

# 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.

### INCOME TAX

#### **REG-103477-14, page 746.**

This document contains proposed regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 describing the verification requirements (including certifications of compliance) and events of default for entities that agree to perform the chapter 4 due diligence, withholding, and reporting requirements on behalf of certain foreign financial institutions or the chapter 4 due diligence and reporting obligations on behalf of certain non-financial foreign entities. Regulations in T.D. 9809 finalize (with changes) certain proposed regulations under chapter 4, withdraw corresponding temporary regulations, and add new temporary regulations. The text of the temporary regulations in T.D. 9809 also serves as the text of the proposed regulations in this document that are proposed by cross-reference to the temporary chapter 4 regulations. This document was published in the Federal Register on January 6, 2017.

#### **REG-123841-16, page 766.**

This document contains proposed regulations under section 3402(q) with respect to withholding on certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The proposed regulations affect both payers and payees of the gambling winnings subject to withholding under section 3402(q).

#### **REG-134247-16, page 744.**

This document contains proposed regulations under chapter 3 of Subtitle A of the Internal Revenue Code of 1986 (Code). Chapter 3 provides rules regarding withholding of tax on certain U.S. source income paid to foreign persons. Regulations in T.D. 9808 finalize certain proposed regulations under chapters 3 and 61 and sections 871, 3406, and 6402 of the Code, withdraw corresponding temporary regulations, and add new temporary regulations. The text of the temporary regulations in

**Bulletin No. 2017-5  
January 30, 2017**

T.D. 9808 serves as the text of the proposed regulations in this document that are proposed by cross-reference to the temporary chapter 3 regulations. This document was published in the Federal Register on January 6, 2017.

#### **T.D. 9807, page 573.**

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The final regulations replace the existing information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings.

#### **T.D. 9808, page 580.**

This document contains final and temporary regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations. This document finalizes (with certain changes) certain proposed regulations under chapters 3 and 61 and sections 871, 3406, and 6402 of the Internal Revenue Code of 1986 (Code), and withdraws corresponding temporary regulations. This document also includes temporary regulations providing additional rules under chapter 3 of the Code. The temporary regulations affect persons making payments of U.S. source income to foreign persons. This document was published in the Federal Register on January 6, 2017.

**(Continued on the next page)**

**T.D. 9809, page 664.**

This document contains final and temporary regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. This document finalizes (with certain changes) certain proposed regulations under chapter 4, and withdraws corresponding temporary regulations. This document also includes temporary regulations providing additional rules under chapter 4. The regulations included in this document affect persons making certain U.S.-related payments to FFIs and other foreign persons and payments by FFIs to other persons. This document was published in the Federal Register on January 6, 2017.

**EMPLOYEE PLANS****Rev. Proc. 2017–18, page 743.**

This revenue procedure provides that the last day of the remedial amendment period for § 403(b) plans, for purposes of section 21 of Rev. Proc. 2013–22, 2013–18 I.R.B. 985, is March 31, 2020.

**ESTATE TAX****Notice 2017–12, page 742.**

This notice provides guidance on the methods available to confirm the closing of an examination of the estate tax return. In addition, the notice announces that an account transcript with a transaction code of “421” and explanation “Closed examination of tax return” can serve as the functional equivalent of an estate tax closing letter in confirming the closing of an examination.

**EMPLOYMENT TAX****REG–123841–16, page 766.**

This document contains proposed regulations under section 3402(q) with respect to withholding on certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The proposed regulations affect both payers and payees of the gambling winnings subject to withholding under section 3402(q).

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This document contains final regulations in Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The final regulations replace the existing information reporting requirements under § 7.6041–1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings.

**ADMINISTRATIVE****REG–123829–16, page 764.**

This document proposes to amend the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, “Report of Health Insurance Provider Information.” These proposed regulations affect those entities.

**REG–123841–16, page 766.**

This document contains proposed regulations under section 3402(q) with respect to withholding on certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The proposed regulations affect both payers and payees of the gambling winnings subject to withholding under section 3402(q).

**T.D. 9807, page 573**

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The final regulations replace the existing information reporting requirements under § 7.6041–1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings.

# 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.

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

26 CFR 1.6041-10: Information returns; Winnings From Bingo, Keno, and Slot Machines

## T.D. 9807

### DEPARTMENT OF TREASURY Internal Revenue Service 26 CFR Parts 1, 7, and 31

#### Information Returns; Winnings from Bingo, Keno, and Slot Machines

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno, and slot machine play. The rules update the existing requirements regarding the filing, form, and content of such information returns; allow for an additional form of payee identification; and provide an optional aggregate reporting method. The final regulations affect persons who pay winnings of \$1,200 or more from bingo and slot machine play, \$1,500 or more from keno, and recipients of such payments.

**DATES:** These regulations are effective on December 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** David Bergman, (202) 317-6845 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The final regulations replace the existing information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The new requirements are set forth in a

new § 1.6041-10 of the regulations. Because the new requirements replace the existing requirements, the regulations under § 7.6041-1 are being removed.

On March 4, 2015, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-132253-11) in the **Federal Register**, 80 FR 11600, containing proposed regulations that would update the existing rules and add rules for electronically tracked slot machine play, payee identification, and an optional aggregate reporting method.

A public hearing was held on June 17, 2015, and five speakers provided testimony. In addition, over 14,000 written public comments were received. After careful consideration of the written comments and statements made during the hearing, the proposed regulations are adopted as modified by this Treasury Decision.

#### Explanation and Summary of Comments

All of the 14,000 written comments on the notice of proposed rulemaking were considered and are available at regulations.gov or upon request. Many of these comments addressed similar issues and expressed similar points of view. These comments are summarized in this preamble. Comments pertaining to parimutuel gambling in the case of horse races, dog races, and jai alai are being considered in a separate regulations project under section 3402(q).

#### *Filing Requirement, Form and Content of the Information Return*

Commentators supported the proposed rules regarding filing requirements and the form and content of the information returns required to be filed. Accordingly, the Treasury Department and the IRS conclude that the final regulations should adopt the filing requirements without modification.

#### *Electronically Tracked Slot Machine Play*

The proposed regulations created rules for electronically tracked slot machine play, which was defined in proposed §1.6041-10(b)(1) as slot machine play where an electronic player system controlled by the gaming establishment (such as through the use of a player's card or similar system) records the amount a specific individual wins and wagers on slot machine play. Section 1.6041-10(b)(2)(i)(D) of the proposed regulations provided that gambling winnings for electronically tracked slot machine play are required to be reported if (1) the total amount of winnings netted against the total amount of wagers during the same session of play was \$1,200 or more, and (2) at least one single win during the session was \$1,200 or more without regard to the wager. A "session" of play was determined with reference to a calendar day. The changes were intended to facilitate reporting by payees on their individual income tax returns under the proposed safe harbor in Notice 2015-21, 2015-12 I.R.B. 765.

Some commentators expressed concern regarding the feasibility of the proposed rules given existing technology and recommended that the proposed rules not be adopted. Commentators stated that one of the purposes of electronic player systems was for marketing and customer loyalty and that current systems should not be used as a mandatory method for tracking winnings and wagers for purposes of tax reporting. Moreover, commentators stated that the use of electronic player systems for tax reporting may chill customer use and have a negative effect on customer relations. In addition, some commentators stated that their electronic player systems lack the necessary controls to be used for tax reporting, and that implementing such controls may be costly and labor-intensive. Based on these comments, the final regulations do not adopt the proposed rules for electronically tracked slot machine play.

### *Payee Identification Requirements*

The proposed regulations retain the rule in §7.6041-1(c)(3) of the Temporary Income Tax Regulations that the payor must obtain two forms of identification from the payee to verify the payee's identity. However, §1.6041-10(f) of the proposed regulations modifies the rules for acceptable identification by requiring that one of the forms of identification include the payee's photograph and by providing that the payor may accept a properly completed Form W-9 in lieu of identification that includes the payee's social security number. The proposed regulations provide that payors may rely on this provision prior to publication of final regulations in the **Federal Register**.

Most commentators supported the proposed rules regarding the types of identification that can be relied on to verify a payee's identity. In particular, commentators supported the provision that allows a Form W-9 to be used as an acceptable means of verifying a payee's identity in lieu of identification that includes the payee's social security number. This rule is consistent with procedures currently used by many payors to address the fact that, today, most forms of identification that payees carry with them do not contain a social security number.

Other commentators suggested that the list of examples of acceptable forms of government-issued identification be expanded to include tribal member identification cards issued by a federally recognized Indian tribe. Some commentators also suggested that an exception from the photo identification requirement be provided for tribal identification cards presented at tribal government gaming facilities because many tribal identification cards do not contain photographs.

In response to the comments received, the list of examples of acceptable government-issued identification has been expanded in §1.6041-10(e)(1) of the final regulations to include tribal member identification cards issued by a federally recognized Indian tribe. In addition, in response to comments, §1.6041-10(d)(2) of the final regulations provides an exception to the photo

identification requirement if one of the forms of identification is a tribal identification card presented at a gaming establishment owned or licensed by the tribal government that issued the tribal member identification card.

### *Optional Aggregate Reporting Method and Session*

Section 1.6041-10(h) of the proposed regulations provides a new rule for an optional aggregate reporting method. Under §7.6041-1(a), reporting of gambling winnings from bingo, keno, and slot machine play is required each time a payor makes a payment of reportable gambling winnings (i.e., a payment that meets the reporting threshold). The aggregate reporting method allows a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game during a "session" to report the aggregate amount of such reportable gambling winnings on one Form W-2G, provided the payor satisfies certain recordkeeping requirements set forth in the regulations. Under §1.6041-10(b)(3) of the proposed regulations, a "session" is generally defined as a period of play that begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same gaming establishment. This aggregate reporting method may be used at the payor's option. The proposed regulations provide that payors may rely on this provision prior to publication of final regulations in the **Federal Register**.

Commentators were generally supportive of the proposed optional aggregate reporting method but did suggest some changes. Accordingly, the final regulations adopt the proposed optional aggregate reporting method with some modifications.

First, the period for purposes of the aggregate reporting method in the final regulations is not referred to as a "session." Rather, in §1.6041-10(g) of the final regulations, the period used for purposes of the aggregate reporting method is now referred to as an "information report-

ing period." The proposed regulations' definition of a "session" was intended to mirror the concept of "session" set forth in the safe harbor for the determination of wagering gains and losses from electronically tracked slot machine play that was published in a Notice and draft Revenue Procedure on the same date as the proposed regulations. Notice 2015-21. The Treasury Department and the IRS are still considering the income tax reporting rules in this area, and the draft Revenue Procedure has not been finalized. Therefore, to avoid confusion, the aggregate reporting method rules in §1.6041-10(g) of the final regulations have been modified so that the period during which reporting may be aggregated is referred to as the "information reporting period" rather than as a "session."

Second, commentators suggested that rather than a calendar day, payors should have the option of using the 24-hour period known commonly in the industry as the "gaming day" for purposes of the aggregate reporting method. The comments explained that the period of a "gaming day" is used by gaming establishments for financial accounting, gaming control board, and other regulatory purposes, and allows each establishment the flexibility to define a day for these purposes by taking into account peak gaming times. The "gaming day" period is also utilized in complying with anti-money laundering reporting obligations. According to the comments, a gaming day is a 24-hour period that ends at a time during which the gaming establishment is closed or when business is slowest, typically between 3 a.m. and 6 a.m. The comments indicate that allowing payors to use the same period for purposes of information reporting as for other regulatory purposes will enhance the benefits of aggregate reporting for payors by not having a different reporting period for tax reporting, and by allowing aggregate reports to be generated during non-peak gaming times.

