Information*

1. Total number of accounts receiving substitute interest payments.
2. Total number of accounts receiving substitute interest reviewed as part of the periodic review.
3. Did QI use a statistical sampling method in conducting the review of substitute interest transactions for which QI assume primary withholding responsibility? Y/N/NA
  - a. If yes, was it the safe harbor method under Appendix II to the QI Agreement?
  - b. If no, describe the method used.

### *B. Documentation*

1. Total accounts reviewed with valid documentation.
2. Total accounts reviewed with invalid documentation or no documentation for which documentation or additional documentation was obtained after the initial review.
3. Total accounts reviewed for which treaty benefits were claimed.
4. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
5. Total accounts reviewed held by U.S. non-exempt recipient account holders.
6. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.

### *C. Withholding*

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S with respect to substitute interest payments.
2. Number of accounts for which amounts were withheld under chapter 3 with respect to substitute interest payments.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S with respect to substitute interest payments.
4. Number of accounts for which amounts were withheld under chapter 4 with respect to substitute interest payments.
5. Additional withholding required under chapter 4 based on results of periodic review.
6. Additional withholding required under chapter 3 based on results of periodic review.
7. Aggregate amount reported as withheld on Forms 1099 on reportable payments (including reportable amounts) subject to backup withholding.
8. Additional backup withholding required based on results of periodic review.
9. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement with respect to substitute interest payments.

### *D. Reporting*

1. Total amount of interest or substitute interest payments received for which QI represented itself as assuming primary withholding responsibility.
2. Aggregate amount of substitute interest payments made.
3. Total amount of payments in Question 2 that were reported on Forms 1099.
4. Total amount of payments in Question 2 that were amounts subject to chapter 4 reporting reported on Form 1042-S.
5. Total amount of payments in Question 2 that were amounts subject to chapter 3 reporting reported on Form 1042-S.
6. Aggregate amount of any claims for credit or refund made by QI with respect to payments of substitute interest.

## APPENDIX II

Section 1. Background. As provided in section 10.05 of the QI Agreement, the reviewer is permitted to use a sampling methodology to perform the periodic review. This Appendix includes safe harbor procedures covering basic sample design parameters and methodologies, including sample size, strata allocation, and projection. QI may use another sampling technique provided it documents its parameters and methodologies for the IRS to review, as described in section 10.05 of the QI Agreement. Sampling should only be used whenever an examination of all accounts within a particular class of accounts would be prohibitive in terms of time and expense. If it is reasonable to examine all accounts in connection with a particular part of the periodic review, sampling techniques should not be used. Except as otherwise provided herein, the terms used in this Appendix are as defined in section 2 of the QI Agreement.

Generally, sampling should only be used if there are more than 50 accounts to review. To the extent applicable, the reviewer must separately review accounts for which QI acts as a qualified intermediary (excluding accounts for which QI is acting as a QDD and accounts to which QI made substitute interest payments for which QI assumed primary withholding responsibility) (“QI accounts”), accounts for which QI is acting as a QDD, and accounts receiving substitute interest payments for which QI assumed primary withholding responsibility. If PAI accounts are also included in the QI’s review (because the PAI did not perform its own compliance review), the PAI accounts should be included in the sample of QI accounts by adding additional strata, replicating the strata prescribed in section 2.C of this Appendix as applicable, that contain only PAI accounts. For purposes of the QI’s periodic review, a QI account, an account for which QI is acting as a QDD, or an account receiving substitute interest payments for which QI assumed primary withholding responsibility is referred to as a “sample unit” (and collectively as the “sample”) with respect to each review. For any of the three reviews with populations containing 50 or fewer sample units, all sample units for that population must be reviewed.

The statistical sampling methodologies used in this Appendix are not intended to be and cannot be used for any other tax purpose. A reviewer may request approval to modify the safe harbor or approval of another sampling methodology in order to select more than the three sample units or to use multistage, cluster, or other sampling methodologies including additional stratifications. To obtain IRS approval, contact the Financial Intermediaries Program in accordance with section 12.06 of the QI Agreement.

### Section 2. Safe Harbor Methodology.

#### A. Populations.

The population of the first sample must consist of QI accounts, taking into account each of the strata described in section 2.C(a) of this Appendix. If QI acts as a QDD, the population of the second sample must consist of accounts for which QI is acting as a QDD, taking into account each of the strata described in section 2.C(b) of this Appendix. If QI assumes primary withholding responsibility for substitute interest payments, the population of the third sample must consist of accounts receiving such substitute interest payments, taking into account each of the strata described in section 2.C(c) of this Appendix.

(a) Sample of QI Accounts. The reviewer selects a random sample of accounts from a portion of the population of all QI accounts. The portion of the population will consist of (1) all accounts held by U.S. persons (or account holders presumed to be U.S. persons) that received a reportable payment and (2) all accounts held by non-U.S. persons (or account holders presumed to be non-U.S. persons) that received a reportable amount. If QI is acting as a QDD, accounts for which QI is acting as a QDD are not to be considered in determining the population for this sample. If QI assumes primary withholding responsibility for substitute interest payments, accounts receiving such substitute interest payments are also not to be considered in determining the population for this sample.

(b) Sample of QDD Accounts. The reviewer selects a random sample of accounts from the population consisting of accounts for which QI is acting as a QDD.

(c) Sample of Accounts Receiving Substitute Interest Payments. The reviewer selects a random sample of accounts from the population consisting of accounts receiving substitute interest payments for which QI assumes primary withholding responsibility.

#### B. Sample Sizes.

(a) The sample sizes for each of the three samples are calculated independently. If PAI accounts have been added to the sample of QI accounts because the PAI did not perform its own periodic review, a separate sample size calculation should also be performed for the PAI accounts as if they were part of a separate sample. The sample size for each of the three samples, and for any additional PAI accounts, is the lesser of (i) the number of sample units determined using the sample formula in paragraph (c) of this section, or (ii) 25 percent of the total number of sample units in the population. However, in determining the sample size, the reviewer must adhere to the guidelines for minimum stratum sample sizes in sections 2.C and 2.D of this Appendix. This may result in a sample size greater than the maximum sample size resulting from using the formula in paragraphs (b) and (c) of this section. The minimum sample size of any sample shall not be less than 50.

(b) Sample Size Adjustments. The variable P “error rate” should be set equal to (1) 5 percent for the sample of QI accounts, resulting in a maximum sample size of 321; (2) 4 percent for the sample of QDD accounts, resulting in a maximum sample size of 259; and (3) 1.5 percent for the sample of accounts receiving substitute interest payments, resulting in a maximum sample size of 100.

(c) Sample Formula. The number of sample units to be reviewed is determined using the sample formula is as follows:

$$\text{Sample Size} = \frac{\frac{t^2 PQ}{d^2}}{1 + \frac{1}{N} \left( \frac{t^2 PQ}{d^2} - 1 \right)}$$

where t= 1.645 (confidence coefficient at 95 percent one-sided)

P= 5 percent (error rate) for the QI account sample, 4 percent for the QDD sample, and 1.5 percent for the substitute interest sample.

Q= 1-P

d = 2 percent (precision level)

N= total population

### C. Strata.

(a) Sample of QI Accounts. The reviewer must segregate all of the QI accounts into the following strata. If QI makes payments to a single account that result in the account meeting the qualifications for more than one stratum, the account should be treated as multiple accounts, with each newly redefined account consisting of the payments received for each relevant stratum. Further substratification by dollar amounts may be used in accordance with section 2.H of this Appendix.

(1) A stratum of accounts held by recalcitrant account holders and non-participating FFI account holders.

(2) A stratum of accounts not included in the previously defined stratum of nonwithholding foreign partnerships and nonwithholding foreign trusts to which the QI applied the joint account option or the agency option.

(3) A stratum of all accounts held by direct account holders that are not U.S. non-exempt recipients and are not included in any previously defined strata.

(4) A stratum of all accounts that are held by direct account holders that are U.S. non-exempt recipients that are not included in any of the previously defined strata.

(5) A stratum of all accounts held by indirect account holders not included in any previously defined strata.

(b) Sample of QDD Accounts. The reviewer must segregate all of the accounts for which QI is acting as a QDD into the following strata:

(1) A stratum of all accounts where the QDD makes or is contractually obligated to make a dividend equivalent payment to recalcitrant account holders and non-participating FFIs.

(2) A stratum of all accounts where the QDD makes or is contractually obligated to make a dividend equivalent payment to foreign recipients that are not included in the previously defined stratum.

(3) A stratum of all accounts where the QDD makes or is contractually obligated to make a payment of a qualifying dividend equivalent offsetting payment that are not included in any of the previously defined strata.

(4) A stratum of all accounts where the QDD makes reportable payments with respect to potential section 871(m) transactions that are not dividend equivalents to foreign recipients that are recalcitrant account holders and non-participating FFIs.

(5) A stratum of all accounts where the QDD makes reportable payments to foreign recipients with respect to potential section 871(m) transactions that are not dividend equivalents that are not included in any of the previously defined strata.

(6) A stratum of all accounts where the QDD makes payments to U.S. persons with respect to potential section 871(m) transactions that are not qualifying dividend equivalent offsetting payments and that are not included in any of the previously defined strata.

(7) A stratum of all accounts not included in any of the previously defined strata.

(c) Sample of Accounts Receiving Payments of Substitute Interest. The reviewer must segregate all of the accounts receiving payments of substitute interest for which QI has assumed primary withholding responsibility into the following strata:

(1) A stratum of accounts held by recalcitrant account holders and non-participating FFI account holders.

(2) A stratum of all accounts held by account holders that are not U.S. non-exempt recipients and are not included in the previously defined stratum.

(3) A stratum of all accounts held by account holders that are U.S. non-exempt recipients and are not included in any of the previously defined strata.

### D. Allocation of Sample Size to Each Stratum.

The reviewer must allocate the number of sample units for each sample, and for any PAI accounts added to the sample of QI accounts, independently of the other samples. For example, the reviewer must allocate the number of sample units in the sample

determined under section 2.B of this Appendix to each stratum described in section 2.C(a) by multiplying the number of sample units in the sample, as determined under section 2.B, by a fraction, the numerator of which is the total number of sample units in the stratum and the denominator of which is the total number of sample units in the population. The same allocation should also be made for each stratum described in sections 2.C(b) and (c) of this Appendix, respectively. The minimum allocation to each stratum is the lesser of (1) 50 sample units or (2) the total number of sample units in the stratum. If there are fewer than 50 sample units in any stratum, all sample units in that stratum must be examined, and the difference between 50 and the number of sample units in the stratum must be reallocated to the remaining strata on a pro rata basis. If there are 50 or more sample units in the stratum, but the allocation, as determined under the fraction above, is less than 50 sample units, the number of sample units to be used in the sample from that stratum is 50.

*E. Number Generator.* The reviewer must select for review sample units from each stratum identified in section 2.C for each of the (a) sample of QI accounts; (b) sample of accounts for which QI is acting as a QDD; and (c) sample of accounts receiving substitute interest payments for which QI assumes primary withholding responsibility by using a random number generator. Random numbers should be drawn separately for each sample including the use of separate seeds. Information regarding the random number generator used must be included in the records required in section 3.E of this Appendix. This information must be sufficient to allow the IRS to replicate the random numbers. This information must include the name and version of the random number generator, the seed numbers used or generated, specification of any options selected, and the computer equipment on which it was run.