To give payors more flexibility, the final regulations adopt these suggestions and provide a flexible "information reporting period" as the period to be used for aggregate reporting. Under §1.6041-10(b)(2) of the final regulations, an "information reporting period" is either a "calendar day" or a "gaming day," so long

as that period is applied uniformly by the payor to all payees during the calendar year. A payor may adopt a different “information reporting period” from one calendar year to the next, but may not change the “information reporting period” in the middle of a calendar year. Changes to a payor’s “information reporting period” from one calendar year to the next must be implemented on January 1. In addition, the final regulations provide that on December 31<sup>st</sup>, all open information reporting periods must end at 11:59 p.m. in order to end by the end of the calendar year. This rule is necessary to maintain calendar year federal income tax reporting that is the bedrock of the information reporting regime and that is required by section 6041. Section 1.6041–10(b)(2)(iii) of the final regulations provides that if a “gaming day” is adopted for a calendar year, the information reporting period for December 31<sup>st</sup> ends at 11:59 p.m. on December 31, and the information reporting period for January 1<sup>st</sup> begins at 12 a.m. on January 1, regardless of the number of hours of the December 31<sup>st</sup> and January 1<sup>st</sup> information reporting periods.

Third, commentators noted that the proposed regulations did not specifically define “gaming establishment,” and how to deal with common ownership between various casinos. Section 1.6041–10(b)(2)(iv) of the final regulations defines the term “gaming establishment” as a business entity of a payor of reportable gambling winnings with respect to bingo, keno, or slot machine play, and includes all gaming establishments owned by the payor using the same employer identification number (EIN) issued to such payor in accordance with section 6109.

Finally, commentators requested that the proposed recordkeeping requirements with respect to aggregate reporting be updated to reflect the actual credentials held by various casino representatives. These recordkeeping requirements require that payors maintain a record of every payment that will be reported using the aggregate reporting method and that each entry in the record be verified by a designated casino representative. Section §1.6041–10(g)(3)(vii) of the proposed regulations requires that the designated individual

provide a gaming license number. The final regulations do not require that a gaming license number be provided. Instead, §1.6041–10(g)(3)(vii) of the final regulations requires that the person authorized by the applicable gaming regulatory control authority to ensure accuracy in reporting provide his or her unique identification number.

#### *Reporting Thresholds*

The proposed rules maintained the reporting thresholds of \$1,200 for bingo and slot machine play and \$1,500 for keno in §7.6041–1(a), but invited comments on the feasibility of reducing these thresholds. Commentators overwhelmingly opposed the idea of reducing these reporting thresholds. Payors opposed lowering the thresholds because it would result in more reporting, which would increase compliance burdens for the industry. In fact, many commentators suggested that rather than reducing the current thresholds, they should be increased to account for inflation. These final regulations do not change the existing reporting thresholds for bingo, keno, and slot machine play.

#### *Netting Wagers*

The proposed regulations retain the rules in §7.6041–1(b) that, in determining whether the reporting threshold is satisfied, the amount of winnings from bingo and slot machine play is not reduced by the amount of the wager, but the amount of winnings from one keno game is reduced by the amount of the wager in that one game. Commentators were divided as to whether uniform application of netting the wager against the winnings was feasible, citing compliance cost and labor concerns. In light of these concerns, the Treasury Department and the IRS conclude that the existing approach, as described in the proposed regulations, should be retained. Accordingly, §1.6041–10(b)(1)(i) of the final regulations provides that reportable gambling winnings in the case of bingo and slot machine play are not determined by netting the wager against the winnings, but reportable gambling winnings in the case of keno are determined by netting the wager in

that one game against the winnings from that game.

#### *Definition of Slot Machine and Reportable Gambling Winnings*

For purposes of information reporting, proposed §1.6041–10(b)(4) defines a slot machine as a device that, by application of the element of chance, may deliver or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens, whether or not the device is operated by inserting a coin, token, or similar object. One commentator suggested that the definition of slot machines be changed to adopt either of the definitions that has been adopted by the states of New Jersey or Nevada, both of which define slot machines more broadly. Other commentators suggested that the definition of slot machine in the proposed regulations is too broad because it could include technologic aids to Class II gaming as defined under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721, such as electronic bingo or electronic pull-tabs.

As discussed in the preamble of the proposed regulations, the definition of slot machine in proposed §1.6041–10(b)(4) is intended to be consistent with the definition of slot machine in §44.4402–1(b)(1) of the Wagering Tax Regulations. Having consistent definitions benefits tax administration and may prevent unintended confusion that could arise from having different definitions for federal tax purposes. Because the Treasury Department and the IRS conclude that, on balance, the proposed definition of slot machine is the most appropriate definition, the final regulations adopt the proposed definition of the term “slot machine” without modification.

Section 1.6041–10(b)(2)(i) of the proposed regulations provides that all winnings from all cards played during one bingo game are combined and that all winnings from all “ways” on a multi-way keno ticket are combined. In addition, §1.6041–10(b)(2)(ii) of the proposed regulations provides that winnings from different types of games are not combined to determine whether the reporting thresholds are satisfied, and that bingo, keno, and slot machine play are all different

types of games. Commentators did not oppose inclusion of these rules in the definition of reportable gambling winnings in the proposed regulations. Accordingly, the final regulations adopt these aspects of the definition of reportable gambling winnings without modification.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the filing of information reporting returns for payors who make reportable payments of bingo, keno, or slot machine winnings and who are required by section 6041 to make returns reporting those payments. The requirement for payors to make information returns is imposed by statute and not these regulations. In addition, this rule reduces the existing burden on payors to comply with the statutory requirement by simplifying the process for payors to verify payees' identities with a broader range of documents that are more readily available, and also by allowing payors to reduce the number of information returns they issue if they adopt the new aggregate reporting methodology. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses, and no comments were received.

### Drafting Information

The principal author of these regulations is David Bergman of the Office of Associate Chief Counsel (Procedure & Administration).

### List of Subjects

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7, and 31 are amended as follows:

#### PART 1 – INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805\* \* \*

Par. 2. Section 1.6041–10 is added to read as follows:

*§1.6041–10 Return of information as to payments of winnings from bingo, keno, and slot machine play.*

(a) *In general.* Every person engaged in a trade or business (as defined in §1.6041–1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph (b)(1) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (g) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) *Definitions—(1) Reportable gambling winnings.* (i) For purposes of this section, the term reportable gambling winnings is defined as follows:

(A) For bingo, the term “reportable gambling winnings” means winnings of \$1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined).

(B) For keno, the term “reportable gambling winnings” means winnings of \$1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all “ways” on a multi-way keno ticket are combined).

(C) For slot machine play, the term “reportable gambling winnings” means winnings of \$1,200 or more from one slot machine play, without reduction for the amount wagered.

(ii) Winnings and wagers from different types of games are not combined to determine if the reporting threshold is satisfied. Bingo, keno, and slot machine play are different types of games.

(iii) Winnings include the fair market value of a payment in any medium other than cash.

(iv) The amount wagered in the case of a free play is zero.

(2) *Information reporting period.* (i) *In general.* For purposes of paragraph (g) of this section, the “information reporting period” begins when a patron places the first wager on a particular type of game at a gaming establishment, as defined in paragraph (b)(2)(iv) of this section, and ends when the patron places his or her last wager on the same type of game at the same gaming establishment before the end of the “information reporting period.” An information reporting period is a 24-hour period. A payor may select a calendar day (as defined in paragraph (b)(2)(ii) of this section) or a gaming day (as defined in paragraph (b)(2)(iii) of this section) as the information reporting period for purposes of the aggregate reporting method in paragraph (g) of this section. For purposes of this paragraph (b)(2), time is determined by the time zone of the location where the patron places the wager. A payor must use the same information reporting period (a calendar day or gaming day) to report all “reportable gambling winnings” paid during the calendar year. Once selected, a payor may not change its information reporting period during a calendar year. Any changes to a payor’s information reporting period from one calendar year to another must be implemented on January 1.

(ii) *Calendar day.* A calendar day is determined with reference to a period beginning at 12 a.m. and ending no later than 11:59 p.m. of the same calendar day.

(iii) *Gaming day—(A) In general.* A gaming day is a 24-hour period other than a calendar day (as defined in paragraph (b)(2)(ii) of this section) selected by the payor, subject to the special rules for December 31 and January 1 in paragraphs (b)(2)(iii)(B) and (C) of this section.

(B) *Special rule for December 31.* For purposes of paragraph (b)(2)(iii) of this section, the gaming day that begins on

December 31 of any calendar year ends at 11:59 p.m. on December 31, regardless of the time on December 31 on which that gaming day began.

(C) *Special rule for January 1.* For purposes of paragraph (b)(2)(iii) of this section, the gaming day of January 1 begins at 12:00 a.m. on January 1, regardless of the time and calendar day on which that gaming day ends, and may extend beyond 24 hours.

(iv) *Gaming establishment.* For purposes of this section, a gaming establishment is a business entity of a payor of reportable gambling winnings with respect to bingo, keno, or slot machine play, and includes all gaming establishments owned by such payor using the same employer identification number (EIN) issued to such payor in accordance with section 6109.

(v) *Examples.* The following examples illustrate the provisions of paragraph (b)(2) of this section.

*Example 1.* Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. For other regulatory purposes, Casino R uses a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the following calendar day. Casino R chooses to use its gaming day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purposes of paragraph (g) of this section for each day during Year 1 begins at 3 a.m. and ends at 2:59 a.m. the following day. The information reporting period for December 31 of Year 1 begins at 3 a.m. on December 31 of Year 1 and ends at 11:59 p.m. on December 31 of Year 1. The information reporting period for January 1 of Year 2 begins at 12 a.m. on January 1 of Year 2 and ends at 2:59 a.m. on January 2 of Year 2.

*Example 2.* The facts are the same as Example 1, except Casino R uses a calendar day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purpose of paragraph (g) of this section for each day during Year 1 begins at 12 a.m. and ends at 11:59 p.m. on the same day.

*Example 3.* Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. For other regulatory purposes, Casino R uses a gaming day that begins at 9:00 p.m. and ends at 8:59 p.m. the following calendar day. Casino R chooses to use its gaming day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purposes of paragraph (g) of this section for each day during Year 1 begins at 9:00 p.m. and ends at 8:59 p.m. the following day. The information reporting period for December 31 of Year 1 begins at 9:00 p.m. on December 30 and ends at 8:59 p.m. on

December 31. A second information reporting period for December 31 then begins at 9:00 p.m. on December 31 and ends at 11:59 p.m. on December 31. The information reporting period for January 1 of Year 2 begins at 12:00 a.m. on January 1 and ends at 8:59 p.m. on January 1 of Year 2.

*Example 4.* Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. In Year 1, Casino R chooses to use a “gaming day” that begins at 3 a.m. and ends at 2:59 a.m. the following day as its information reporting period. During the course of Year 1, Casino R decides that it would like to change its information reporting period to instead begin at 5 a.m. and end at 4:59 a.m. the following day. Casino R must wait until January 1 of Year 2 to implement such a change. On January 1 of Year 2, Casino R’s information reporting period will begin at 12 a.m. and end at 4:59 a.m. on January 2. On December 31 of Year 2, Casino R’s information reporting period will begin at 5 a.m. and end at 11:59 p.m.

(3) *Slot machine.* The term “slot machine” means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

(c) *Prescribed form; time and place for filing the return.* The return described in paragraph (a) of this section is a Form W-2G, “Certain Gambling Winnings.” The Form W-2G must be filed with the appropriate Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. See section 6011 and § 1.6011-2 for requirements to file electronically.