*G. Selection of Accounts for Review.* For purposes of reviewing and testing accounts in accordance with section 10.05 of the QI Agreement, the reviewer must review accounts from every stratum in all three applicable samples that meet the requirements for the review, taking into account the applicable presumption rules where documentation is missing, invalid, or cannot be relied upon (and any reclassification after applying the presumption rules).

To the extent the number of sample units listed above from the sample (or in the population, if the reviewer has not used statistical sampling) in any stratum is less than 20, the reviewer must also select for review (in the order selected by the random number generator under section 2.E of this Appendix or, if the reviewer has not used statistical sampling, in the order used by the QI for its record keeping) an additional number of sample units drawn from that stratum that equal the difference between 20 and the number of sample units from the sample in that stratum.

*H. Optional Further Stratification by Dollar Amounts.* For any of the three samples, the reviewer may further stratify by dollar amounts for that sample without submitting a request for approval when the reviewer is otherwise selecting the sample in accordance with this Appendix. For the QI account sample, reportable amounts for foreign recipients and reportable payments for U.S. recipients are to be considered in the substratification. If the reviewer chooses to substratify under this section, the reviewer must comply with the following rules:

- (a) The strata consisting of sample units that have received payments of the highest dollar amounts during the audit year shall not consist of more than 25 accounts. All items in these strata shall be reviewed.
- (b) The remaining strata shall be randomly selected to contain approximately equal amounts in each substratum.
- (c) The minimum strata size shall not be less than 25 sample units.

#### *I. Determining Rate of Withholding for Partnerships and Trusts for Which the QI has Utilized Joint Account Treatment*

When reviewing documentation of partners, beneficiaries, or owners to determine the rate of withholding QI should have applied to a partnership or trust, the reviewer may limit the review to the number of partners, beneficiaries, or owners by referring to the table below.

<i>Number of partners, beneficiaries, or owners</i>	<i>Number to be reviewed</i>
0 – 10	all
11 – 14	10
15 – 19	13
20 – 24	16
25 – 29	18
30 – 34	20
35 – 39	21
40 – 49	22
50 – 74	24
75 – 99	26
100 – 199	27
200 – 499	29
500 – 4,999	31
> 4,999	32

## Section 3. Additional Requirements Regarding the Use of Sampling

### A. Reporting of Sample Plan for Samples not Utilizing the Safe Harbor.

When not utilizing the safe harbor statistical sampling plan in this Appendix, the reviewer should provide in its periodic review report a description of the sampling methodology used. If the reviewer used a statistical sampling plan other than the safe harbor statistical sampling plan described in this Appendix, the reviewer should provide the information described in Rev. Proc 2011–42 Appendix A) Sampling Plan Standards and Appendix B) Sampling Documentation Standards for Sample Execution Documentation, in addition to any information required by this Appendix.

B. *Determination of Underwithholding.* If the reviewer determines that underwithholding has occurred with respect to the sampled accounts, QI shall report and pay, in accordance with the requirements of the QI Agreement, the underwithheld tax determined under the IRS projection method described in section 3.D. The QI will also notify the IRS Financial Intermediaries Program at the address provided in section 12.06 of the QI Agreement of any underwithholding discovered as a result of the review. Alternatively, the QI can propose to the IRS another amount of underwithholding based on section 3.B of this Appendix. For this purpose, QI agrees to provide the IRS with the information (*e.g.*, number of accounts, associated amounts, stratum locations of adjusted items, etc.) required to project the underwithholding. If the IRS does not agree with the amount proposed by QI, the IRS shall assess a tax under the procedures set forth in the Code.

C. *QDD Tax Liability.* If the reviewer determines that QI acting as a QDD has not fully satisfied its QDD tax liability (as described in section 3.09 of the QI Agreement), QI must report and pay the amount owed in accordance with the requirements of the QI Agreement. A QI acting as a QDD may not use a projection method to determine the amount of underpayment of its QDD tax liability.

D. *Projection.* If the reviewer has determined that underwithholding has occurred with respect to the sample, based on the original assessment of the reviewer without regard to any remediation or curing after the selection of the sample units for review, then the reviewer will determine the total amount of underwithheld tax by utilizing a projection method, except as provided in section 3.C of this Appendix. If the reviewer is using a method other than the safe harbor statistical sampling plan described in this Appendix, QI shall contact the Financial Intermediaries Team to agree to a projection method. If the review is using the safe harbor statistical sampling plan, then the reviewer may determine the amount of underwithheld tax by projecting the underwithholding over the entire stratum of similar sampling units using the following method:

- (a) Divide the amount of underwithholding for the stratum (as originally determined by the reviewer without regard to any remediation or curing after the reviewer selected the sample units to be reviewed) by the number of sampling units in the sample;
- (b) Multiply the result in (a) by the total number of sampling units in the stratum; and
- (c) Subtract from (b) the actual amount of any cured underwithholding.
- (d) Total all amounts for (c) for all strata.

If the reviewer has determined that overwithholding has occurred with respect to the sample, the reviewer may not project the amount of overwithholding in order to claim a refund. The reviewer may offset any underwithholding against any overwithholding in the sample, provided that QI enters into a closing agreement (Form 906) that QI will not file a claim for refund for any overwithholding that the reviewer has discovered.

If after reviewing the periodic review report, the IRS determines that further action is necessary with respect to underwithholding, the IRS may request that QI have the reviewer conduct a full review of the entire sample or may determine that it is not appropriate to project an amount of underwithholding. In making such determination, the IRS will consider whether: (1) the amount is the consequence of an identified error; (2) the error was not repeated throughout the population over which it would be projected; (3) QI has corrected the error; (4) QI has established safeguards to prevent reoccurrence of the error; and (5) facts as corrected show that there was actually no underwithholding during the compliance period.

The QI may also propose an alternative projected underwithholding tax adjustment based on facts and circumstances.

E. *Reporting of Sample Results.* At a minimum, the reviewer should note the following separately for each sample by stratum in its periodic review report:

- (1) The steps taken to construct the sample population and the steps taken to ensure all accounts subject to review were included in the populations of accounts and subject to sampling under the procedures outlined in this Appendix;
- (2) Original population and sample statistics as follows:
  - (1) Total number of sample units in the population;
  - (2) Total number of sample units in the sample;
  - (3) Total reportable amounts for foreign recipients for the population;
  - (4) Total reportable payments for U.S. recipients for the population;
  - (5) Total reportable amounts for foreign recipients for the sample;
  - (6) Total reportable payments for U.S. recipients for the sample;
  - (7) Total chapter 3 withholding for the population;
  - (8) Total backup withholding for the population;

- (9) Total chapter 4 withholding for the population;
- (10) Total chapter 3 withholding for the sample;
- (11) Total backup withholding for the sample; and
- (12) Total chapter 4 withholding for the sample.

Additionally, the reviewer should note a reconciliation of amounts included in the sample population to payments and withholdings of reportable amounts as detailed in Part IV sections E (Reconciliations of Reporting on Payments of Reportable Amounts) and F (Reconciliation of Withholding on Reportable Amounts) of Appendix I to the QI Agreement.

## **2015 Section 45K(d)(2)(C) Reference Price**

### **Notice 2016-43**

#### **SECTION 1. PURPOSE**

This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year 2015. The credit period for the nonconventional source production credit under § 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit under § 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under § 613A.

#### **SECTION 2. BACKGROUND**

Section 45K(d)(2)(C) provides that the term “reference price” means, with respect to a calendar year, the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 43(a) provides that, for purposes of § 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer’s qualified enhanced oil recovery costs for such taxable year.

Section 43(b)(1) provides that the amount of enhanced oil recovery credit for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as - (A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds \$28, bears to (B) \$6. Section

43(b)(2) provides that the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

Section 45I(a) provides that, for purposes of § 38, the marginal well production credit for any taxable year is an amount equal to the product of the credit amount and the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

Section 45I(b)(1) provides that the amount of the marginal well production credit is \$3 per barrel of qualified crude oil production, and 50 cents per 1,000 cubic feet of qualified natural gas production.

Section 45I(b)(2) provides that the \$3 and 50 cents amounts under § 45I(b)(1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as - (i) the excess (if any) of the applicable reference price over \$15 (\$1.67 for qualified natural gas production), bears to (ii) \$3 (\$0.33 for qualified natural gas production). The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

Section 45I(c) provides that the term reference price means, with respect to any calendar year - (i) in the case of qualified crude oil production, the reference price determined under § 45K(d)(2)(C).

Section 613A(c)(6)(A) provides, in general, the allowance for depletion under § 611 shall be computed in accordance with § 613 with respect to - (i) so much of the taxpayer’s average daily marginal production of domestic crude oil as does not exceed the taxpayer’s depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and (ii) so much of the taxpayer’s average daily marginal production of domestic natural gas as does not

exceed the taxpayer’s depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)), and the applicable percentage shall be deemed to be specified in subsection (b) of § 613 for purposes of subsection (a) of that section.

Section 613A(c)(6)(C) provides that the term “applicable percentage” means the percentage (not greater than 25 percent) equal to the sum of - (i) 15 percent, plus (ii) 1 percentage point for each whole dollar by which \$20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins. For purposes of this paragraph, the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

#### **SECTION 3. REFERENCE PRICE**

The reference price under § 45K(d)(2)(C) for calendar year 2015 is \$44.39.

#### **SECTION 4. DRAFTING INFORMATION**

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Garcia on (202) 317-6853 (not a toll-free number).

## **2016 Section 43 Inflation Adjustment**

### **Notice 2016-44**

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the “reference price,” determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the tax-

able year begins is greater than \$28 multiplied by the inflation adjustment factor for that year.

The term “inflation adjustment factor” means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of

which is the GNP implicit price deflator for 1990.

Because the reference price for the 2015 calendar year (\$44.39) does not exceed \$28 multiplied by the inflation adjustment factor for the 2015 calendar year (\$28 multiplied by 1.6464 = \$46.01), the enhanced oil recovery credit for qualified

costs paid or incurred in 2016 is determined without regard to the phase-out for crude oil price increases.

Table 1 contains the GNP implicit price deflator used for the 2016 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2015 calendar years.

Notice 2016–44 TABLE 1  
GNP IMPLICIT PRICE DEFLATORS

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)
2009	109.764 (used for 2010)*****
2010	110.654 (used for 2011)
2011	113.347 (used for 2012)*****
2012	115.387 (used for 2013)
2013	106.710 (used for 2014)*****
2014	108.407 (used for 2015)*****
2015	109.868 (used for 2016)

\* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

\*\* Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

\*\*\* Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

\*\*\*\* Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

\*\*\*\*\* Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

\*\*\*\*\* Beginning in 2011, the 1990 GNP implicit price deflator used to compute the 2012 § 43 inflation adjustment factor is 72.260.

\*\*\*\*\* Beginning in 2013, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2014 § 43 inflation adjustment factor is 66.803.

\*\*\*\*\* Beginning in 2014, the 1990 GNP implicit price deflator used to compute the 2015 § 43 inflation adjustment factor is 66.732.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2016 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in the 1991 through 2015 calendar years.