(d) *Information included on the return—(1) In general.* Each return required by paragraph (a) of this section must contain:

(i) The name, address, and taxpayer identification number of the payor;

(ii) The name, address, and taxpayer identification number of the payee;

(iii) A general description of the two types of identification (as described in paragraph (e) of this section), one of which must have the payee’s photograph on it (except in the case of tribal member identification cards in certain circumstances as described in paragraph (d)(2) of this section) that the payor relied on to verify the payee’s name, address, and taxpayer identification number;

(iv) The date and amount of payment;

(v) The type of wagering transaction (bingo, keno, or slot machine play);

(vi) In the case of a bingo or keno game, any number, color, or other designation assigned to the game for which the payment is made;

(vii) In the case of slot machine play, the identification number of the slot machine(s) (for example, location and asset number);

(viii) Any other information required by the forms, instructions, revenue procedures, or other applicable guidance published in the Internal Revenue Bulletin.

(2) *Special rule for tribal member identification cards.* A tribal member identification card need not contain the payee’s photograph to meet the identification requirement described in paragraph (d)(1)(iii) of this section if:

(i) The payee is a member of a federally recognized Indian tribe;

(ii) The payee presents the payor with a tribal member identification card issued by a federally recognized Indian tribe stating that the payee is a member of such tribe; and

(iii) The payor is a gaming establishment (as described in paragraph (b)(2)(iv) of this section) owned or licensed (in accordance with 25 U.S.C. 2710) by the tribal government that issued the tribal member identification card referred to in (d)(2)(ii).

(3) *Special rule for optional aggregate reporting method.* In the case of aggregate reporting under paragraph (g) of this section, the amount of the payment in paragraph (d)(1)(iv) of this section is the aggregate amount of payments of reportable gambling winnings from the same type of game (bingo, keno, or slot machine play) made to the same payee during the same information reporting period (as defined in paragraph (b)(2) of this section). Unless otherwise provided in forms, instructions, or other guidance, in the case of aggregate reporting under paragraph (g) of this section, the information required by paragraphs (d)(1)(v) through (viii) of this section must be maintained by the payor as described in paragraph (g)(3) of this section.

(e) *Identification.* The following items are treated as identification for purposes of paragraph (d)(1)(iii) of this section—

(1) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, tribal member identification card issued by a federally recognized Indian tribe, or voter registration card) in the name of the payee; and

(2) A Form W-9, "Request for Taxpayer Identification Number and Certification," signed by the payee, that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W-9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(f) *Furnishing a statement to the payee.* Every payor required to make a return under paragraph (a) of this section must also make and furnish to each payee, with respect to each payment of reportable gambling winnings, a written statement that contains the information that is required to be included on the return under paragraph (d) of this section. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the reportable gambling winnings is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(g) *Aggregate reporting of bingo, keno, and slot machine winnings*—(1) *In general.* In lieu of filing a separate information return for each payment of reportable gambling winnings as required by paragraph (a) of this section, a payor may use the aggregate reporting method (defined in paragraph (g)(2) of this section) to report reportable gambling winnings from bingo, keno, or slot machine play. A payor using the aggregate reporting method to file information returns under paragraph (a) of this section must also furnish statements to the payee under paragraph (f) of this section using the aggregate reporting method.

(2) *Aggregate reporting method defined.* (i) The aggregate reporting method

is a method of reporting more than one payment of reportable gambling winnings from the same type of game (bingo, keno, or slot machine play) made to the same payee during the same information reporting period (as defined in this paragraph (b)(2) of this section) on one information return or statement.

(ii) A payor may use the aggregate reporting method for payments to some payees and not others, at its own discretion. In addition, with respect to a single payee, the payor may use the aggregate reporting method to report winnings from one type of game, but not for winnings from another type of game.

(iii) Failure to report some reportable gambling winnings from a particular type of game during one information reporting period to a particular payee under the aggregate reporting method (for whatever reason, including because the winnings are not permitted to be reported using the aggregate reporting method under paragraph (g)(4) of this section) will not disqualify the payor from using the aggregate reporting method to report other reportable gambling winnings from that type of game during that information reporting period to that payee. The payor may stop using the aggregate reporting method for a particular payee or for all payees before the end of the payor's information reporting period for any reason.

(3) *Recordkeeping under the aggregate reporting method.* A payor using the aggregate reporting method must maintain a record of every payment of reportable gambling winnings from the same type of game made to the same payee during the information reporting period that will be reported using the aggregate reporting method. Every individual that the payor has determined is responsible for an entry in the record must confirm the information in the entry by signing the record in a manner that will enable the signature to be associated with the relevant entry. Each payment of a reportable gambling winning made to the same payee and reported under the aggregate reporting method must have its own entry in the record, however, the information required by paragraphs (d)(1)(i) through (iii) of this section is not required to be recorded more than one time per information re-

porting period. A payor that uses the aggregate reporting method must retain a copy of the record in its files. The record (which may be electronic provided the requirements set forth in forms, instructions, or guidance published in the Internal Revenue Bulletin are met) must include the following information about each payment:

(i) The payee's signature confirming the information in the record;

(ii) The information required under paragraph (d) of this section;

(iii) The time of the win resulting in the reportable gambling winnings;

(iv) The total amount of reportable gambling winnings with respect to all payments to the payee during the information reporting period;

(v) The amount of reportable gambling winnings with respect to each particular payment;

(vi) The method of payment to the payee (for example, cash, check, voucher, credit, token, or chips); and

(vii) The name and unique identification number of the individual who the payor has determined is responsible for ensuring that the entry with respect to the reportable gambling winnings (including the general description of two types of identification used to verify the payee's name, address, and taxpayer identification number) is complete and accurate and who is authorized to perform that function by the applicable gaming regulatory control authority. Such individual may or may not be the same individual who prepared the entry.

(4) *When the aggregate reporting method may not be used.* A payor cannot use the aggregate reporting method if—

(i) The payment is to a foreign person, as described in section 1.6041-10(h);

(ii) The payor knows or has reason to know that the person making the wager is not the person entitled to the winnings or is not the only person entitled to the winnings (regardless of whether the person making the wager furnishes a Form 5754, "Statement by Person(s) Receiving Gambling Winnings"); or

(iii) Backup withholding under section 3406(a) applies to the payment.

(5) *Examples.* The following examples illustrate the provisions of this section. For each example, assume that for pur-

poses of the aggregate reporting method in paragraph (g) of this section, Casino R's "information reporting period" for all calendar years is a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the following day (except for January 1 and December 31) and that individuals C, D, and E are U.S. persons.

*Example 1.* On Day 1, between 7 a.m. and 4 p.m., C places five wagers at casino R on five different slot machines. The first two wagers result in no win. The third wager results in a \$1,500 win. The fourth wager results in a \$2,500 win. The fifth wager results in an \$800 win:

(i) Under paragraph (b)(1)(i)(C) of this section, there are reportable gambling winnings from the slot machine play of \$4,000 (\$1,500 + \$2,500). The \$800 win is not a reportable gambling winning from slot machine play because it does not equal or exceed the \$1,200 threshold.

(ii) Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same information reporting period, R is permitted to use the aggregate reporting method under this paragraph (g). If R decides not to use the aggregate reporting method, a separate Form W-2G would have to be filed and furnished for the payment of reportable gambling winnings of \$1,500 and for the payment of reportable gambling winnings of \$2,500. However, if R decides to use the aggregate reporting method, R may report total reportable gambling winnings from slot machine play of \$4,000 (\$1,500 + \$2,500) on one Form W-2G.

*Example 2.* Assume the same facts as *Example 1*, except that in addition to the winnings described in *Example 1*, at 5 a.m. on Day 2, C wins \$3,250 from one slot machine play at casino R. Even though C played the same type of game (slot machine play) on Day 1 and Day 2, under paragraph (b)(2) of this section, the win at 5 a.m. on Day 2 is a win during a separate information reporting period. Under paragraph (g)(2)(i) of this section, the \$3,250 of reportable gambling winnings on Day 2 cannot be aggregated with the reportable gambling winnings of \$4,000 from Day 1 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$4,000 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W-2G, and \$3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W-2G.

*Example 3.* On December 31 of Year 1 at 4:00 p.m., C wins \$10,000 from one slot machine play at casino R. At 12:30 a.m. on January 1 of Year 2, C wins \$4,000 from one slot machine play at casino R. Under paragraphs (b)(2)(iii)(B) and (C) of this section, the win at 4 p.m. on December 31 of Year 1 and the win at 12:30 a.m. on January 1 of Year 2 are wins during different information reporting periods. Under paragraph (g)(2)(i) of this section, the \$4,000 of reportable gambling winnings on January 1 cannot be aggregated with the reportable gambling winnings of \$10,000 from December 31 on a single

Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$10,000 of reportable gambling winnings from slot machine play paid to C on December 31 on the first Form W-2G and \$4,000 of reportable gambling winnings from slot machine play paid to C on January 1 on the second Form W-2G.

*Example 4.* Assume the same facts as example 3, except that C also wins \$5,000 from one slot machine play at 3:30 p.m. on January 1 and \$7,000 from one slot machine play at 1:30 a.m. on January 2. Under the special rule of paragraph (b)(2)(iii) of this section, the "information reporting period" begins at 12:00 a.m. on January 1 and extends until the start of the next information reporting period, in this case 2:59 a.m. on January 2. Under paragraph (b)(1)(C) of this section, Casino R will pay C a total of \$26,000 (\$10,000 + \$4,000 + \$5,000 + \$7,000) in reportable gambling winnings; however, \$10,000 must be reported in Year 1, and \$16,000 must be reported in Year 2. Because all of the amounts won in Year 2 were won on the same type of game and during the same information reporting period, R is permitted to use the aggregate reporting method under this paragraph (g). If R decides to use the aggregate reporting method, R may report \$10,000 of reportable gambling winnings from slot machine play paid to C on December 31 on the first Form W-2G and \$16,000 of total reportable gambling winnings from slot machine play paid to C on January 1 on the second Form W-2G.

*Example 5.* At 2 p.m. on Day 1, D won \$2,000 (after reducing the amount of the win by the amount wagered) playing one keno game at casino R. D provides R with his driver's license. The driver's license has D's photograph on it, as well as D's name and address. The driver's license does not include D's social security number. D cannot remember his social security number and has no other identification at the time with his social security number on it. D does not provide R with his social security number before R pays the winnings to D. Because D cannot remember his social security number, D cannot complete and sign a Form W-9. R deducts and withholds \$560 (28 percent of \$2,000) under the backup withholding provisions of section 3406(a) and pays the remaining \$1,440 in winnings to D. D returns to casino R and at 6 p.m. on Day 1 wins \$1,500 (after reducing the amount of the win by the amount wagered) in one keno game. D provides R with his driver's license as well as D's social security card. R generally uses the aggregate reporting method and in all cases where it is used, R complies with the requirements of this paragraph (g). At 8 p.m. and 10 p.m. on Day 1, D wins an additional \$1,800 and \$1,700 (after reducing the amount of the win by the amount wagered), respectively, from two different keno games. For each of these two wins, an employee of R obtains the information from D required by this paragraph (g):

(i) Under paragraph (b)(1)(i)(B) of this section, each of D's wins from the four games of keno on Day 1 (\$2,000, \$1,500, \$1,800, and \$1,700) are reportable gambling winnings. Because D's first win on Day 1 was at 2 p.m. and D's last win on Day 1 was at 10 p.m., all of D's reportable gam-

bling winnings from keno are won during the same information reporting period. Because R satisfies the requirements of paragraph (g)(2)(i), R may use the aggregate reporting method to report D's reportable gambling winnings from keno. However, pursuant to paragraph (g)(4)(iii) of this section, the \$2,000 payment made to D at 2 p.m. cannot be reported under the aggregate reporting method because that payment was subject to backup withholding. Accordingly, if R uses the aggregate reporting method under this paragraph (g), R will have to file two Forms W-2G with respect to D's reportable gambling winnings from keno on Day 1. On the first Form W-2G, R will report \$2,000 of reportable gambling winnings and \$560 of backup withholding with respect to the 2 p.m. win from keno, and, on the second Form W-2G, R will report \$5,000 of reportable gambling winnings from keno (representing the three payments of \$1,500, \$1,800, and \$1,700 that D won between 6 p.m. and 10 p.m. on Day 1).