Notice 2016-44 TABLE 2 INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS		
<i>Calendar Year</i>	<i>Inflation Adjustment Factor</i>	<i>Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent
2010	1.5203	100 percent
2011	1.5326	100 percent
2012	1.5686	100 percent
2013	1.5968	100 percent
2014	1.5974	100 percent
2015	1.6245	100 percent
2016	1.6464	0

**DRAFTING INFORMATION**

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Garcia at (202) 317-6853 (not a toll-free number).

## 2016 Marginal Production Rates

### Notice 2016-45

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2016 calendar year.

Section 613A(c)(6)(C) defines the term “applicable percentage” for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under § 45K(d)(2)(C)) for

crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2015 calendar year is \$44.39.

The following table contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2016.

<i>Notice 2016-45</i>	
<i>APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION</i>	
<i>Calendar Year</i>	<i>Applicable Percentage</i>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent
2010	15 percent
2011	15 percent
2012	15 percent
2013	15 percent
2014	15 percent
2015	15 percent
2016	15 percent

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ms. Garcia at (202) 317-6853 (not a toll-free number).

## Rev. Proc. 2016-37

### Table of Contents

PART I – OVERVIEW .....	136
SECTION 1. PURPOSE .....	136
SECTION 2. BACKGROUND .....	137
SECTION 3. SUMMARY OF SIGNIFICANT MODIFICATIONS .....	139
PART II – INDIVIDUALLY DESIGNED PLANS .....	139
SECTION 4. ELIMINATION OF FIVE-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM; OTHER MODIFICATIONS .....	139
SECTION 5. EXTENSION OF REMEDIAL AMENDMENT PERIOD FOR INDIVIDUALLY DESIGNED PLANS .....	140
SECTION 6. EXTENDED REMEDIAL AMENDMENT PERIOD TRANSITION RULE FOR INDIVIDUALLY DESIGNED PLANS .....	141
SECTION 7. TERMINATING PLANS .....	141
SECTION 8. PLAN AMENDMENT DEADLINE .....	141
SECTION 9. REQUIRED AMENDMENTS LIST .....	142
SECTION 10. OPERATIONAL COMPLIANCE LIST .....	142
SECTION 11. EXAMPLES .....	142
SECTION 12. SCOPE OF PLAN REVIEW .....	143
SECTION 13. RELIANCE ON DETERMINATION LETTERS .....	143
PART III – PRE-APPROVED PLANS .....	143
SECTION 14. SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM FOR PRE-APPROVED PLANS .....	143
SECTION 15. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD AND DEADLINES FOR THE ADOPTION OF INTERIM AND DISCRETIONARY PLAN AMENDMENTS FOR PRE-APPROVED PLANS .....	144
SECTION 16. SCHEDULES FOR THE SECOND AND THIRD SIX-YEAR REMEDIAL AMENDMENT CYCLES .....	145
SECTION 17. CUMULATIVE LISTS OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS; OPERATIONAL COMPLIANCE LIST .....	146
SECTION 18. EXTENSION OF DEADLINE FOR AN EMPLOYER TO ADOPT A NEWLY APPROVED PRE-APPROVED DEFINED CONTRIBUTION PLAN AND TO APPLY FOR A DETERMINATION LETTER (IF APPLICABLE) .....	146
SECTION 19. ELIGIBILITY FOR SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM .....	147
SECTION 20. EFFECT OF EMPLOYER AMENDMENTS ON SIX-YEAR REMEDIAL AMENDMENT CYCLE .....	148
SECTION 21. OFF-CYCLE FILING .....	149
PART IV – EFFECT ON OTHER DOCUMENTS, EFFECTIVE DATE, DRAFTING INFORMATION .....	150
SECTION 22. EFFECT ON OTHER DOCUMENTS .....	150
SECTION 23. EFFECTIVE DATE .....	150

### PART I – OVERVIEW

#### SECTION 1. PURPOSE

.01 This revenue procedure modifies the Internal Revenue Service (IRS) determination letter program for qualified plans to eliminate, as of January 1, 2017, the five-year remedial amendment cycle system for individually designed plans, currently set forth in Rev. Proc. 2007-44, 2007-2 C.B. 54. Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application only for initial plan qualification, for qualification upon plan termination, and in certain other

circumstances, as described in section 4.03(3) of this revenue procedure.

.02 This revenue procedure provides an extended remedial amendment period under § 401(b) of the Internal Revenue Code (Code) for individually designed plans.

.03 This revenue procedure describes and makes clarifying changes to the six-year remedial amendment cycle system for pre-approved qualified plans and modifies the six-year remedial amendment cycle system, as applicable, to reflect changes that have been made to the determination letter program for individually designed plans. In addition, this revenue procedure delays until August 1, 2017, the beginning of the 12-month submission pe-

riod for master and prototype (M&P) plan sponsors and volume submitter (VS) practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle.

.04 The extended remedial amendment period for individually designed plans and the six-year remedial amendment cycle system for pre-approved plans are established pursuant to the authority under § 401(b) and its underlying regulations to extend the remedial amendment period and pursuant to the authority under § 7805(b) to establish the effective date of any rule or regulation.

.05 This revenue procedure is effective January 1, 2017. This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2007-44, modifies sections 2.07 and 24.03 of Rev. Proc. 2015-36, 2015-27 I.R.B. 20, and modifies sections I and III of Notice 2015-84, 2015-52 I.R.B. 880.

## SECTION 2. BACKGROUND

.01 Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

.02 Section 7805(b)(1) provides that, except as otherwise provided, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates: (i) the date on which such regulation is filed with the Federal Register; (ii) in the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register; or (iii) the date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

.03 Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

.04 Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of § 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment

period. Under § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. Under § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements, or (ii) is integral to a qualification requirement of the Code that has been changed. For this purpose, § 1.401(b)-1(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date the change in those requirements became effective with respect to the plan. Under § 1.401(b)-1(c)(3), the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions described in § 1.401(b)-1(b)(3).

.05 For a disqualifying provision of a new plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the date the plan is put into effect and, in the case of a plan maintained by one employer, ends on the later of (i) the due date (including extensions) for filing the employer's tax return for the taxable year in which the plan is put into effect; or (ii) the last day of the plan year in which the plan is put into effect. In the case of a new plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year that includes the date the plan is put into effect.

.06 For a disqualifying provision that is an amendment to an existing plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the earlier of the date the plan amendment is adopted or put into effect and, in the case of a plan maintained by one employer, ends on the later of (i) the due date (including extensions) for filing the employer's tax return for the taxable year in which the amendment is adopted or effective

(whichever is later); or (ii) the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

.07 For a disqualifying provision described in § 1.401(b)-1(b)(3), the remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of: (i) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins; or (ii) the last day of the plan year that includes the date on which the remedial amendment period begins. In the case of a plan maintained by more than one employer the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

.08 Section 1.401(b)-1(f) provides that the Commissioner has discretion to extend the remedial amendment period.

.09 Rev. Proc. 2007-44 sets forth rules and procedures for a system of cyclical remedial amendment periods under § 401(b) for individually designed plans and for a system of cyclical remedial amendment periods under § 401(b) for pre-approved qualified plans, including the following:

(1) Section 4.01 provides that the IRS intends to publish annually Cumulative Lists of Changes in Plan Qualification Requirements (Cumulative Lists). The Cumulative Lists are intended to identify, on a year-by-year basis, all changes in qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin, that are required to be

taken into account in the written plan document that is submitted to the IRS for an opinion, advisory, or determination letter, as applicable.

(2) Section 5.04 provides that when there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment generally will be required.

(3) Section 9 generally provides that an individually designed plan's five-year remedial amendment cycle (Cycle A, B, C, D, or E) is determined by reference to the last digit of the employer identification number (EIN) of the employer that sponsors the plan. However, Section 10.06 provides that, if more than one plan is maintained by members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the employers may elect that the five-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans under § 414(f), multiple employer plans, governmental plans under § 414(d), or certain jointly trustee single employer collectively bargained plans) will be Cycle A. In general, the Cycle A election must be made jointly by all members of the controlled group or affiliated service group. However, in the case of a parent-subsidiary controlled group, this election may be made on behalf of all of the members by the parent.

(4) Section 10.08(1) provides that, in the case of a Cycle A election under section 10.06 that does not involve a parent-subsidiary controlled group, if a new member joins the controlled group, that member must make an election no later than one year from the date the new member joins the controlled group in order for other members to maintain the existing election.

(5) Section 13.02 provides that determination letters issued for individually designed plans will include a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received, and will include a specific "expiration date."

.10 Notice 2010-90, 2010-52 I.R.B. 909, included the 2010 Cumulative List of

Changes in Plan Qualification Requirements, which contains qualification requirements for pre-approved defined contribution plans to be used for the second submission period under the six-year remedial amendment cycle and for certain single employer individually designed plans.

.11 Announcement 2012-3, 2012-4 I.R.B. 335, extended to April 2, 2012, the deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined contribution plans for the plans' second six-year remedial amendment cycle.

.12 In Announcement 2014-16, 2014-17 I.R.B. 983, the IRS announced it would issue opinion and advisory letters for pre-approved defined contribution plans that were restated for changes in plan qualification requirements listed in the 2010 Cumulative List and that were filed with the IRS during the plans' second submission period under the remedial amendment cycle under Rev. Proc. 2007-44. The announcement provided that employers using these pre-approved plan documents to restate a plan for the plan qualification requirements on the 2010 Cumulative List would be required to adopt the plan document by April 30, 2016, and that the IRS would accept applications for individual determination letters from employers under the second six-year remedial amendment cycle for pre-approved defined contribution plans starting May 1, 2014, and ending April 30, 2016.

.13 Announcement 2014-41, 2014-52 I.R.B. 979, extended to June 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle, as previously extended in Announcement 2014-4, 2014-7 I.R.B. 523.

.14 Rev. Proc. 2015-36 provided rules for issuing opinion and advisory letters for pre-approved plans. This revenue procedure also extended to October 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle.

.15 Announcement 2015-19, 2015-32 I.R.B. 157, announced the elimination of

the five-year remedial amendment cycle system for individually designed plans and provided that the scope of the determination letter program for individually designed plans would be limited to determination letter applications for initial plan qualification, for qualification upon termination, and in certain other circumstances. This announcement also provided a transition rule with respect to the remedial amendment period for certain plans currently operating under the five-year remedial amendment cycle system, and announced that the IRS, as of July 21, 2015, would cease accepting off-cycle determination letter applications (as defined in section 14 of Rev. Proc. 2007-44), except with respect to new and terminating plans.

.16 Notice 2015-84 included the 2015 Cumulative List of Changes in Plan Qualification Requirements, which contains qualification requirements for single employer individually designed defined contribution plans and defined benefit plans, to be used primarily by plan sponsors of such plans that fall in Cycle A.

.17 Rev. Proc. 2016-6, 2016-1 I.R.B. 200, set forth the annual update of procedures for issuing determination letters on the qualified status of plans. Rev. Proc. 2016-6 provided that, effective as of January 4, 2016, determination letters issued to sponsors of individually designed plans would no longer contain an expiration date.