*Example 6.* In one information reporting period on Day 1, E won five reportable gambling winnings from five different bingo games at a casino R. R generally uses the aggregate reporting method and in all cases where it is used, R complies with the requirements of this paragraph (g). Although E signed the entry in the record R maintains for payment of the first four reportable gambling winnings, E refuses to sign the entry in the record for the fifth payment of reportable gambling winnings. R may use the aggregate reporting method for the first four payments of reportable gambling winnings to E. However, because the entry in the record for the fifth payment of reportable gambling winnings does not include E's signature, as required by paragraph (g)(3)(i) of this section, that payment may not be reported under the aggregate reporting method. Accordingly, if R uses the aggregate reporting method under paragraph (g) of this section, R must prepare two Forms W-2G as follows: On the first Form W-2G, R must report the first four payments of reportable gambling winnings from bingo made to E on Day 1. On the second Form W-2G, R must report the fifth payment of reportable gambling winnings from bingo made to E on Day 1.

(h) *Payments to foreign persons.* See § 1.6041-4 regarding payments to foreign persons. See § 1.6049-5(d) for determining whether the payee is a foreign person.

(i) *Effective/applicability date.* Section 1.6041-10(b)(2), concerning payor-selected "information reporting periods," applies to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after January 1 of the year following the date these regulations are published in the **Federal Register**. All other sections contained herein apply to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after December 30, 2016.

(j) *Cross-references for certain gambling winnings.* For provisions relating to backup withholding for winnings from bingo, keno, and slot machine play and other reportable gambling winnings, see §31.3406(g)-2(d). For provisions relating to withholding and reporting for gambling winnings from lotteries, sweepstakes, wagering pools, and other wagering transactions, including a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai, see §31.3402(q)-1.

PART 7 – TEMPORARY INCOME  
TAX REGULATIONS UNDER THE  
TAX REFORM ACT OF 1976

Par. 3. The authority citation for part 7 continues to read in part as follows:

26 U.S.C. 7805\* \* \*  
§7.6041-1 [Removed]

Par. 4. Section 7.6041-1 is removed.

PART 31—EMPLOYMENT TAXES  
AND COLLECTION OF INCOME  
TAX AT SOURCE

Par. 5. The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805\* \* \*  
§31.3406(g)-2 [Amended]

Par. 6. In §31.3406(g)-2, paragraph (d)(3) is amended by removing the citation “§7.6041-1” and adding the citation “§1.6041-10” in its place.

\* \* \* \* \*

John Dalrymple  
*Deputy Commissioner for Services and  
Enforcement.*

Approved: December 13, 2016.

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

(Filed by the Office of the federal Register on December 8, 2016, 8:45 a.m., and published in the issue of the federal Register on December 9, 2016, 81 F.R. 89004)

26 CFR 1.871-14; 26 CFR 1.1441-0; 26 CFR 1.1441-1; 26 CFR 1.1441-2; 26 CFR 1.1441-3; 26 CFR 1.1441-4; 26 CFR 1.1441-5; 26 CFR 1.1441-6; etc.

## T.D. 9808

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, and 301

#### Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment

AGENCY: Internal Revenue Service  
(IRS), Treasury.

ACTION: Removal of temporary regulations; final regulations; and temporary regulations.

SUMMARY: This document contains final and temporary regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations. This document finalizes (with minor changes) certain proposed regulations under chapters 3 and 61 and sections 871, 3406, and 6402 of the Internal Revenue Code of 1986 (Code), and withdraws corresponding temporary regulations. This document also includes temporary regulations providing additional rules under chapter 3 of the Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin**. The temporary regulations affect persons making payments of U.S. source income to foreign persons.

DATES: *Effective date.* These regulations are effective on January 6, 2017.

*Applicability dates.* For dates of applicability, see §§ 1.871-14(j), 1.1441-1(f), 1.1441-3(i), 1.1441-4(g), 1.1441-5(g), 1.1441-6(i), 1.1441-7(g), 1.1461-1(i), 1.1461-2(d), 1.6041-1(j), 1.6041-4(d), 1.6042-2(f), 1.6042-3(d), 1.6045-1(q), 1.6049-4(h), 1.6049-5(g), 31.3406(g)-1(g), 31.3406(h)-2(i), and 301.6402-3(f).

FOR FURTHER INFORMATION CONTACT: Leni Perkins at (202) 317-6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1441-1, 1.1441-3, 1.1441-4, and 1.1441-5. The IRS intends that the information collection requirements of these regulations will be implemented through use of the W-8 series of forms, Form W-9, Form 1042, Form 1042-S, the 1099 series of forms, and Form 8966, as well as certain income tax returns (for example, Forms 1040, 1040-NR, and 1120F). As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

#### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 871, 1441, 1461, 6041, 6042, 6045, 6049, and 6050 of the Code, the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Admin-

istration Regulations (26 CFR part 301) under section 6402 of the Code. On January 28, 2013, final regulations (TD 9610) under chapter 4 of the Code (sections 1471 through 1474) were published in the **Federal Register** (78 FR 5874), and on September 10, 2013, corrections to the final regulations were published in the **Federal Register** (78 FR 55202). The regulations in TD 9610 and the corrections thereto are collectively referred to in this preamble as the 2013 final chapter 4 regulations. To coordinate with certain provisions of the 2013 final chapter 4 regulations, as well as temporary regulations (TD 9657) under chapter 4 published in the **Federal Register** (79 FR 12812) on March 6, 2014, temporary regulations (TD 9658) revising certain provisions of the final chapters 3 and 61 regulations were published in the **Federal Register** (79 FR 12726) on March 6, 2014, and corrections to those temporary regulations were published in the **Federal Register** (79 FR 37181) on July 1, 2014. Collectively, the regulations in TD 9657 and the corrections thereto are referred to in this preamble as the 2014 temporary coordination regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary coordination regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12880).

Comments were received in response to the 2014 temporary coordination regulations, but no public hearing was requested, and none was held. In response to comments, and after further consideration, this document includes final and temporary regulations that revise and clarify certain sections of the 2014 temporary coordination regulations. In some cases, the changes to the 2014 temporary coordination regulations contained in these final and temporary chapter 3 regulations are made to coordinate with final and temporary regulations issued under chapter 4 that are being published in the **Federal Register** concurrently with this document. Certain provisions of these final and temporary chapter 3 regulations were previewed in notices published after the publication of the 2014 temporary coordination regulations. See Notice 2014–33, 2014–21 I.R.B. 1033; Notice 2014–59, 2014–44 I.R.B. 747; and Notice 2016–42, 2016–19 I.R.B. 67. In addition, some

changes in these final regulations are corrections of minor errors in the 2014 temporary coordination regulations. Additional unsolicited comments were received regarding the final chapters 3 and 61 regulations. These comments are not discussed herein, except where changes have been made in response thereto.

### **Summary of Comments and Explanation of Revisions and Provisions**

#### *A. Comments and Changes to § 1.1441–1 – Requirement for the Deduction and Withholding of Tax on Payments to Foreign Persons*

##### *1. U.S. branch treated as a U.S. person*

Section 1.1441–1T(b)(2)(iv)(A) of the 2014 temporary coordination regulations provides that a U.S. branch of a foreign person that is a participating FFI, registered deemed-compliant FFI, or NFFE may agree to be treated as a U.S. person. In connection with changes in the chapter 4 regulations published concurrently with these regulations, the final regulations remove the requirement that the foreign person of which the U.S. branch is a part have a specified chapter 4 status. Additionally, the requirements for a withholding certificate from a U.S. branch that agrees to be treated as a U.S. person in § 1.1441–1(e)(3)(v)(A) have been modified to remove the requirement that the U.S. branch certify to the chapter 4 status of the foreign person of which the U.S. branch is a part.

##### *2. Presumption of foreign status of an entity based on documentary evidence or GIIN*

Section 1.1441–1T(b)(3)(iii)(A) of the 2014 temporary coordination regulations provides presumption rules for payments made to exempt recipients. Comments requested that if a withholding agent or payor makes a payment (other than a withholdable payment) to an entity payee that is an exempt recipient and has not received a valid withholding certificate but instead has documentary evidence such as a certificate of incorporation indicating that the payee is a foreign person, the withholding agent or payor should be

able to presume, based on the documentary evidence, that the payee is a foreign person. The Treasury Department and the IRS decline to adopt this recommendation because the application of such a presumption rule would be limited in scope (given that withholding agents can choose to apply the rules of § 1.1441–1(b)(3)(iii)(A)(2), which are generally applicable to withholdable payments, to all payments with respect to an obligation) and because of concerns about the application of the suggested presumption rule in the case of foreign partnerships in which non-exempt recipients are partners, and to which the presumption rules of § 1.1441–5(c)(1)(iii) apply.

Comments also requested that a withholding agent or payor should be able to presume that an undocumented entity payee is foreign if there is a Global Intermediary Identification Number (GIIN) on file for the payee and the payee's name appears on the IRS FFI List. The Treasury Department and the IRS have declined to adopt this suggestion. U.S. entities can obtain GIINs, and if they do, their names appear on the IRS FFI list, such as when they are acting as sponsoring entities for chapter 4 purposes. Thus, it would not be appropriate for a GIIN to support a presumption of foreign status without more evidence of such status.

##### *3. Presumption of foreign status for certain entities on the per se list of foreign corporations*

Under § 1.1441–1T(b)(3)(iii)(A)(1)(iii) of the 2014 temporary coordination regulations, a withholding agent must presume that an undocumented entity payee that is an exempt recipient is a foreign person if the name of the payee indicates that the entity is a type of entity that is on the per se list of foreign corporations in § 301.7701–2(b)(8)(i), unless the name contains the designation “corporation” or “company” (which, in itself, would not be indicative of foreign status). Comments have requested that, rather than excluding all exempt entity payees whose names include “company” or “corporation” for purposes of this presumption rule, the rule instead be modified to provide that for payees whose names contain these designations, foreign status should be presumed

if the withholding agent has a document that reasonably demonstrates that the entity is incorporated in the relevant foreign jurisdiction on the per se list. The Treasury Department and the IRS agree that this modification is appropriate and have included it in these final regulations.

#### *4. Reliance on electronic transmission of certificates, forms, and documentation*

Generally, a withholding agent must withhold at a 30% rate on any payment of an amount subject to withholding unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. § 1.1441-1(b)(1). The 2014 temporary coordination regulations allow a withholding agent to rely on a valid Form W-8 or documentary evidence received by facsimile or scanned and furnished by e-mail unless the withholding agent knows that the person transmitting the withholding certificate or documentary evidence is not authorized to do so, effective for payments made after March 6, 2014. This effective date prevents withholding agents from relying upon scanned or faxed withholding certificates or documentary evidence pursuant to § 1.1441-1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations for payments made on or before March 6, 2014. As a result, withholding agents must instead obtain “hard copies” of the original form or document in order to cure documentation failures for such payments, to the extent allowed under § 1.1441-1(b)(7)(ii). Comments have suggested that the effective date with respect to this provision be modified to allow withholding agents to rely upon forms or documentary evidence received by facsimile or scanned and sent by e-mail after March 6, 2014, regardless of when the payment was made. The Treasury Department and the IRS agree that requiring hard copies of original documentation to cure documentation failures for payments made on or before March 6, 2014, but not for payments after that date, provides minimal benefits compared to the additional effort required for a withholding agent to obtain a hard copy of the documentation. Accordingly, these final

regulations modify the effective date as it relates to this provision so that it applies to any open tax year. In addition, to correspond to other changes, § 1.1441-1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations is redesignated as § 1.1441-1(e)(4)(iv)(D) in these final regulations.

#### *5. Curing late documentation for claims that income is effectively connected with the conduct of a trade or business in the United States*

When a withholding agent fails to obtain documentation and fails to withhold at the time of payment, the withholding agent is allowed, under certain circumstances, to obtain a valid withholding certificate (and other certifications, as required) to support a reduced rate of withholding. A withholding agent may obtain valid documentation after the date of payment to establish that a reduced rate of withholding was appropriate when it meets the additional requirements under § 1.1441-1(b)(7)(ii) (as amended by the 2014 temporary coordination regulations).

The rules in § 1.1441-1T(b)(7)(ii) of the 2014 temporary coordination regulations establish when additional documentation is required and what the additional documentation is required to contain. These temporary regulations add § 1.1441-1T(b)(7)(ii)(B) with respect to late documentation for income that is effectively connected with the conduct of a trade or business in the United States (effectively connected income). Under this rule, the withholding certificate (in this case, Form W-8ECI) must be associated with a signed affidavit that states that the information and representations contained on the certificate were accurate as of the time of the payment and either (i) the beneficial owner has included the income on its U.S. income tax return for the taxable year in which the income must be reported, or (ii) the beneficial owner will include the income on its U.S. income tax return for the taxable year in which the income must be reported and the due date for filing the return (including any applicable extensions) is after the date on which the affidavit is signed.

This rule is added to ensure compliance with the requirement that the beneficial owner actually include the income on its income tax return for the taxable year in which the income is required to be reported for U.S. tax purposes. Because the exemption for withholding on effectively connected income under section 1441(c)(1) applies only when the income is included in the gross income of the recipient, the Treasury Department and the IRS have decided it is appropriate for a withholding agent that receives a late Form W-8ECI to obtain the aforementioned affidavit. A corresponding change has been made to the temporary regulations under chapter 4 that are being published concurrently with these regulations to address circumstances when a withholding agent may rely on a Form W-8ECI provided after the date of a payment to claim that the payment is effectively connected income (and thus is not a withholdable payment under § 1.1473-1(a)(5)(ii)).

#### *6. Nonresident alien individuals and dual residents*

A U.S. person is defined by reference to section 7701(b). The definition of nonresident alien individual in the chapter 3 regulations does not specify the exact circumstances under which a dual resident of the United States and another jurisdiction will be treated as a nonresident alien individual under an applicable income tax treaty and § 301.7701(b)-7. These temporary regulations therefore clarify that an individual will not be treated as a U.S. person for a taxable year (or any portion thereof) for which he or she is a dual resident taxpayer who is treated as a nonresident alien pursuant to § 301.7701(b)-7 for purposes of computing his or her U.S. tax liability. A corresponding change has also been made to the definition of a U.S. person in the chapter 4 regulations that are being published concurrently with these regulations.

#### *7. Hold mail instruction*

The 2014 temporary coordination regulations provide that an address that is provided subject to instructions to hold all mail to that address is not considered a

permanent residence address; the same rule is provided in the 2013 final chapter 4 regulations. Comments have requested that the definition of permanent residence address be modified to treat an address subject to a hold mail instruction as a permanent residence address if additional documentation is provided. The Treasury Department and the IRS agree that a hold mail instruction should not prevent persons from being able to verify that they have a permanent residence address by providing appropriate additional documentary evidence that supports their residency in the foreign jurisdiction where they are claiming to be resident. These temporary regulations thus revise the definition of “permanent residence address” in § 1.1441-1T(c)(38) to add that an address that is subject to a hold mail instruction can be relied upon as a permanent residence address if the person provides documentary evidence (as described in § 1.1441-1(c)(17)) establishing the person’s residence in the country where the person is claiming to be resident. These revisions also provide that if a hold mail instruction is provided to a withholding agent after the withholding certificate was provided, this will be considered a change in circumstances requiring that additional documentary evidence be obtained in order to use the address on the withholding certificate as a permanent residence address.

#### 8. Revisions to nonqualified intermediary withholding statement for U.S. payee pool

Under § 1.1441-1(e)(3)(iv), a withholding statement provided by a nonqualified intermediary may include an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees when the requirements of that paragraph are satisfied, and a similar allowance is provided for an FFI withholding statement provided by a nonqualified intermediary in the case of a withholdable payment for chapter 4 purposes. A chapter 4 withholding rate pool of U.S. payees is defined as a pool of payees described in either § 1.1471-3(c)(3)(iii)(B)(2)(ii) or (iii) (with § 1.1471-3(c)(3)(iii)(B)(2)(ii), as revised in the final chapter 4 regulations, being published concurrently with these regulations). See the preamble to the final chapter 4 regulations for background on this revision. Payees described in § 1.1471-3(c)(3)(iii)

(B)(2)(ii) consist of account holders receiving payments not subject to withholding under chapter 3 or 4 or under section 3406 that are either (1) holders of non-consenting U.S. accounts maintained by a reporting Model 2 FFI, or (2) holders of accounts with U.S. indicia maintained by a reporting Model 1 FFI for which appropriate documentation sufficient to treat the account holders as other than U.S. persons has not been provided to the FFI. Payees described in § 1.1471-3(c)(3)(iii)(B)(2)(iii) consist of account holders of an FFI that is a non-U.S. payor for chapter 61 purposes that are account holders not subject to withholding under chapter 3 or chapter 4 or under section 3406 and that are also: (1) holders of U.S. accounts that the FFI reports as U.S. accounts pursuant to § 1.1471-4(d)(3) or (5) for the year in which the payment is made, (2) holders of U.S. accounts that the FFI reports pursuant to the conditions of its applicable deemed-compliant status under § 1.1471-5(f)(1) for the year in which the payment is made, or (3) holders of U.S. accounts that a reporting Model 1 FFI reports as reportable U.S. accounts pursuant to an applicable Model 1 IGA, and which includes the U.S. taxpayer identification numbers (TINs) of such account holders, for the year in which the payment is made. Although an allocation of a payment to a payee described in § 1.1471-3(c)(3)(iii)(B)(2)(ii) (as revised in the final chapter 4 regulations being published concurrently with these regulations) is not permitted for a payment subject to chapter 3 withholding, no such limitation applies under § 1.1471-3(c)(3)(iii)(B)(2)(iii) for a payment that is allocable to U.S. accounts (or reportable U.S. accounts) that are maintained by a non-U.S. payor and subject to comprehensive reporting (which includes the U.S. TINs of such account holders) under FATCA or an applicable IGA. As a result, these final regulations add a requirement that a withholding agent may not treat as valid an allocation of a payment subject to chapter 3 withholding to a withholding rate pool of U.S. payees that a nonqualified intermediary does not identify as described in § 1.1471-3(c)(3)(iii)(B)(2)(iii) (by citing to § 1.1471-3(c)(3)(iii)(B)(2)(iii) or describing the payees consistent with that paragraph). To allow withholding agents time to amend their procedures for validating with-

holding statements provided by non-qualified intermediaries, this requirement applies only to payments made on or after April 1, 2018.

#### 9. Alternative withholding statement of a nonqualified intermediary

Section 1.1441-1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations prescribes the information required to be included on a withholding statement provided by a nonqualified intermediary (NQI), such as the name, address, TIN (if any), and type of documentation received by the NQI for each payee. Comments have requested that NQIs be permitted to provide, and withholding agents be permitted to rely on, simplified withholding statements that do not include all of the information specified in § 1.1441-1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations. These comments noted that withholding agents are required to independently verify the information provided on the NQI withholding statement by reviewing and validating the beneficial owner withholding certificates that accompany the NQI’s Form W-8IMY. Accordingly, the comments requested that withholding agents not be required to invalidate a withholding statement that does not provide all of the information specified in § 1.1441-1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations when that information can be found on the beneficial owner withholding certificate. The Treasury Department and the IRS agree with this recommendation, and these temporary regulations add § 1.1441-1T(e)(3)(iv)(C)(3) to provide a new rule allowing a withholding agent to rely on an alternative withholding statement received from an NQI to the extent that the NQI provides the withholding agent with beneficial owner withholding certificates (and not only with documentary evidence). The alternative withholding statement is not required to include information that is also included on the withholding certificates and is not required to specify the rate of withholding applicable to each payee, as long as the withholding agent can determine the appropriate rate from the information on the withholding certificates. Additional requirements include that the alternative

withholding statement contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61, and section 3406, and that the NQI certify that none of the information on the beneficial owner withholding certificates is inconsistent with information in the NQI's files. For example, under this alternative withholding statement rule, if a withholding agent is making a payment to a foreign partnership (that is not a withholding foreign partnership) and has partners who are all foreign individuals, the withholding agent can choose to accept a Form W-8IMY from the foreign partnership that is associated with Forms W-8BEN from all of its partners. The foreign partnership would provide the withholding agent with, in addition to its Form W-8IMY and the Forms W-8BEN, a withholding statement indicating the appropriate allocation among the partners and a representation that none of the information on the Forms W-8BEN is inconsistent with what the foreign partnership has in its files. However, if, for example, the foreign partnership has information in its files for one of the foreign partners such that it would be unable to rely on the withholding certificate under the rules of § 1.1441-7, the foreign partnership would not be able to provide the representation, and the withholding agent would not be allowed to rely on an alternative withholding statement.

#### 10. Indefinite validity of documentation

Section 1.1441-1T(e)(4)(ii)(B)(1) of the 2014 temporary coordination regulations requires that documentary evidence be provided at the same time as a withholding certificate provided by an individual to support a claim of foreign status in order for the withholding certificate to remain valid indefinitely. Commenters have noted that documentary evidence and withholding certificates are often not provided at the same time, and therefore the rule should be more flexible regarding the timing of when these documents must be obtained. The Treasury Department and the IRS agree that the meaning of "provided together" should be clarified. These final regulations specify that "provided together" means that a withholding certifi-

cate and the documentary evidence must be received within 30 days of one another, regardless of which is received first. The Treasury Department and the IRS do not believe it is appropriate to allow the documentary evidence to be provided at any point before the expiration of the withholding certificate because of the risk of changes in an individual's status or residency over a three-year period. In addition, account opening procedures are generally performed within a 30-day period. See § 1.1441-7(b)(2). Corresponding changes have also been made to the chapter 4 regulations that are being published concurrently with these regulations.

In addition, § 1.1441-1T(e)(4)(ii)(B)(2) of the 2014 temporary coordination regulations provides that a withholding certificate (other than the portion relating to a claim for treaty benefits) described in § 1.1471-3(c)(6)(ii)(C)(2) and documentary evidence provided by an entity supporting the entity's claim of foreign status are valid indefinitely if they are provided together. Similar to comments on withholding certificates provided by individuals, comments on withholding certificates provided by entities noted challenges with respect to the "provided together" requirement. In response to these comments, the final regulations remove the phrase "provided together" and instead provide that a withholding certificate provided by an entity (that is, a Form W-8BEN-E) (other than the portion relating to a claim for treaty benefits) accompanied by documentary evidence will be valid indefinitely if the withholding agent receives both before either the withholding certificate or the documentary evidence would otherwise expire (even if the withholding certificate and documentary evidence are not provided simultaneously). The Treasury Department and the IRS believe it is appropriate to have different standards for documentation received from individuals and entities in this respect because it is less common for entities to change their statuses within a three-year period. In addition, comments noted that the applicability of this rule in the 2014 temporary coordination regulations, limited to the withholding certificates described in § 1.1471-3(c)(6)(ii)(C)(2), is too narrow. The Treasury Department and the IRS agree; accordingly, these final regulations

remove the cross-reference to § 1.1471-3(c)(6)(ii)(B). However, these final regulations cross-reference the indefinite validity rules in § 1.1471-3(c)(6)(ii) that apply for chapter 4 purposes.