.18 Notice 2016-03, 2016-3 I.R.B. 278, announced that guidance will be issued to provide that: (i) controlled groups and affiliated service groups that have previously made a Cycle A election are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017; (ii) expiration dates on determination letters issued prior to January 4, 2016, are no longer operative; and (iii) the period during which certain employers may, on or after January 1, 2016, establish or adopt a pre-approved defined contribution plan and, if permissible, apply for a determination letter, is extended from April 30, 2016, to April 30, 2017.

### **SECTION 3. SUMMARY OF SIGNIFICANT MODIFICATIONS**

.01 Consistent with Announcement 2015–19, this revenue procedure eliminates, as of January 1, 2017, the staggered five-year remedial amendment cycle system for individually designed plans, currently set forth in Rev. Proc. 2007–44. This revenue procedure also provides new rules, as described in paragraphs (1) through (5) of this section 3.01, for individually designed plans. A sponsor of an individually designed plan will be permitted to submit a determination letter application for initial plan qualification, for qualification upon termination, and in other circumstances. See section 4.03 of this revenue procedure.

(1) Effective January 1, 2017, the interim amendment requirement set forth in section 5.04 of Rev. Proc. 2007–44 will no longer apply to individually designed plans. See section 4.02 of this revenue procedure.

(2) With respect to individually designed plans, for disqualifying provisions that arise as a result of a change in qualification requirements, the Department of the Treasury (Treasury) and the IRS intend to publish annually a Required Amendments List, which will establish the deadline for a plan to be amended to comply with requirements described in section 5.03 of this revenue procedure that are identified on the list. The deadline (that is, the end of the remedial amendment period for a change to a qualification requirement included on a particular Required Amendments List) will be, unless otherwise provided, the end of the second calendar year following the year in which the list is issued. In general, a change to the qualification requirements will not appear on a Required Amendments List until guidance with respect to such change (including model amendments, if any) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. The first Required Amendments List generally will apply to changes in qualification requirements first effective during the 2016 calendar year. See sections 4, 5, and 9 of this revenue procedure.

(3) This revenue procedure extends the remedial amendment period for individu-

ally designed plans to correct disqualifying provisions (i) that are in new plans, (ii) that arise as a result of amendments made to existing plans, and (iii) that arise as a result of a change in qualification requirements. See section 5 of this revenue procedure.

(4) For individually designed plans, a transition rule extends the remedial amendment period for certain disqualifying provisions to December 31, 2017. See section 6 of this revenue procedure.

(5) The scope of review of an individually designed plan submitted for a determination letter is described in section 12 of this revenue procedure.

(6) The effect of subsequent changes in law and plan amendments on the reliance by the sponsor of an individually designed plan on a prior determination letter is described in section 13 of this revenue procedure.

.02 A description of, and clarifying changes to, the six-year remedial amendment cycle system for pre-approved plans, and modifications of the six-year remedial amendment cycle system to reflect changes that have been made to the determination letter program for individually designed plans, are provided in Part III of this revenue procedure. In addition, the time to adopt a newly approved pre-approved defined contribution plan and to file for a determination letter for certain adopters of pre-approved defined contribution plans for the second six-year remedial amendment cycle is extended to April 30, 2017.

.03 The beginning of the 12-month submission period for M&P sponsors and VS practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle is delayed until August 1, 2017. See section 16 of this revenue procedure.

.04 To assist sponsors in achieving operational compliance with the Code's qualification requirements, the IRS intends to provide annually an Operational Compliance List that identifies changes in qualification requirements that are effective during a calendar year. See sections 10 and 17.05 of this revenue procedure.

### **PART II – INDIVIDUALLY DESIGNED PLANS**

#### **SECTION 4. ELIMINATION OF FIVE-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM; OTHER MODIFICATIONS**

.01 Effective January 1, 2017, the staggered five-year remedial amendment cycle system for individually designed plans is eliminated. As of that date, the IRS will no longer accept determination letter applications based on the five-year remedial amendment cycle system. However, sponsors of Cycle A plans (that is, generally, plan sponsors with employer identification numbers ending in 1 or 6) will continue to be permitted to submit determination letter applications during the period beginning February 1, 2016, and ending January 31, 2017. For this purpose, controlled groups and affiliated service groups that maintain more than one plan are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017, provided that a prior Cycle A election with respect to the controlled group or affiliated service group had been made by January 31, 2012 (the last day of the previous Cycle A submission period) and any new member of the controlled group or affiliated service group made a timely election to join the group in accordance with section 10.08(1) of Rev. Proc. 2007–44, if applicable. See section 10.06 of Rev. Proc. 2007–44.

.02 Effective January 1, 2017, plan sponsors of individually designed plans will no longer be required to adopt interim amendments, as required by section 5.04 of Rev. Proc. 2007–44. This change applies with respect to interim amendments that would have had an adoption deadline on or after January 1, 2017, had the interim amendment requirement remained in effect. The interim amendment requirement continues to apply to individually designed plans with respect to interim amendments with an adoption deadline prior to January 1, 2017.

.03 Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application for initial plan qualification, for qualification upon termination,

and in other circumstances, as described in section 4.03(1), (2), and (3) of this revenue procedure.

(1) *Initial plan qualification.* An employer may submit a plan for initial plan qualification on a Form 5300 (*Application for Determination for Employee Benefit Plan*) as long as a favorable determination letter has never been issued with respect to the plan. Thus, for example, an employer that maintains a plan for which a determination letter has been issued as a result of filing a Form 5300 or Form 5307 (*Application for Determination for Adopters of Modified Volume Submitter Plans*) is not eligible to submit that plan for a determination letter for initial qualification.

(2) *Qualification upon plan termination.* An application is filed in connection with plan termination only if it is filed no later than the later of (i) one year from the effective date of the termination, or (ii) one year from the date on which the action terminating the plan is taken. However, in no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the plan termination.

(3) *Other circumstances.* Consideration will be given annually to whether determination letter applications will be accepted for individually designed plans in specified circumstances other than for initial qualification and qualification upon plan termination. Circumstances that will be considered when evaluating whether to accept determination letter applications for certain amended plans or types of amendments in plans in certain future years, include, for example, significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved (that is, M&P and VS) plan documents. In addition, the IRS's current case load and resources available to process determination letter applications will be significant factors in deciding if and when to consider certain amended plans or types of amendments in plans under the determination letter program. Additional situations in which plan sponsors will be permitted to request determination letters will be an-

nounced in guidance published in the Internal Revenue Bulletin. Treasury and the IRS intend to request, on a periodic basis, comments on the additional situations in which the submission of a determination letter application may be appropriate. Based on an analysis of the factors listed in this section 4.03(3), including the IRS's current resources and case load, the only determination letter applications for individually designed plans that will be accepted during calendar year 2017 (other than for Cycle A plans as described in section 4.01) are applications for initial plan qualification and qualification upon plan termination.

## **SECTION 5. EXTENSION OF REMEDIAL AMENDMENT PERIOD FOR INDIVIDUALLY DESIGNED PLANS**

.01 The provisions of this section 5 apply to disqualifying provisions (as defined in section 5.02 and 5.03 of this revenue procedure) that are first effective on or after January 1, 2016.

.02 Pursuant to § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. In addition, pursuant to § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision that has been designated by the Commissioner, in section 5.03 of this revenue procedure or subsequent guidance published in the Internal Revenue Bulletin, as a disqualifying provision by reason of a change in those requirements.

.03 Pursuant to § 1.401(b)-1(b)(3), the IRS designates a plan provision as a disqualifying provision if it:

(1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001;<sup>1</sup> or

(2) is integral to such disqualifying provision.

.04 A change in qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. In addition, a disqualifying provision, as described in section 5.03 of this revenue procedure, includes the absence from a plan of a provision required by (or, if applicable, integral to) the change in the qualification requirements of the Code.

.05 Except as otherwise provided by statute, or regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period that would otherwise apply under § 1.401(b)-1 for the disqualifying provisions described in this section 5.05 is extended as follows for plans that are not governmental plans within the meaning of § 414(d):

(1) *New plan.* The remedial amendment period for a disqualifying provision with respect to a provision of a new plan or the absence of a provision from a new plan is extended to the later of (i) the 15th day of the 10th calendar month after the end of the plan's initial plan year or (ii) the "modified § 401(b) expiration date." The modified § 401(b) expiration date is defined in this section 5.05(1)(a) and (b):

(a) The modified § 401(b) expiration date for a plan that is not maintained by a tax exempt employer is the last day of the remedial amendment period determined under § 1.401(b)-1(d)(2), applied as though the employer has an extension to file its income tax return (or partnership return of income).

(b) The modified § 401(b) expiration date for a plan maintained by a tax exempt employer is the last day of the remedial amendment period determined under § 1.401(b)-1(d)(2) applied as though the due date (including extensions) for filing the income tax return for the employer's taxable year is the date determined under the following rules. The due date for filing the employer's tax return in the case of a tax exempt employer that files Form 990-T (or Form 990 or Form 990-EZ if no Form 990-T is filed) is the later of (i) the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the

<sup>1</sup>As provided in section 5.01 of Rev. Proc. 2007-44, December 31, 2001, was the date after which all changes in qualification requirements were designated as disqualifying provisions by the Commissioner in order for those changes to be eligible for the remedial amendment period available with respect to disqualifying provisions.

employer does not have a tax year) or (ii) the due date for filing the Form 990 series (plus extensions). For the purpose of this section 5.05(1), an employer is treated as having obtained an extension of time for filing the Form 990 series. The due date for filing the employer's tax return in the case of a tax exempt employer that is not required to file a Form 990 series return is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).

(2) *Amendment to existing plan.* The remedial amendment period for a disqualifying provision with respect to an amendment to an existing plan (other than an amendment described in section 5.05(3) of this revenue procedure) is extended to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

(3) *Change in qualification requirements.* The remedial amendment period for a disqualifying provision with respect to a change in qualification requirements (as described in section 5.04 of this revenue procedure) is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List (described in section 9 of this revenue procedure) in which the change in qualification requirements appears.

.06 Except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period that would otherwise apply under § 1.401(b)-1 for the disqualifying provisions described in this section 5.06 is extended as follows for plans that are governmental plans within the meaning of § 414(d):

(1) *New plan.* The remedial amendment period for a disqualifying provision with respect to a provision of a new governmental plan or the absence of a provision from a new governmental plan is extended to the later of: (i) the date determined in section 5.05(1) of this revenue procedure; or (ii) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the plan's initial plan year.

(2) *Amendment to existing plan.* The remedial amendment period for a disqual-

ifying provision with respect to an amendment to an existing governmental plan (other than an amendment described in paragraph (3) of this section 5.06) is extended to the later of: (i) the date determined in section 5.05(2) of this revenue procedure; and (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the calendar year in which the amendment is adopted or effective (whichever is later).

(3) *Change in qualification requirements.* The remedial amendment period for a disqualifying provision in a governmental plan that arises as a result of a change in qualification requirements (as described in section 5.03 of this revenue procedure) is extended to the later of: (i) the date determined in section 5.05(3) of this revenue procedure; or (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the Required Amendments List in which the change in qualification requirements appears.

.07 This revenue procedure does not provide relief from the requirements of § 411(d)(6) for any plan amendments, including plan amendments adopted as a result of changes to the qualification requirements. Except to the extent permitted under § 411(d)(6) and the regulations thereunder, or under a statutory provision, § 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate § 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

#### **SECTION 6. EXTENDED REMEDIAL AMENDMENT PERIOD TRANSITION RULE FOR INDIVIDUALLY DESIGNED PLANS**

Section 5.03 of Rev. Proc. 2007-44 extends the remedial amendment period for certain disqualifying provisions under

§ 401(b) (including provisions designated in Rev. Proc. 2007-44 as disqualifying provisions) to the end of a plan's applicable remedial amendment cycle. As a result of the elimination of the five-year remedial amendment cycle system for individually designed plans, the extended remedial amendment period provided in section 5.03 of Rev. Proc. 2007-44 will expire December 31, 2016. However, pursuant to this revenue procedure, the remedial amendment period is extended to December 31, 2017, for disqualifying provisions for which, as of January 1, 2017, the remedial amendment period under section 5.03 of Rev. Proc. 2007-44 has not expired. The extension provided in this section 6 does not apply to disqualifying provisions set forth on the 2016 Required Amendments List. See section 5.05(3) of this revenue procedure, which provides that the remedial amendment period for a disqualifying provision set forth on a Required Amendments List is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List in which such provision appears. See also section 9 of this revenue procedure for a description of the Required Amendments List.

#### **SECTION 7. TERMINATING PLANS**

Notwithstanding sections 5 and 6 of this revenue procedure, the termination of a plan ends the plan's remedial amendment period and, thus, generally will shorten the remedial amendment period for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect qualification requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a Required Amendments List.

#### **SECTION 8. PLAN AMENDMENT DEADLINE**

.01 With respect to a disqualifying provision described in section 5 of this revenue procedure, except as otherwise provided by statute, or in regulations or other guidance published in the Internal Reve-

nue Bulletin, the plan amendment deadline is the date on which the remedial amendment period with respect to such disqualifying provision expires. See sections 5.05 and 5.06 of this revenue procedure for the determination of the applicable remedial amendment period.

.02 With respect to a discretionary amendment (that is, an amendment that is not made with respect to a disqualifying provision), except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the plan amendment deadline is the date described in paragraph (1) or (2) of this section 8.02, as applicable.

(1) In the case of a discretionary amendment to a plan other than a governmental plan within the meaning of § 414(d), the plan amendment deadline is the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment (rather than existing plan terms). For example, the deadline for adopting a discretionary amendment with respect to a calendar year plan that increases participants' accrued benefits and is operationally put into effect during 2018 is December 31, 2018. As another example, the deadline for adopting a discretionary amendment with respect to a calendar year plan that is operationally put into effect during 2018 to provide a new right or benefit as of January 1, 2011, with respect to participants with same-sex spouses is December 31, 2018. See Notice 2015-86, 2015-52 I.R.B. 887, Q&A-5.

(2) In the case of a discretionary amendment to a governmental plan within the meaning of § 414(d), the plan amendment deadline is the later of: (i) the end of the plan year in which the plan amendment is operationally put into effect; or (ii) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment is operationally put into effect.

## SECTION 9. REQUIRED AMENDMENTS LIST

.01 Treasury and the IRS intend to publish annually a Required Amendments List that generally applies to changes in

qualification requirements that become effective on or after January 1, 2016. The Required Amendments List establishes the date that the remedial amendment period expires for changes in qualification requirements contained on the list, as described in section 5.03 of this revenue procedure. See also section 12 of this revenue procedure, which describes the scope of review by the IRS of a plan submitted for a determination letter.

.02 In general, an item will be included on a Required Amendments List after guidance with respect to such item (including any model amendment) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. However, in the discretion of the IRS, an item may be included on a Required Amendments List in other circumstances, such as when a statutory change is enacted and it is anticipated that no guidance will be issued.

## SECTION 10. OPERATIONAL COMPLIANCE LIST

The remedial amendment period permits a plan to be amended retroactively to comply with a change in plan qualification requirements; however, a plan must be operated in compliance with a change in qualification requirements from the effective date of the change. To assist plan sponsors in achieving operational compliance, the IRS intends to provide annually an Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. In order to be qualified, however, a plan must comply operationally with each relevant qualification requirement, even if the requirement is not included on an Operational Compliance List.

## SECTION 11. EXAMPLES

Examples 1 through 7 illustrate the extended remedial amendment period for new plans, amendments made to existing plans that are not made as a result of changes in qualification requirements, and amendments to existing plans that are made as a result of changes in qualification requirements. In each of these examples, assume that the plan is an individually designed plan that is intended to be qualified under § 401(a) and that the plan

amendments meet the requirements of § 411(d)(6).

*Example 1: Remedial amendment period for a new plan.* Employer A, which is not a tax exempt employer, adopts a new individually designed plan, Plan M, on July 1, 2017. Plan M is effective January 1, 2017. Plan M's plan year and Employer A's tax year are the calendar year. Plan M contains a provision that does not satisfy the qualification requirements (a disqualifying provision under § 401(b)). Employer A discovers the disqualifying provision in February 2018. Pursuant to section 5.05(1) of this revenue procedure, the remedial amendment period for this disqualifying provision is extended to the later of (i) October 15, 2018 (the 15th day of the 10th calendar month after the end of the plan's initial plan year), or (ii) the modified § 401(b) expiration date. The modified § 401(b) expiration date is the later of September 15, 2018 (the due date for filing Employer A's tax return plus extensions) and the last day of the plan year in which the plan is put into effect (December 31, 2017). Thus, Employer A must correct the disqualifying provision in Plan M by October 15, 2018, retroactively effective beginning January 1, 2017, in order for Plan M to be qualified, and must correct Plan M's operation to the extent necessary to reflect the corrective amendment.

*Example 2: Determination letter application filed for a new plan.* The facts are the same as in *Example 1*, except that, instead of Employer A identifying the disqualifying provision, Employer A files a determination letter application and the IRS discovers the error. If Employer A submits Plan M for a determination letter by October 15, 2018, then, pursuant to § 1.401(b)-1(e)(3), Employer A would have until 91 days after the date a favorable determination letter is issued with respect to Plan M to adopt an amendment that corrects the disqualifying provision retroactively effective beginning January 1, 2017 (the effective date of Plan M). To maintain plan qualification, Employer A must correct Plan M's operation to the extent necessary to reflect the corrective amendment.

*Example 3: Remedial amendment period for amendment to an existing plan.* Employer B maintains Plan N, an individually designed plan. In 2014, the IRS issued a determination letter for Plan N. On January 1, 2018, Employer B adopts and makes effective an amendment to Plan N's vesting schedule. This amendment causes Plan N to fail to satisfy the requirements of the Code. Pursuant to section 5.05(2) of this revenue procedure, a remedial amendment to correct this disqualifying provision generally must be adopted by December 31, 2020, the end of the second calendar year following the calendar year in which the amendment is adopted or effective (whichever is later). The remedial amendment must be retroactively effective beginning January 1, 2018, the date the earlier plan amendment was effective, in order for Plan N to be qualified. Also, to maintain plan qualification, Employer B must correct Plan N's operation to the extent necessary to reflect the corrective amendment.

*Example 4: Remedial amendment period for a change in qualification requirements.* Employer C maintains Plan O, an individually designed plan. In July 2016, guidance is published in the Internal Revenue Bulletin that would require an amendment to Employer C's plan in order to retain the plan's qualification. The guidance is effective in 2017. The

guidance is included on the 2017 Required Amendments List. Pursuant to section 5.05(3) of this revenue procedure, the remedial amendment period for items identified on the 2017 Required Amendments List expires December 31, 2019, the end of the second calendar year that begins after the issuance of the Required Amendments List in which the guidance appears; therefore, the expiration of the remedial amendment period for the disqualifying provision in Plan O is December 31, 2019. The plan amendment deadline for the change in qualification requirements is also December 31, 2019, pursuant to section 8.01 of this revenue procedure.

*Example 5: Correction of amendment made due to a change in qualification requirements.* Employer D maintains Plan P, an individually designed plan. In 2015, the IRS issued a determination letter for Plan P. On April 1, 2018, Employer D amends Plan P based on a change in a qualification requirement that was identified on the 2017 Required Amendments List. This amendment was effective January 1, 2017. Pursuant to section 5.05(3) of this revenue procedure, the remedial amendment period for the change in qualification requirements expires December 31, 2019, the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements was identified. In October 2019, Employer D discovers the amendment does not satisfy the qualification requirements of the Code; therefore, Plan P still contains a disqualifying provision. To maintain plan qualification, Employer D must correct the disqualifying provision in Plan P by amending the plan not later than December 31, 2019, retroactively effective beginning January 1, 2017, and must correct Plan P's operation to the extent necessary to reflect the corrective amendment.

*Example 6: Governmental Plans - remedial amendment period for a change in qualification requirements.* State E maintains Plan Q, a governmental plan within the meaning of § 414(d). In September 2015, the IRS issued a determination letter for Plan Q. The legislature of State E annually convenes January 4 and adjourns March 31. On March 1, 2020, the legislature of State E amends Plan Q based on a change in a qualification requirement that was identified on the 2018 Required Amendments List. This amendment is effective January 1, 2020. In January 2021, State E discovers the amendment created a disqualifying provision. Generally, pursuant to section 5.06(3) of this revenue procedure, the legislature of State E has until the later of (i) December 31, 2020 (which is the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements was identified), or (ii) June 29, 2021 (which is 90 days after the close of the third regular legislative session of the legislative body of State E that began on or after the date of the issuance of the 2018 Required Amendments List) to amend Plan Q, retroactively effective beginning January 1, 2020, to correct the disqualifying provision in order for Plan Q to be qualified. To maintain plan qualification, State E must also correct Plan Q's operation to the extent necessary to reflect the corrective amendment.

*Example 7: Extended remedial amendment period transition rule.* Employer F maintains Plan R, an individually designed plan. Plan R's plan year is

the calendar year. Under Rev. Proc. 2007-44, section 9.03, Plan R's cycle is Cycle B. Employer F submitted Plan R for a determination letter during the Cycle B submission period for the second five-year remedial amendment cycle (February 1, 2012 – January 31, 2013) and received a determination letter in July, 2014. In October 2014, Employer F adopted a timely interim amendment, in accordance with section 5.04 and 5.05 of Rev. Proc. 2007-44, for a change in qualification requirements identified on the 2013 Cumulative List of Changes (Notice 2013-84, 2013-52 I.R.B. 82). Because Employer F adopted a timely amendment for the change in qualification requirements, the remedial amendment period for the change was extended to the end of the third Cycle B remedial amendment cycle (January 31, 2018) pursuant to section 5.03 of Rev. Proc. 2007-44.

On January 1, 2017, the five-year remedial amendment cycle system will be eliminated. As a result, the remedial amendment period under Rev. Proc. 2007-44 for the change in qualification requirements for Plan R would not extend beyond December 31, 2016. However, pursuant to the extended remedial amendment period transition rule in section 6 of this revenue procedure, the expiration of the remedial amendment period is extended to December 31, 2017, with respect to any disqualifying provision for which, as of January 1, 2017, the remedial amendment period (as extended by Rev. Proc. 2007-44) has not expired. Thus, Plan R's extended remedial amendment period for the change in qualification requirements identified on the 2013 Cumulative List will expire December 31, 2017.