#### 11. Treaty statements provided with documentary evidence

Under the chapter 3 regulations, a withholding agent may apply a reduced rate of withholding under section 1441, 1442, or 1443 on a payment to a foreign entity in certain cases under the terms of an income tax treaty if the person represents that the payment is treated as derived by a resident of the applicable treaty jurisdiction and all of the other requirements for benefits under the applicable treaty are satisfied. A withholding certificate provided by an entity that is claiming reduced withholding under an income tax treaty must contain a statement that the treaty claimant meets the limitation on benefits requirement, if any, under the treaty. Because entitlement to a reduced rate of withholding under a treaty is conditioned on the beneficial owner satisfying limitation on benefits provisions, the requirement for a beneficial owner to provide a treaty statement helps ensure that beneficial owners understand the relevant treaty provisions and qualify for the claims they are making. Under the chapter 3 regulations, a treaty statement provided on a Form W-8BEN-E expires on the last day of the third calendar year following the date the form was signed, but a treaty statement provided with documentary evidence remains valid indefinitely (unlike the documentary evidence itself in most cases). In order to enhance the reliability and increase the accuracy of the claims, to help assure that information is updated when ownership thresholds or activity requirements in a particular treaty have changed, and to have a consistent validity period regardless of how a treaty statement is provided, these temporary regulations provide that a treaty statement regarding limitation on benefits that is associated with documentary evidence will remain valid until the last day of the third calendar year following the year in which the statement is provided to the withholding agent. For existing accounts that were documented with documentary

evidence before the date of publication of these temporary regulations, the treaty statements will expire on January 1, 2019.

#### 12. *Electronic system for Form 8233*

Section 1.1441-1T(e)(4)(iv)(A) of the 2014 temporary coordination regulations allows a withholding agent to establish an electronic system to collect Forms W-8 (or any other form as the IRS may prescribe) from a beneficial owner or payee. Comments requested that withholding agents be allowed to establish such an electronic system for collecting Forms 8233, "Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual." The Treasury Department and the IRS accept this request and have added § 1.1441-1T(e)(4)(iv)(C) to provide the requirements for the system.

#### 13. *Electronic signatures*

Comments requested that the regulations be amended to allow a withholding agent to accept a Form W-8 with an electronic signature when the withholding agent has not developed and maintained an electronic collection system described in § 1.1441-1(e)(4)(iv)(B). The Treasury Department and the IRS have determined that valid electronically signed withholding certificates may be accepted by a withholding agent if the withholding certificates reasonably demonstrate to the withholding agent that they have been electronically signed by the recipient identified on the form or a person authorized by the recipient to sign the form (by, for example, a signature block that includes a time and date stamp and a statement that the certificate has been electronically signed and the name of the person authorized to sign the form). If the withholding certificate contains only a typed name in the signature line and no other information regarding the method of signature, a withholding agent cannot treat the withholding certificate as validly signed. These temporary regulations reflect this change. A coordinating change is also being made to the chapter 4 regulations.

#### 14. *Authentication of forms and documentary evidence received by facsimile or e-mail*

Comments requested more detailed guidance on how a withholding agent could authenticate and verify a form or documentary evidence received by facsimile or e-mail, for example by obtaining an authorization letter from the person who signed the form. The Treasury Department and the IRS have not provided prescriptive guidance on the procedures that must be used for this purpose, in part because the standard under § 1.1441-1(e)(4)(iv)(D) (§ 1.1441-1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations) for a withholding agent with respect to whether a form was provided by someone authorized to provide the form is an actual knowledge standard (that is, the withholding agent must not have actual knowledge that the form was transmitted by a person not authorized to do so by the person required to execute the form). The Treasury Department and the IRS believe that the current regulations offer sufficient flexibility for withholding agents to develop the necessary procedures for authenticating and verifying that the form was transmitted to the withholding agent by a person who was authorized to do so without the need for further guidance.

#### 15. *Withholding certificates and documentary evidence furnished through a third party repository*

Comments have requested clarification of guidance provided in the Frequently Asked Questions (FAQ) on the IRS website (see <https://www.irs.gov/businesses/corporations/frequently-asked-questions-fatca-compliance-legal>) regarding when withholding agents may rely on withholding certificates obtained from third-party repositories; specifically, clarification was requested that the principles for the appropriate use of a third-party repository outlined in the FAQ would extend to all Forms W-8. The Treasury Department and the IRS have included in these temporary regulations guidance regarding the circumstances under which a Form W-8 (and, in certain circumstances where applicable, a withholding statement) maintained by a third-party repository will be considered

furnished to the withholding agent by the person whose name is on the certificate. See § 1.1441-1T(e)(4)(iv)(E).

#### 16. *Reliance on prior versions of withholding certificates*

The 2014 temporary coordination regulations allow a withholding agent to continue to accept the prior version of a withholding certificate that has been revised for a period of six months after the date of release of the revised withholding certificate. Comments noted that this period may be difficult for withholding agents to comply with, depending on when the revised version of the form is released and how extensive the revisions are. Comments also noted challenges in coordinating this requirement with the renewal requirements for withholding certificates, which expire as of the end of a calendar year. The Treasury Department and the IRS agree that it is appropriate to extend the period during which prior versions of withholding certificates may be used beyond six months. These final regulations provide that withholding agents generally may use prior versions of withholding certificates until the later of six months after the date of issuance of the most recent revision to the withholding certificate, or the end of the calendar year during which the revised version was issued. However, in certain circumstances, such as when a new status must be established on the withholding certificate because of a new requirement in the regulations, the Treasury Department and the IRS may designate a shorter transition period.

#### 17. *Revisions related to qualified intermediaries*

On July 1, 2016, in Notice 2016-42, 2016-29 I.R.B. 67, the Treasury Department and the IRS released the proposed Qualified Intermediary (QI) agreement (the Proposed QI Agreement), which, once finalized, would be effective on or after January 1, 2017. In response to comments received following the publication of the QI agreement (the 2014 QI Agreement) in 2014 in Rev. Proc. 2014-39, 2014-29 I.R.B. 150, the Proposed QI Agreement provided more detailed compliance and review procedures for QIs,

requirements applicable to qualified derivatives dealers, and other revisions and corrections. These temporary and final regulations include several revisions that align with the Proposed QI Agreement. These final regulations clarify the rule already provided in the 2014 temporary coordination regulations that when a QI is a participating FFI or a registered deemed-compliant FFI for purposes of chapter 4, it may represent that it assumes chapter 61 reporting responsibilities (and reports accordingly) when it reports its U.S. accounts in accordance with the coordination rules of § 1.6049-4(c)(4). These regulations also clarify that, in certain cases, for purposes of the alternative procedures for allocating payments to U.S. non-exempt recipients on withholding statements described in the QI agreement, QIs may, as provided in the QI agreement, include a chapter 4 withholding rate pool of U.S. payees in the same zero-rate pool as foreign persons that are exempt from chapter 3 withholding.

Section 1.1441-1T(e)(5)(ii) of the 2014 temporary coordination regulations lists the types of entities that are eligible to enter into QI agreements, including foreign corporations that are presenting claims of treaty benefits on behalf of their shareholders. In Notice 2016-42, the Treasury Department and the IRS requested comments on the situations where a foreign corporation (other than a reverse hybrid entity) would be seeking to act as a QI on behalf of its shareholders, and questioned why the withholding foreign partnership agreement does not accommodate such situations. No comments were received in response to this request. As a result, and because § 1.1441-1(e)(5)(ii)(D) provides that “any person acceptable to the IRS” may be eligible to be a QI, these final regulations remove from the list of prospective QIs the specific category of foreign corporations presenting treaty benefit claims on behalf of their shareholders.

#### 18. Requirement for a withholding agent to collect foreign taxpayer identification number (foreign TIN)

Form W-8BEN and the instructions to the form describe circumstances under which a foreign person is required to provide a foreign TIN or date of birth on the

form. Similarly, Form 1042-S and the instructions to the form outline circumstances under which a withholding agent is required to report such information. These temporary regulations provide that, starting January 1, 2017, for an account maintained at a U.S. office or branch of a withholding agent that is a financial institution, the withholding agent will be required to collect the account holder’s foreign TIN, and, in the case of an individual account holder, the account holder’s date of birth, on a withholding certificate. A withholding certificate that does not contain a date of birth but is otherwise valid will not be invalid if the withholding agent has such information in its files. For withholding certificates associated with payments made on or after January 1, 2018, a foreign person that does not have a foreign TIN must provide a reasonable explanation as to the lack of a foreign TIN (for example, that the country of residence does not provide TINs).

#### B. Changes to § 1.1441-2 – Amounts Subject to Withholding – Withholding on United States Source Gross Transportation Income

Under section 887(a), gross income derived by a nonresident individual or foreign corporation that constitutes United States source gross transportation income (USSGTI) is subject to a four-percent tax, and is not subject to tax under section 871, 881, or 882. For these purposes, USSGTI consists of income derived from, or in connection with, (1) the use (or hiring or leasing for use) of a vessel or aircraft or (2) the performance of services directly related to the use of a vessel or aircraft, to the extent the income is treated as derived from U.S. sources under section 863(c)(2). USSGTI does not include such income, however, if it is effectively connected with the trade or business in the United States of a nonresident alien or foreign corporation, within the meaning of section 887(b)(4), nor does it include income taxable in a possession of the United States under the provisions of the Code as made applicable in such possession. Items of income that are not USSGTI, as defined in section 887(b), are not affected by the change to the regulations described in

this section, and the normal income tax rules apply.

Under sections 1441 and 1442, items of gross income from U.S. sources paid to nonresident individuals and foreign corporations may be subject to withholding at a 30-percent rate if such items are “amounts subject to withholding” within the meaning of § 1.1441-2. In general, under § 1.1441-2(a), the term “amounts subject to withholding” is broadly defined to include amounts from sources within the United States that constitute fixed or determinable annual or periodical income, which in turn is defined to include all income included in gross income under section 61 subject to certain exceptions. Given the broad definition of “amounts subject to withholding” and the lack of a specific exception for USSGTI, taxpayers have questioned whether amounts paid that constitute USSGTI are subject to withholding under section 1441 or 1442 at a 30-percent rate, notwithstanding that, under section 887(a), a four-percent tax is imposed on a nonresident alien individual or foreign corporation’s USSGTI for the taxable year.

Because USSGTI is not subject to section 871 or 881 gross basis tax if section 887(a) applies, it is not an amount subject to withholding under section 1441 or 1442. The temporary regulations clarify this result under § 1.1441-2T(a)(8) by providing that amounts subject to withholding under section 1441 or 1442 do not include gross income of a nonresident alien or foreign corporation that is taxable under section 887(a) at four percent. Comments are requested regarding documentation requirements for applying this exception.

#### C. Comments and Changes to § 1.1441-3 – Determination of Amounts to be Withheld – Coordination with Withholding under Section 1445 as Amended by the PATH Act

The regulations in § 1.1441-3 include rules for coordinating with section 1445 in the case of distributions from qualified investment entities and United States real property holding companies. Section 1445(a) generally imposes a withholding tax obligation on the transferee when a foreign person disposes of

a United States real property interest. Before the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422, the withholding rate under the relevant provisions of section 1445 was 10 percent of either the amount realized or the fair market value of the interest, as applicable. The PATH Act generally increased the withholding rate under section 1445 from 10 percent to 15 percent for dispositions occurring after February 16, 2016 (with certain exceptions for acquisitions of residences). These final regulations incorporate the PATH Act’s rate change for these dispositions when referenced in § 1.1441–3.