## **SECTION 12. SCOPE OF PLAN REVIEW**

With respect to individually designed plans for which a determination letter application is submitted, the IRS review will be based on the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application. For example, with respect to a plan submitted for a determination letter during the calendar year beginning January 1, 2020, the IRS's review will be based on the Required Amendments List that was issued in 2018, regardless of the fact that the plan otherwise would not be required to be amended for items on the 2018 Required Amendments List until December 31, 2020. The review will also take into account all previously issued Required Amendments Lists (and Cumulative Lists issued prior to 2016). Terminating plans will be reviewed for amendments required to be adopted in connection with plan termination (see section 7 of this revenue procedure). Plans submitted for initial qualification during the 2017 calendar

year will be reviewed based on the 2015 Cumulative List (Notice 2015-84). With the exception of a terminating plan, an individually designed plan must be restated to incorporate all previously adopted amendments into the plan document when a determination letter application is submitted.

## **SECTION 13. RELIANCE ON DETERMINATION LETTERS**

.01 Rev. Proc. 2016-6 provides that, effective as of January 4, 2016, determination letters issued to individually designed plans will no longer contain an expiration date.

.02 Under this revenue procedure, expiration dates included in determination letters issued prior to January 4, 2016, are no longer operative.

.03 In general, a plan sponsor that maintains a qualified plan for which a favorable determination letter has been issued and that is otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to a plan provision that is subsequently amended or that is subsequently affected by a change in law. However, a plan sponsor may continue to rely on a determination letter with respect to plan provisions that are not amended or affected by a change in law. Reliance on determination letters is discussed in section 13 of Rev. Proc. 2016-4, 2016-1 I.R.B. 142 (updated annually) and section 21.01 of Rev. Proc. 2016-6, 2016-1 I.R.B. 200 (updated annually).

## **PART III – PRE-APPROVED PLANS**

### **SECTION 14. SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM FOR PRE-APPROVED PLANS**

.01 Under this revenue procedure, every pre-approved plan (that is, every M&P and VS plan) generally has a regular, six-year remedial amendment cycle. As a result, M&P sponsors and VS practitioners (including mass submitters), as defined in Rev. Proc. 2015-36, may apply for new opinion or advisory letters once every six years. Employers that adopt such pre-approved plans generally are on the same six-year remedial amendment cycle with respect to their plans, and, if otherwise

eligible under section 20.03 of this revenue procedure and section 8 of Rev. Proc. 2016-6 (updated annually), may apply for determination letters once every six years. However, pre-approved defined contribution plans have different six-year remedial amendment cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle applies with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle applies with respect to all pre-approved defined benefit plans.

.02 M&P sponsors and VS practitioners generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion and advisory letters. In addition, generally, the deadline for word-for-word identical adopters and minor modifier placeholder applications is January 31st of the calendar year following the opening of the six-year remedial amendment cycle (see section 12 of Rev. Proc. 2015-36 for more details). However, see section 16 of this revenue procedure, which modifies the dates of the submission period for pre-approved defined contribution plans during the third six-year remedial amendment cycle.

.03 When the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the IRS intends to announce the date by which adopting employers must adopt the newly approved plans. This is expected to be a uniform date that will apply to all adopting employers. Depending upon the length of the review process, it is expected that this deadline will provide virtually all employers approximately a two-year window to adopt their updated plans. An employer that adopts the approved M&P or VS plan by the announced deadline will have adopted the plan within the employer's six-year remedial amendment cycle. The announced deadline will be the end of the plan's remedial amendment cycle for all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle. For purposes of this rev-

enue procedure, an adopting employer means an employer that satisfies the requirements described in section 19 of this revenue procedure.

#### **SECTION 15. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD AND DEADLINES FOR THE ADOPTION OF INTERIM AND DISCRETIONARY PLAN AMENDMENTS FOR PRE-APPROVED PLANS**

.01 To promote compliance during the six-year remedial amendment cycle with statutory or regulatory changes with respect to plan qualification requirements that will affect provisions of the written plan document, the adoption of an interim amendment generally will be required.

.02 An amendment with respect to a disqualifying provision described in section 5.03 of this revenue procedure (that is, a disqualifying provision that results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001,<sup>2</sup> or that is integral to such disqualifying provision) is referred to as an interim amendment for purposes of this revenue procedure.

.03 Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period for the disqualifying provisions described in this section 15.03 is extended as follows:

(1) The remedial amendment period for any disqualifying provision described in § 1.401(b)-1(b)(1) that would otherwise apply under § 1.401(b)-1 is extended to the end of the applicable remedial amendment cycle described in section 16 that includes the date on which the remedial amendment period would otherwise end if the disqualifying provision was a provision of, or absence of a provision from, a new plan and the plan was intended, in good faith, to be qualified. The same extension of the remedial amendment period applies to a disqualifying provision (including a disqualifying provision described in section 15.02) in the case of an adoption of an amendment to

an existing plan (without regard to whether that amendment was required to be adopted) if the amendment was adopted timely and in good faith with the intent of maintaining the qualified status of the plan. However, the remedial amendment period for a disqualifying provision will not end before the last day of a plan's first applicable remedial amendment cycle in which an application for an opinion or advisory letter that considers the disqualifying provision may be submitted. The IRS will make the final determination in all cases as to whether a new plan or an amendment to an existing plan was adopted with the good faith intention of being qualified or maintaining qualified status.

(2) In addition, the extension of the remedial amendment period described in section 15.03(1) applies to a disqualifying provision described in section 15.02 in cases in which the employer (or M&P sponsor or VS practitioner, if applicable) reasonably and in good faith determines during the period when an interim amendment to reflect a qualification change would otherwise be required under section 15.01 that no amendment is required because the qualification change does not impact provisions of the written plan document. Thus, for example, if an employer (or M&P sponsor or VS practitioner, if applicable) makes such a determination and the IRS finds that an amendment is required, the plan would still be eligible for the six-year remedial amendment cycle to correct the disqualifying provisions described in section 15.02. The IRS will make the final determination in all cases as to whether the determination that no interim amendment was required was reasonable and in good faith.

(3) Notwithstanding paragraphs (1) and (2) of this section 15.03, the termination of a plan ends the plan's remedial amendment period and, thus, generally will shorten the remedial amendment period for the plan.

.04 Except as otherwise provided in sections 15.05 and 15.06 of this revenue procedure, the deadline for the timely adoption of an amendment for any pre-approved plan is determined as follows:

<sup>2</sup>As provided in section 5.01 of Rev. Proc. 2007-44, December 31, 2001, was the date after which all changes in qualification requirements were designated as disqualifying provisions by the Commissioner in order for the changes to be eligible for the remedial amendment period available with respect to disqualifying provisions.

(1) In the case of an interim amendment, an employer (or a M&P sponsor or VS practitioner, if applicable) is considered to have timely adopted the amendment if the plan amendment is adopted by the end of the remedial amendment period described in § 1.401(b)-1(b)(3) (determined without regard to the extension under section 15.03 of this revenue procedure). See section 2.07 of this revenue procedure.

(2) In the case of a discretionary amendment (that is, one that is not an interim amendment described in section 15.02), an employer (or a M&P sponsor or VS practitioner, if applicable) is considered to have adopted the amendment timely if the plan amendment is adopted by the end of the plan year in which the plan amendment is operationally put into effect. See section 8.02(1) of this revenue procedure for examples illustrating this deadline.

*.05 Exceptions to section 15.04 amendment adoption deadlines.*

Section 15.04 of this revenue procedure applies unless a statutory provision or guidance issued by the IRS sets forth an earlier deadline to timely adopt a discretionary amendment with respect to a plan year (for example, an amendment to add a qualified cash or deferred arrangement to a profit sharing plan cannot be adopted retroactively) or if a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 15.04.

*.06 Special deadlines for governmental and tax exempt employers.*

(1) *Governmental plans.*

(a) For a governmental plan within the meaning of § 414(d), the adoption deadline for interim amendments is: the later of (i) the deadline that would apply under the rules of section 15.04(1), or (ii) 90 days after the close of the third regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

(b) For a governmental plan within the meaning of § 414(d), the adoption deadline for discretionary amendments is: the later of (i) the deadline that would apply under the rules of section 15.04(2), or (ii) 90 days after the close of the second regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

(2) *Tax exempt employers.* For a tax exempt employer, the adoption deadline for interim amendments set forth in section 15.04(1) and 15.05 of this revenue procedure applies, as modified in this section 15.06(2). For purposes of determining the applicable tax filing deadline, the following rule is used to determine the due date (including extensions) for filing the income tax return for the employer's taxable year under section 2.07 of this revenue procedure. The due date for filing the employer's tax return in the case of a tax exempt employer that files Form 990-T (or Form 990 or Form 990-EZ if no Form 990-T is filed) is the later of (i) the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year) or (ii) the due date for filing the Form 990 series

(plus extensions). For this purpose, an employer is not treated as having obtained an extension of time for filing the Form 990 series unless such extension is actually applied for and granted. The due date for filing the employer's tax return in the case of a tax exempt employer that is not required to file a Form 990 series return is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).

.07 For purposes of this revenue procedure, a pre-approved plan restatement that generally is effective as of a certain date should not be treated as superseding a previously adopted interim plan amendment that is effective before or after the restatement's effective date and that has not been incorporated or reflected in the restatement, provided that the pre-approved plan is operated in a manner consistent with the interim plan amendment. A plan is presumed to be operating in compliance with the interim plan amendments in any case in which the operation of the plan cannot be determined.

**SECTION 16. SCHEDULES FOR THE SECOND AND THIRD SIX-YEAR REMEDIAL AMENDMENT CYCLES**

.01 The table in this section 16 sets forth the schedules for the second and third six-year remedial amendment cycles for pre-approved defined contribution and defined benefit plans. Subsequent cycles will continue on six year intervals.

Schedule(s) of Second and Third Six-Year Remedial Amendment Cycles		
If the plan is -	The second six-year remedial amendment cycle began on -	And ends on -
Defined Contribution	February 1, 2011	January 31, 2017
Defined Benefit	February 1, 2013	January 31, 2019
If the plan is -	The third six-year remedial amendment cycle begins on -	And ends on -
Defined Contribution	February 1, 2017	January 31, 2023
Defined Benefit	February 1, 2019	January 31, 2025

.02 In general, sponsors of M&P plans and practitioners maintaining VS plans must apply for new opinion or advisory letters for the plans every six years. The submission period for pre-approved defined contribution plans during the third six-year remedial amendment cycle would ordinarily begin February 1, 2017, and end January 31, 2018 (on-cycle submission period). However, pursuant to this section 16.02, the on-cycle submission period for M&P sponsors and VS practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle will begin August 1, 2017, and end July 31, 2018.

.03 If necessary, the IRS may revise the schedules described in this section 16 to respond to changing circumstances and the needs of plan sponsors. The IRS will announce any such revisions and the timing of the submission periods within each cycle in future guidance published in the Internal Revenue Bulletin.

#### **SECTION 17. CUMULATIVE LISTS OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS; OPERATIONAL COMPLIANCE LIST**

.01 The IRS intends to publish Cumulative Lists of Changes in Plan Qualification Requirements (Cumulative Lists) for pre-approved plans. The Cumulative Lists are intended to identify all changes in the qualification requirements that are required to be taken into account in the written plan document that is submitted to the IRS for an opinion, advisory, or determination letter, as applicable. The IRS currently anticipates that a Cumulative List will be issued in the year preceding the year in which the pre-approved defined contribution plan or defined benefit plan submission period begins. The target date for publication of a Cumulative List is December of such year.

.02 Each Cumulative List identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings, that will be considered by the IRS in its review of plans whose pre-approved plan submission period begins on the February 1st (or other date deter-

mined under section 16.02 or 16.03, as applicable) following issuance of the Cumulative List.

.03 Except as provided in the applicable Cumulative List, the IRS generally will not consider in its review of any opinion, advisory, or determination letter application any:

(1) guidance issued after the October 1 immediately preceding the date the applicable Cumulative List is issued;

(2) statutes enacted after the October 1 immediately preceding the date the applicable Cumulative List is issued;

(3) statutes that are first effective in the year in which the submission period begins for which there is no guidance identified on the applicable Cumulative List (regardless of when they are enacted); or

(4) qualification requirements (either statutory or regulatory) that become effective for the plan in a calendar year after the calendar year in which the submission period begins, regardless of when the qualification requirements are enacted or issued (for example, qualification requirements first effective in 2018, for applications submitted during the period beginning August 1, 2017, based on the 2016 Cumulative List).

.04 The IRS will, however, consider in its review of any opinion, advisory, or determination letter application all qualification requirements that are not described in section 17.03(1) through (4) of this revenue procedure. Thus, for example, a determination letter may be relied on with respect to guidance issued on or before the October 1st preceding the issuance of the applicable Cumulative List and which is effective during the calendar year in which the submission period begins, whether or not identified on the applicable Cumulative List.

In addition, in the case of a terminating plan, any retroactive remedial plan amendments or other required plan amendments (that is, plan amendments required to be adopted to reflect qualification requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on an applicable Cumulative List.

.05 The remedial amendment period permits a plan to be amended retroactively to comply with a change in plan qualifi-

cation requirements; however, a plan must be operated in compliance with a change in qualification requirements from the effective date of the change. To assist plan sponsors in achieving operational compliance, the IRS intends to provide annually an Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. In order to be qualified, however, a plan must comply operationally with each relevant qualification requirement, even if the requirement is not included on an Operational Compliance List.

#### **SECTION 18. EXTENSION OF DEADLINE FOR AN EMPLOYER TO ADOPT A NEWLY APPROVED PRE-APPROVED DEFINED CONTRIBUTION PLAN AND TO APPLY FOR A DETERMINATION LETTER (IF APPLICABLE)**

.01 Consistent with Notice 2016-03, except as provided in section 18.02 of this revenue procedure, the deadline for an employer to adopt a newly approved pre-approved defined contribution plan that was based on the 2010 Cumulative List, and to apply for a determination letter, is extended from April 30, 2016, to April 30, 2017, for any newly approved pre-approved defined contribution plan adopted on or after January 1, 2016. For plans eligible for this extension, the procedures for adopting a pre-approved plan and for filing a determination letter set forth in Rev. Proc. 2016-6 and Rev. Proc. 2007-44 will continue to apply. Thus, for example, in the case of an employer eligible for this extension that is adopting a newly approved pre-approved defined contribution plan as a modification and restatement of an individually designed plan, the rules relating to the scope of the determination letter program set forth in section 4 of this revenue procedure do not apply, and the employer is permitted, until April 30, 2017, to file a determination letter application for the plan on a Form 5307 (*Application for Determination for Adopters of Modified Volume Submitter Plans*) or a Form 5300 (*Application for Determination for Employee Benefit Plan*), regardless of whether the employer had previously filed a Form 5300 with respect to the plan.

.02 For an employer that adopted a pre-approved defined contribution plan prior to January 1, 2016, the deadline to adopt a modification and restatement of the pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible, was April 30, 2016.

*.03 Examples.*

Examples 8 through 10 illustrate the deadline for an employer to adopt a pre-approved defined contribution plan and to apply for a determination letter, if permissible.

*Example 8: Extended deadline for employer with an existing individually designed plan.* As of June 30, 2016, Employer A maintains Plan X, an individually designed defined contribution plan. Employer A is considering converting Plan X into a pre-approved defined contribution plan. Employer A has until April 30, 2017, to adopt a newly approved pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

*Example 9: Extended deadline for employer with a new individually designed plan.* Employer B adopts Plan Y, an individually designed defined contribution plan, on January 1, 2016. Employer B is considering converting Plan Y into a pre-approved defined contribution plan. Employer B has until April 30, 2017, to adopt a newly approved pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

*Example 10: Existing deadline for employer that adopted a pre-approved defined contribution plan prior to January 1, 2016.* On April 1, 2010, Employer C initially adopted the VS defined contribution plan of Practitioner Z, which was approved based on the 2004 Cumulative List. On January 15, 2016, Employer C adopted the newly approved VS defined contribution plan of Practitioner Z as a modification and restatement of Employer C's existing VS defined contribution plan. The deadline for Employer C to apply for a determination letter, if permissible, was April 30, 2016. The same deadline would apply if Employer C had adopted a plan of a different VS practitioner.

## **SECTION 19. ELIGIBILITY FOR SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM**

.01 An employer's plan is treated as a pre-approved plan and therefore eligible

for a six-year remedial amendment cycle system if the employer is:

(1) a prior adopter described in section 19.02; or

(2) a new adopter described in section 19.03.

.02 An employer is a prior adopter if the employer adopted and made effective an existing pre-approved plan, as described in section 19.05(1) of this revenue procedure, during the six-year remedial amendment cycle immediately preceding the opening of the current six-year cycle<sup>3</sup>, and the employer, within the announced adoption period described in section 14.03 of this revenue procedure, either:

(1) adopts the newly approved version of that pre-approved plan; or

(2) adopts the newly approved version of a different pre-approved plan maintained by either the same M&P sponsor or VS practitioner or a different M&P sponsor or VS practitioner. See section 19.05(3) of this revenue procedure for the definition of a newly approved pre-approved plan.

.03 An employer is a new adopter if the employer adopts a pre-approved plan and the employer is not a prior adopter.

.04 An employer may adopt a pre-approved plan at any time during a six-year remedial amendment cycle; however, if the employer adopts an existing pre-approved plan described in section 19.05(1) of this revenue procedure, or an interim pre-approved plan described in section 19.05(2) of this revenue procedure, it must adopt either the newly approved version of the same plan or a newly approved version of a different pre-approved plan by the end of the adoption period described in section 14.03 of this revenue procedure (see section 19.05(3) of this revenue procedure for the definition of a newly approved pre-approved plan). An employer that adopts an existing pre-approved plan or an interim pre-approved plan, but during the adoption period described in section 14.03 of this revenue procedure, adopts a plan other than a newly approved version of a pre-approved plan, will not be treated as

adopting a pre-approved plan. In such case, the plan remains eligible for the current six-year remedial amendment cycle; however, if the plan is submitted for a determination letter (as permitted under section 20.03 of this revenue procedure), the plan will be reviewed on the basis of the applicable Required Amendments List as provided in section 12 of this revenue procedure.

.05 For purposes of this section 19:

(1) An existing pre-approved plan is a plan (other than a newly approved plan, as described in section 19.05(3) of this revenue procedure) that has received a valid opinion or advisory letter for the six-year remedial amendment cycle immediately preceding the opening of the current six-year remedial amendment cycle. For purposes of this definition, a plan is considered an existing pre-approved plan whether or not interim or discretionary amendments have been integrated into the pre-approved plan document.

(2) An interim pre-approved plan is a plan (other than a newly approved plan) that was not in existence in the immediately preceding six-year remedial amendment cycle and that has been or will be submitted for an opinion or advisory letter during the current six-year remedial amendment cycle. For purposes of this definition, a plan is considered an interim pre-approved plan whether or not interim or discretionary amendments have been integrated into the pre-approved plan.

(3) A newly approved plan is a pre-approved plan for which an opinion or advisory letter has been issued in the current six-year remedial amendment cycle.<sup>4</sup>

*.06 Examples.*

Examples 11 through 14 illustrate an employer's eligibility for the six-year remedial amendment cycle. In the following examples, both the tax year of the employer and the plan year are the calendar year and, except as otherwise provided, the plan has been operated in accordance with plan terms, including any interim and discretionary amendments.

*Example 11: Adoption of plan maintained by different sponsor.* Employer L adopted and made

<sup>3</sup>The current six year remedial amendment cycle as of the date of publication of this revenue procedure began on February 1, 2011, for defined contribution plans and February 1, 2013, for defined benefit plans. The immediately preceding six year remedial amendment cycle ended on January 31, 2011, for defined contribution plans and January 31, 2013, for defined benefit plans.

<sup>4</sup>See section 21 of this revenue procedure for special rules applicable to an opinion or advisory letter application for a new pre-approved plan created after the submission period for the applicable six-year cycle.

effective Plan X on January 1, 2011. Plan X is an existing pre-approved M&P defined contribution plan sponsored by Sponsor M. Plan Y is also a defined contribution M&P plan but sponsored by Sponsor N, which timely submitted an application by April 2, 2012 (the extended deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined contribution plans for the second six-year remedial amendment cycle, as provided in Announcement 2012-3). In Announcement 2014-16, the IRS announced that May 1, 2014 through April 30, 2016 would be the two-year window for employers to adopt newly approved pre-approved plans and file determination letters, if applicable.

Sponsor M notified Employer L that it no longer qualified as a sponsor because it did not have the requisite number of employers (30) reasonably expected to adopt Plan X. Therefore, Sponsor M did not submit a new opinion letter application for Plan X within the six-year remedial amendment cycle by April 2, 2012. Employer L timely adopts Plan Y of Sponsor N within the two-year window period (May 1, 2014 through April 30, 2016). Employer L will be considered to be a “prior adopter” within the meaning of section 19.02 of this revenue procedure and is eligible for the six-year remedial amendment cycle. The result would be the same whether Employer L switched to Plan Y because Sponsor M did not timely submit an application by April 2, 2012, for Plan X, Sponsor M timely submitted an application by April 2, 2012 but later withdrew the application, or Employer L chose not to retain the plan of Sponsor M for other reasons.

*Example 12: Adoption of different plan offered by same sponsor.* The facts are the same as in *Example 11* except Employer L adopts Plan Z, a different pre-approved M&P defined contribution plan sponsored by Sponsor M, within the announced two-year window period and Sponsor M timely submitted an application for an opinion letter by April 2, 2012 for Plan Z. Employer L is considered to be a prior adopter and is eligible for the six-year remedial amendment cycle.

*Example 13: Adoption of VS plan in place of M&P plan.* The facts are the same as in *Example 11* except Employer L adopts Plan V, a VS defined contribution plan instead of an approved M&P plan, within the announced two-year window period and the practitioner timely submitted an application for an advisory letter for Plan V by April 2, 2012. Employer L is considered to be a prior adopter and is eligible for the six-year remedial amendment cycle.

*Example 14: Adoption of plan by new adopter.* Employer P has never maintained a qualified plan. Sponsor S timely submitted an application for an opinion letter for Plan Y, an interim pre-approved defined contribution M&P plan (that was not in

existence in the immediately preceding six-year remedial amendment cycle), by April 2, 2012. Employer P adopted the interim pre-approved plan document of Plan Y on December 15, 2012, prior to the announced adoption period (May 1, 2014 through April 30, 2016). On March 28, 2014, the IRS issued a favorable opinion letter for Plan Y. Employer P adopted the newly approved version of Plan Y on June 1, 2014, during the announced adoption period. Employer P is a new adopter and is eligible for the six-year remedial amendment cycle.