*D. Comments and Changes to § 1.1441–4 – Exemptions from Withholding for Certain Effectively Connected Income and Other Amounts – Form 8233 TIN requirement*

Compensation for personal services paid to a nonresident alien individual is not subject to withholding under section 1441 if the compensation is effectively connected with the conduct of a trade or business in the United States and is exempt from U.S. federal income tax under an income tax treaty. In order for a nonresident alien individual to claim treaty benefits for reduced withholding, the chapter 3 regulations require that he or she provide a Form 8233 that includes a TIN or proof that an application for a TIN has been filed. Comments requested that individuals in these circumstances be exempt from the requirement to include a TIN on the Form 8233. The Treasury Department and the IRS decline to accept this request because these individuals also generally have an obligation to file a Form 1040NR to claim the exemption from tax provided by the income tax treaty and must have a TIN to file the Form 1040NR. The requirement that the TIN (or proof of application for a TIN) also be provided on the Form 8233 therefore does not place an additional burden on these individuals and helps ensure appropriate treaty benefits are provided.

*E. Comments and Changes to § 1.1441–6 – Claim of Reduced Withholding under an Income Tax Treaty*

*1. Form W–8BEN–E and limitation on benefits requirements*

In April 2016, the IRS released a revised Form W–8BEN–E, “Certification of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities),” and revised instructions, which require an entity claiming treaty benefits to identify the specific type of limitation on benefits provision that the entity meets to be eligible to claim benefits under the treaty (for example, the publicly traded test or the stock ownership and base erosion test, the active trade or business test, etc.). These temporary regulations modify the chapter 3 regulations, consistent with the revised Form W–8BEN–E and instructions, to require that a limitation on benefits statement on Form W–8BEN–E identify the specific limitation on benefits provision on which the taxpayer is relying to claim treaty benefits. This revision to the form and the chapter 3 regulations will further improve the compliance of treaty claimants with the specific requirements of the applicable limitation on benefits provisions in the treaty pursuant to which they seek at-source relief from chapter 3 withholding.

Comments requested that more guidance be provided on when a payee’s limitation on benefits claim is unreliable or incorrect. Accordingly, these temporary regulations provide that a withholding agent may rely on a valid Form W–8BEN–E that includes limitation on benefits information unless it has actual knowledge that the information provided with respect to the limitation on benefits is unreliable or incorrect. Withholding agents are generally expected to report this information beginning in 2018.

Under the chapter 3 regulations, a withholding agent may, in certain circumstances, use documentary evidence to document a payee and reduce the rate of withholding if the withholding agent obtains a treaty statement that the payee meets the limitation on benefits provision contained in the applicable income tax treaty. These temporary regulations pro-

vide, consistent with the requirements for withholding certificates, that the treaty statement associated with documentary evidence to support a treaty claim must also identify the specific limitation on benefits provision on which the entity relies to claim benefits under the applicable income tax treaty.

*2. Reason to know that a treaty is in force*

More generally, these temporary regulations also clarify a withholding agent’s responsibility with respect to claims of benefits under an income tax treaty, whether they are made by an individual or an entity. By way of example, these temporary regulations provide that if the income tax treaty that the treaty claimant references on the form does not exist or is not in force (which a withholding agent can determine by consulting the list of jurisdictions with which the United States has an income tax treaty in force maintained on the IRS website, or the State Department’s *Treaties in Force* publication), a withholding agent will have reason to know that the information provided on the Form W–8BEN–E is incorrect and the form is therefore not valid for purposes of claiming treaty benefits.

*F. Comments and Changes to § 1.1441–7 – General Provisions Relating to Withholding Agents*

*1. Curing of U.S. indicia*

Under § 1.1441–7(b), a withholding agent must withhold at the full 30-percent rate if it has actual knowledge or reason to know that a payee’s claim of U.S. status or of entitlement to a reduced rate of withholding is unreliable or incorrect. Comments requested that a withholding agent should be able to presume that an undocumented entity payee is a foreign person if the withholding agent has on file for the payee a GIIN and confirms that the payee’s name and GIIN appear on the IRS FFI list. These comments noted that under § 1.1471–3(e)(4)(ii)(B), for chapter 4 purposes, a withholding agent can reliably associate a withholding certificate with a payment to a participating FFI, a registered deemed-compliant FFI, a spon-

soring entity, or a sponsored FFI without applying the rules of § 1.1441-7(b)(5) (relating to when a withholding agent has reason to know that a withholding certificate is unreliable or incorrect due to the presence of U.S. indicia) if the withholding agent has confirmed the entity's GIIN on the current published FFI list. The Treasury Department and the IRS have declined to adopt this suggestion. Because U.S. entities can obtain GIINs, and if they do so, their names would appear on the IRS FFI list (as is the case for U.S. entities that are sponsoring entities, for example), it is not appropriate to allow a GIIN to cure U.S. indicia for purposes of chapter 3.

## *2. Modification of applicability date for revised standards of knowledge as previewed in Notice 2014-33*

The 2014 temporary coordination regulations revised the standards of knowledge regarding additional U.S. indicia that will cause a withholding agent to have reason to know that a payee's claim of foreign status is unreliable or incorrect for purposes of chapter 3 or 61 to coordinate with the standards of knowledge that apply for purposes of chapter 4. These revised standards of knowledge generally do not require a withholding agent to take the additional U.S. indicia into account for a preexisting obligation of a direct account holder if the foreign status of the account holder was documented by the withholding agent for purposes of chapter 3 or chapter 61 before July 1, 2014. On May 19, 2014, Treasury and the IRS published Notice 2014-33, 2014-21 I.R.B. 1033, which, among other things, generally allowed a withholding agent or FFI to treat an obligation held by an entity that was issued, opened, or executed on or after July 1, 2014, and before January 1, 2015, as a preexisting obligation described in §§ 1.1471-2(a)(4)(ii), 1.1472-1(b)(2), and 1.1471-4(c)(3). Following the publication of Notice 2014-33, comments noted that, while the modifications made to § 1.1441-7(b) addressed the application of the revised reason to know standards for obligations that were documented by a withholding agent before July 1, 2014, Notice 2014-33 did not

address how the standards would apply to entity accounts opened on or after July 1, 2014, and before January 1, 2015, that are treated as preexisting obligations by withholding agents and participating FFIs for purposes of chapter 4, pursuant to Notice 2014-33. These comments requested that a similar modified applicability date be added to § 1.1441-7(b) to allow withholding agents to treat an entity account opened during the transition period between July 1, 2014, and January 1, 2015 as a preexisting entity account for purposes of the standards of knowledge applicable to accounts under chapters 3 and 61. Accordingly, these final regulations allow withholding agents to apply the rules under § 1.1441-7(b)(5) and (b)(8) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to accounts opened, and obligations entered into, by an entity on or after July 1, 2014, and before January 1, 2015. In addition, these final regulations provide that, with respect to an obligation held by an entity, a withholding agent will not be required to treat the existence of the additional U.S. indicia specified in § 1.1441-7(b) as giving rise to a change in circumstances under § 1.1441-1(e)(4)(ii)(D) before January 1, 2015. These changes to the chapter 3 regulations were previewed in Notice 2014-59, 2014-44 I.R.B. 747.

## *3. Indicia of U.S. status on Form W-8ECI*

The 2014 temporary coordination regulations describe the U.S. indicia that will cause a withholding agent to have reason to know that a withholding certificate is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person. Comments have noted that foreign persons that have a trade or business in the United States are likely to have U.S. indicia; therefore, the existence of U.S. indicia on a Form W-8ECI should not cause the withholding agent to have reason to know that the Form W-8ECI is unreliable or incorrect. The Treasury Department and the IRS agree. These final regulations reflect this change by providing that the existence of U.S. indicia on a Form W-8ECI will not cause a withholding agent to have reason to know that the form is unreliable or incorrect for pur-

poses of establishing the account holder's status as a foreign person.

## *4. Reason to know—specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities*

The chapter 3 regulations permit a withholding agent to accept a Form W-8 (or a substitute Form W-8) electronically through a system established by the withholding agent that meets the requirements described in § 1.1441-1(e)(3)(iv)(B). Announcement 98-27, 1998-1 C.B. 865, and Announcement 2001-91, 2001-2 C.B. 221, provide similar requirements for an electronic system established by a withholding agent to receive a Form W-9. Comments requested that specific guidance be given to clarify that a withholding agent is allowed to rely on documentation provided to it by an intermediary or flow-through entity that has established an electronic system to collect documentation from a payee. The primary concern raised in these comments was how a withholding agent was supposed to validate, and whether a withholding agent could rely on, a signature on a beneficial owner withholding certificate received through an electronic system. In Notice 2016-08, 2016-6 I.R.B. 304, the Treasury Department and the IRS announced an intent to modify the standards of knowledge under §§ 1.1441-7(b)(10) and 1.1471-3(e)(4)(vi)(A)(2) to allow a withholding agent to rely on a withholding certificate collected through an electronic system maintained by a nonqualified intermediary, nonwithholding foreign partnership, or nonwithholding foreign trust. However, in light of the new provisions in § 1.1441-1T(e)(4)(i)(B) describing when withholding agents may accept withholding certificates signed electronically, the Treasury Department and the IRS have determined that it is not necessary to modify the standards of knowledge for payments to intermediary and flow-through entities as previewed in Notice 2016-08.

## *5. Authorized agents and Form 8655*

Under the 2014 temporary coordination regulations, a withholding agent must file Form 8655, "Reporting Agent Autho-

rization,” with the IRS if it appoints an agent to act as its reporting agent for filing Form 1042, “Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,” or making tax deposits and payments with respect to Form 1042. A comment suggested that a Form 8655 should be required to be filed only when an agent files a Form 1042 in its own name (and under its own EIN) on behalf of one or more other withholding agents. In response to the comment, these final regulations amend the 2014 temporary coordination regulations to provide that a withholding agent must file a Form 8655 only when its agent files a Form 1042 as the filer on behalf of one or more other withholding agents. This revision is also included in temporary regulations under chapter 4 that are being published concurrently with these temporary and final regulations.

#### *G. Comments and Changes to § 1.1461-1 – Payment and Returns of Tax Withheld*

##### *1. Electronic furnishing of Form 1042-S*

The chapter 3 regulations generally require withholding agents to file an information return on Form 1042-S to report the amounts subject to reporting that were paid during the preceding calendar year and to provide a copy of the form to the recipient of the payment, on or before March 15 of the calendar year following the payment. The withholding agent must retain a copy of each Form 1042-S for the period corresponding to the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042-S relates. The Treasury Department and the IRS have determined that it is appropriate to allow withholding agents to furnish the recipient copy of the Form 1042-S electronically under the same conditions applicable to furnishers of recipient copies of other forms (for example, Form W-2, Form 1099-K), and for this reason, these final regulations include a cross-reference to the requirements under § 1.6050W-2 for certain information statements that are furnished electronically. Statements can be furnished electronically beginning in calendar year

2017 for payments made in calendar year 2016 that are reportable on Form 1042-S.

##### *2. Provision of foreign TINs on recipient copies of Form 1042-S*

The Form 1042-S requires, among other information, the foreign TIN of a recipient if (A) the recipient is claiming a reduced rate of, or exemption from, tax under a tax treaty, the person did not provide a U.S. TIN, and the income is not the type of income for which an exemption from the U.S. TIN requirement applies; (B) the recipient receives a payment made with respect to an obligation maintained at a U.S. office or branch of the withholding agent, the withholding agent is a financial institution, and the foreign TIN is available in the withholding agent’s electronically searchable information; or (C) the withholding agent is required to collect the foreign TIN on the Form W-8. Comments have requested that the form instructions or the chapter 3 regulations be modified to allow a foreign TIN to be truncated on the recipient copy of the Form 1042-S consistent with the truncation of U.S. TINs on the Form 1042-S. The Treasury Department and the IRS agree with these comments and will modify the Form 1042-S instructions accordingly.