## **SECTION 20. EFFECT OF EMPLOYER AMENDMENTS ON SIX-YEAR REMEDIAL AMENDMENT CYCLE**

*.01 General rule.* An employer that amends any provision of an approved M&P plan, including its adoption agreement (other than to change the choice of options, if the plan or adoption agreement permits or contemplates such a change), or an employer that amends provisions of a VS plan loses reliance on the opinion or advisory letter issued to the M&P sponsor or VS practitioner; however, except as provided in section 20.02 of this revenue procedure, the employer’s plan will remain on the current six-year remedial amendment cycle. The employer’s plan may be eligible for the six-year remedial amendment cycle that follows the current six-year remedial amendment cycle if the employer’s plan satisfies the conditions set forth in section 19.01 of this revenue procedure. See section 20.03 of this revenue procedure for procedures for filing a determination application to obtain continued reliance.

*.02 Ineligibility for Six-Year Remedial Amendment Cycle.* A plan is ineligible for the six-year remedial amendment cycle if the employer:

(1) amends an approved M&P plan, including its adoption agreement, to incorporate, within one year of the date the employer initially adopted the M&P plan, a type of plan not allowed in the M&P program (see section 6.03 of Rev. Proc. 2015-36); or

(2) amends an approved VS plan, including its adoption agreement, if applicable, to incorporate, within one year of the date the employer initially adopted the VS plan, a type of plan not allowed in the VS program (see section 16.03 of Rev. Proc. 2015-36).

*.03 Determination letter procedures.*

(1) An employer that amends a M&P or VS plan loses reliance on the opinion or advisory letter of the M&P or VS plan. However, to the extent permitted in this section 20.03(2) through (5), that employer may file a determination letter application for the plan to obtain reliance. See also, Rev. Proc. 2016-6, section 8.01 (updated annually).

(2) An adopting employer described in section 20.03(1) that modifies the terms of an approved VS plan in situations in which the modifications are not extensive may apply for a determination letter on Form 5307, regardless of whether a prior determination letter has been issued with respect to the plan.

(3) An adopting employer described in section 20.03(1) that makes extensive modifications to an approved VS plan and an adopting employer that makes any modifications to an approved M&P plan may apply for a determination letter on Form 5300. An employer may submit a determination letter application on a Form 5300 only if the application is made upon initial qualification, plan termination, or in other circumstances identified by the IRS. See section 4 of this revenue procedure and Rev. Proc. 2016-6, section 8.01 (updated annually). For this purpose, an employer that previously filed an application on Form 5300 or Form 5307 with respect to the plan and was issued a favorable determination letter is not eligible to file a Form 5300 for initial plan qualification.

(4) Subject to section 20.03(5), an adopting employer described in section 20.03(2) or (3) that files a determination letter application for the plan must file the application within the announced adoption period described in section 14.03 of this revenue procedure. In such case, the employer’s plan is reviewed using the Cumulative List that was used to review the underlying pre-approved plan.

(5) Section 24.03 of Rev. Proc. 2015-36 provides that, due to the nature and extent of employer amendments made to an approved M&P or VS plan, the IRS may, in its discretion, treat the plan as individually designed. In such case, although the plan remains eligible for the six-year remedial amendment cycle until the expiration of the current remedial

amendment cycle in accordance with section 20.01 of this revenue procedure, the employer's plan is, in other respects, treated as an individually designed plan. Thus, for example, the IRS reviews the plan using the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application, in accordance with section 12 of this revenue procedure.

(6) Determination letter filing procedures are set forth in Rev. Proc. 2016-6, which will be updated annually.

(7) While it is expected that an M&P sponsor and a VS practitioner, if applicable, generally will continue to amend on behalf of the adopting employer even if the adopting employer adopts amendments to the plan, the sponsor or practitioner no longer has the authority to amend on behalf of the employer if the amendment falls into one of the categories listed in section 6.03 or section 16.03 of Rev. Proc. 2015-36 or the IRS has exercised its authority under section 24.03 of Rev. Proc. 2015-36.

#### .04 Examples.

Examples 15 through 17 illustrate how different types of employer amendments to a pre-approved plan affect an employer's eligibility for the six-year remedial amendment cycle and which applicable list (either the Cumulative List or the Required Amendments List) the IRS will use to review an employer's submission. In the following examples, both the tax year of the employer and the plan year are the calendar year and, except as otherwise provided, the plan has been operated in accordance with the plan terms, including any interim and discretionary amendments.

*Example 15: Eligibility for six-year remedial amendment cycle after minor modifications.* Employer X has maintained Plan M, an approved VS plan, since 2002. Employer X never received an individual determination letter for Plan M. Plan M is timely submitted for the third six-year remedial amendment cycle by the VS practitioner. During the third six-year remedial amendment cycle, Employer X makes minor modifications to Plan M. Pursuant to section 20.01 and 20.03, Plan M is eligible to remain on the six-year remedial amendment cycle and may be submitted for a determination letter application on a Form 5307 by the end of the adoption period described in section 14.03 of this revenue procedure. The IRS will review the determination letter application based

upon the Cumulative List that was used to review the underlying VS plan.

*Example 16: Eligibility for six-year remedial amendment cycle if plan amendments are not minor.* The facts are the same as in Example 15, except that during the third six-year remedial amendment cycle, Employer X modifies Plan M to the extent that the plan is not eligible to be submitted on a Form 5307, in accordance with section 8.01(2) of Rev. Proc. 2016-6. Because Employer X has never received an individual determination letter for Plan M, pursuant to section 20.03(3) of this revenue procedure, Employer X may submit a Form 5300 determination letter application for initial plan qualification for Plan M. Employer X must submit the determination letter application for Plan M by the end of the adoption period described in section 14.03 of this revenue procedure. Plan M remains eligible for the third six-year remedial amendment cycle as described in section 20.01. The IRS will review the plan based upon the Cumulative List that was used to review the underlying VS plan.

*Example 17: Eligibility for six-year remedial amendment cycle and applicability of Required Amendments List.* Employer Z has never maintained a defined contribution plan and then adopts a newly approved VS plan (Plan V); however, Employer Z makes major modifications to the provisions of the plan. Employer Z submits a determination letter application on Form 5307 during the two-year window described in section 14.03 of this revenue procedure. Pursuant to section 24.03 of Rev. Proc. 2015-36, the IRS, in its discretion, determines that Employer Z has modified the provisions of the plan to such an extent that Plan V is considered an individually designed plan. In accordance with section 20.01 of this revenue procedure, Plan V remains eligible for the third six-year remedial amendment cycle. Employer Z may submit Plan V for a determination letter for initial qualification on Form 5300. Consistent with section 12 of this revenue procedure, the IRS will use the Required Amendments List that was issued during the second calendar year preceding the submission of a determination letter application in its review of the determination letter submission for Plan V. The review will also take into account all previously issued Required Amendments Lists (and Cumulative Lists issued prior to 2016). The result in this example would be the same if Employer Z had amended Plan V to incorporate a type of plan provision not permitted in the VS program more than one year after Employer Z initially adopted Plan V (see section 16.03 of Rev. Proc. 2015-36).

## SECTION 21. OFF-CYCLE FILING

.01 An application for an opinion or advisory letter for a plan that is word-for-word identical to an approved mass submitter that has a current advisory or opinion letter is not treated as off-cycle merely because it is submitted after the end of the applicable on-cycle submission period for the six-year remedial amendment cycle. Any other application for an opinion or advisory letter that is

submitted after the applicable on-cycle submission period for the six-year remedial amendment cycle is treated as an off-cycle filing. If such an off-cycle application is submitted before the beginning of the two-year window for employer adoption announced by the IRS for an applicable six-year cycle (as described in section 14.03 of this revenue procedure), the IRS generally will not review the application until it has reviewed and processed all on-cycle plans. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated under certain circumstances. Off-cycle applications that are submitted during or after the two-year window will not be accepted.

.02 As described in section 14.03 of this revenue procedure, the IRS intends to publish an announcement providing the date by which adopting employers must adopt the newly approved plans when the review of a cycle for pre-approved plans has neared completion. Depending on the length of the review process, it is expected that this date will provide virtually all employers approximately a two-year window to adopt the newly approved plans. However, the adoption period for employers to adopt such newly approved plans may be shorter than this approximate two-year window, depending on when the IRS finishes the review and approves such plans. In any event, for adopting employers of such newly approved plans to be eligible for the applicable six-year remedial amendment cycle, M&P sponsors or VS practitioners filing off cycle must submit new pre-approved plans prior to the beginning of such announced adoption period, to give the IRS time to review such plans and to provide time for adopting employers to adopt such plans.

.03 Adopting employers must adopt such newly approved plans within the adoption period described in section 14.03 of this revenue procedure and, if eligible to submit for a determination letter pursuant to section 20.03 of this revenue procedure, may file a Form 5307 or Form 5300 as appropriate.

**PART IV – EFFECT ON OTHER DOCUMENTS, EFFECT ON OTHER LAWS, EFFECTIVE DATE, DRAFTING INFORMATION**

**SECTION 22. EFFECT ON OTHER DOCUMENTS**

.01 Rev. Proc. 2007–44 is clarified, modified, and superseded.

.02 Sections 2.07 and 24.03 of Rev. Proc. 2015–36 are modified.

.03 Sections I and III of Notice 2015–84 are modified.

**SECTION 23. EFFECTIVE DATE**

This revenue procedure is effective January 1, 2017.

**DRAFTING INFORMATION**

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

Bulletin 2016–27 through 2016–29

### **Action on Decision:**

2016-01, 2016-16 I.R.B. 580

### **Announcements:**

2016-21, 2016-27 I.R.B. 8  
2016-23, 2016-27 I.R.B. 10

### **Notices:**

2016-40, 2016-27 I.R.B. 4  
2016-41, 2016-27 I.R.B. 5  
2016-42, 2016-29 I.R.B. 67  
2016-43, 2016-29 I.R.B. 132  
2016-44, 2016-29 I.R.B. 132  
2016-45, 2016-29 I.R.B. 135

### **Proposed Regulations:**

REG-123854-12, 2016-28 I.R.B. 15  
REG-147196-07, 2016-28 I.R.B. 32

### **Revenue Procedures:**

2016-37, 2016-29 I.R.B. 136

### **Revenue Rulings:**

2016-17, 2016-27 I.R.B. 1

### **Treasury Decisions:**

9773, 2016-29 I.R.B. 56

---

<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletin 2016–27 through 2016–29

### **Notices:**

#### **2013-1**

Modified by  
Notice 2016-41, 2016-27 I.R.B. 5

#### **2013-1**

Superseded by  
Notice 2016-41, 2016-27 I.R.B. 5

### **Revenue Procedures:**

#### **2007-44**

Clarified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

Modified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

Superseded by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2015-36**

Modified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

---

<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

# **Internal Revenue Service**

## **Washington, DC 20224**

---

Official Business  
Penalty for Private Use, \$300

---

## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

---

## **We Welcome Comments About the Internal Revenue Bulletin**

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.