#### *H. Comments and Changes to § 1.6041-4 – Foreign-Related Items and Other Exceptions – Definition of “Paid and Received Outside the United States”*

Under § 1.6041-4, returns of information are not required for payments of certain amounts from sources outside the United States that are paid by a non-U.S. payor or a non-U.S. middleman and that are paid and received outside the United States. Section 1.6049-4(f)(16) describes the circumstances under which a payment is considered “paid and received outside the United States” (and is therefore not a reportable payment). Comments have suggested that the definition of “paid and received outside the United States” be limited to allow a broader range of payments to be treated as reportable payments, such as payments for services performed outside the United States. The Treasury Department and the IRS con-

tinue to consider this issue but have not incorporated this suggestion into these temporary and final regulations.

#### *I. Comments and Changes to § 1.6042-2 and § 1.6045-1 – Returns of Information as to Dividends Paid and Brokers and Barter Exchanges – Extended Period of Validity for PFIC Statements*

Under § 1.6042-2, every person who makes a payment of dividends to any other person during a calendar year must file an information return (that is, Form 1099) that contains the aggregate amount of the dividends, identifying information about the payee, the amount of tax deducted and withheld under section 3406, and such other information as the form requires. The 2014 temporary coordination regulations provide an exception to this filing requirement for payments made by a paying agent on behalf of a passive foreign investment company (PFIC), as defined in section 1297(a), with respect to a shareholder in the PFIC if, among other things, the paying agent obtains from the corporation a written certification signed by an officer of the corporation that states that the corporation is described in section 1297(a) for each calendar year during which the exception is to be applied, and the paying agent has no reason to know that the written certification is unreliable or incorrect. The paying agent must also identify, before payment, that the PFIC is a participating FFI or a reporting Model 1 FFI, and must obtain annually a written certification from the PFIC representing that it will report payments made by the paying agent pursuant to its reporting obligations under chapter 4 or under an applicable intergovernmental agreement (IGA).

Comments have requested that, rather than obtaining an annual certification that is signed by an officer of the corporation, the paying agent should be able to rely on a single written certification of PFIC status until there is a change in circumstances or the paying agent knows or has reason to know that the certification is unreliable or incorrect, and that such certification can be signed by any person that has the authority to sign the certification on behalf of the corporation. The Treasury Department and the IRS decline to accept

the request for a single written certification of PFIC status at this time because the annual certification requirement does not appear to present a significant compliance burden and helps assure that the paying agent is meeting its due diligence standards. However, the request that the certification be signed by any person that has the authority to sign the certification on behalf of the corporation has been accepted. A similar change has been made in § 1.6045-1(c)(3)(xiv)(A).

*J. Comments and Changes to § 1.6049-5 – Interest and Original Discount Subject to Reporting After December 31, 1982*

*1. Modification of applicability date for use of documentary evidence with respect to an offshore obligation*

The regulations under § 1.6049-5(c)(1) provide guidance on a payor's use of documentary evidence to establish a payee's foreign status for certain amounts paid outside the United States (as determined under § 1.6049-5(e)) with respect to an offshore obligation. The 2014 temporary coordination regulations included a series of modifications, made in coordination with modifications to regulations under chapter 4, to the conditions under which a withholding agent or a payor (as defined for chapter 61 purposes in § 1.6049-5(c)(5)) may rely on documentary evidence to document a payee's foreign status, and also provided guidance on when an amount is considered paid outside the United States. The 2014 temporary coordination regulations under § 1.6049-5T(c)(1) apply to payments made on or after July 1, 2014, except for certain payments made with respect to preexisting obligations, as described in § 1.1441-7(b)(3)(ii).

In response to requests to allow payors additional time to modify their systems to implement the revised requirements of § 1.6049-5(c)(1), these final regulations allow a payor to continue to use, for accounts opened on or after July 1, 2014, and before January 1, 2015, the rules regarding the use of documentary evidence under § 1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013 (prior § 1.6049-5(c)), instead of the new rules regarding

documentary evidence for offshore obligations under § 1.6049-5T(c)(1) and (c)(4) of the 2014 temporary coordination regulations. For consistency, a payor that applies prior § 1.6049-5(c) to an account or obligation will also be required to apply § 1.1441-6(c)(2) (for documentary evidence used to support a treaty claim) and § 1.6049-5(e) as in effect and contained in 26 CFR part 1 revised April 1, 2013, with respect to the account or obligation. These modifications to the 2014 temporary coordination regulations were previewed in Notice 2014-59.

*2. Presumption rules for bank deposit interest*

These regulations also include a change to the presumption rule for U.S. source bank deposit interest in § 1.6049-5(d)(3)(iii)(A). This presumption rule was inadvertently removed in the 2014 temporary coordination regulations and the 2014 QI Agreement, and it was corrected in the Proposed QI Agreement. It is expected to apply only in cases in which chapter 4 withholding does not apply.

*K. Minor and Non-substantive Clarifications and Corrections*

These final regulations also include various non-substantive clarifications and corrections to the 2014 temporary coordination regulations, including corrections of erroneous cross-references. For example, these final regulations clarify in § 1.1441-5(c)(2)(iii) that a withholding foreign partnership is required to assume primary withholding responsibility under chapters 3 and 4 to the extent required by the withholding foreign partnership agreement.

**Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory assessment is not required.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin**.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations in this document were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these proposed regulations is Leni C. Perkins, 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 parts 1, 31, and 301 are amended as follows:

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.871-14 is amended by revising paragraphs (b), (c)(2) introductory text, (c)(2)(i) through (iv), (c)(3)(i), (c)(4), and (e)(1), removing paragraph (e)(4)(iv), and revising paragraph (j).

The revisions read as follows:

*§ 1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.*

\* \* \* \* \*

(b) *Rules concerning obligations in bearer form before March 19, 2012—(1) In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, and issued before March 19, 2012, that is described in section 163(f)(2)(B), as in effect before the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111-147, and the regulations under that section and an exception under section 871(h) or 881(c) does not apply.

Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441-1(b)(4)(i). See § 1.1471-2 for rules relating to withholding under chapter 4 of the Code that may apply to withholdable payments (as defined in § 1.1471-4(b)(145)) made on or after July 1, 2014, with respect to an agreement or instrument that is not treated as an obligation outstanding before March 19, 2012. For purposes of the preceding sentence, the terms *obligation* and *outstanding* are described in § 1.1471-2(b). See also § 1.1471-4(d)(6) for the reporting requirements of participating foreign financial institutions (as defined in § 1.1471-1(b)(91)) with respect to accounts held by recalcitrant account holders (as defined in § 1.1471-5(g)). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049-5(b)(8) for the payment of interest and § 1.6045-1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c) \* \* \*

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section (to the extent applicable).

(i) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii). See § 1.1441-1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can

reliably associate the payment with a withholding certificate described in § 1.1441-5(c)(2)(iv) from a person claiming to be a withholding foreign partnership or § 1.1441-5(e)(v) for a person claiming to be a withholding foreign trust.

(iii) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441-1(e)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility for the payment in accordance with § 1.1441-1(e)(5)(iv) or a qualified intermediary that has provided a withholding statement that meets the requirements of § 1.1441-1(e)(5)(v)(C) or that includes the payment in a withholding rate pool for payments excepted from withholding.

(iv) The U.S. person (or its authorized agent described in § 1.1441-7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441-1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441-1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441-1(b)(2)(iv)(E).

\* \* \* \* \*

(3) *Time for providing certificate or documentary evidence—(i) General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, § 1.1441-1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in

§§ 1.1464-1 and 301.6402-3(e) of this chapter. See §§ 1.1474-5 and 301.6402-3(e) of this chapter for the allowance and requirements for a refund with respect to an amount (including a payment of interest) that was withheld upon under chapter 4 of the Code. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461-2(a) for a payment withheld upon under chapter 3 of the Code or in § 1.1474-2 for a payment withheld upon under chapter 4 of the Code.

\* \* \* \* \*

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c)(4), see § 1.1441-1(b)(4)(i). For rules applicable to withholding certificates, see § 1.1441-1(e)(4). For rules regarding documentary evidence, see § 1.6049-5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441-1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441-7(b). For rules relating to reporting on Forms 1042 and 1042-S, see § 1.1461-1(b) and (c). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049-5(b)(8) for the payment of interest and § 1.6045-1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to withholding under sections 1471 and 1472 that may apply notwithstanding the exemption for payments of portfolio interest under section 1441, see §§ 1.1471-2(a), 1.1471-4(b), and 1.1472-1(b).

\* \* \* \* \*

(e) *Foreign-targeted registered obligations—(1) General rule.* The statement described in paragraph (c)(1)(ii) of this section is not required with respect to interest paid on an obligation issued before January 1, 2016, that is a registered obligation targeting foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441-1(b)(2)(iv)(A) or (E) to a registered owner at an address outside the

United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

\* \* \* \* \*

(j) *Effective/applicability date*—(1) *In general.* Except as otherwise provided in paragraph (j)(2) and (3) of this section, this section applies to payments of interest made on or after January 6, 2017. (For the rules that apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments of interest made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(2) *Portfolio interest not to include interest received by 10-percent shareholders.* Paragraph (g) applies to interest paid after April 12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

(3) *Portfolio interest not to include certain contingent interest.* The rules of paragraph (h) of this section apply beginning September 18, 2015.

**§ 1.871-14T [Removed]**

Par. 3. Section 1.871-14T is removed.

Par. 4. Section 1.1441-0 is amended by:

1. Revising entries for § 1.1441-1(b)(2)(vii)(D) through (F) and (b)(3)(ii)(C).

2. Adding entries for § 1.1441-1(b)(3)(iii)(A)(I) and (2).

3. Revising entry for § 1.1441-1(b)(3)(iii)(D).

4. Adding entry for § 1.1441-1(b)(3)(iii)(E).

5. Removing entries for § 1.1441-1(b)(3)(v)(C) and (D).

6. Revising entries for § 1.1441-1(b)(3)(vi) through (b)(3)(vii)(B).

7. Revising entries for § 1.1441-1(b)(6)(ii) through (b)(7)(v).

8. Adding entries for § 1.1441-1(c)(2)(i) and (ii).

9. Revising entries for § 1.1441-1(c)(5), (c)(10), and (c)(28) and (29).

10. Adding entries for § 1.1441-1(c)(30) through (56).

11. Adding entries for § 1.1441-1(e)(2)(ii)(A) and (B).

12. Revising the entry for § 1.1441-1(e)(3)(iv).

13. Adding entries for § 1.1441-1(e)(3)(iv)(C)(1) through (4) and § 1.1441-1(e)(3)(iv)(D)(I) through (8).

14. Revising the entry for § 1.1441-1(e)(3)(v).

15. Adding entries for § 1.1441-1(e)(4)(i)(A) and (B).

16. Revising the entry for § 1.1441-1(e)(4)(ii)(A) and adding entries for § 1.1441-1(e)(4)(ii)(A)(I) and (2).

17. Adding entries for § 1.1441-1(e)(4)(ii)(D)(I) through (3)

18. Revising the entries for § 1.1441-1(e)(4)(iii).

19. Adding entries from § 1.1441-1(e)(4)(iv)(B)(I) through (4).

20. Revising the entry from § 1.1441-1(e)(4)(iv)(C) and adding entries for § 1.1441-1(e)(4)(iv)(D) and (E).

21. Revising the entries for § 1.1441-1(e)(4)(v), § 1.1441-1(e)(4)(viii)(C), § 1.1441-1(e)(4)(ix) introductory text and § 1.1441-1(e)(4)(ix)(A) and (B).

22. Adding entries for § 1.1441-1(e)(4)(ix)(B)(I) and (2)..

23. Revising entry for § 1.1441-1(e)(4)(ix)(C) and adding entries for § 1.1441-1(e)(4)(ix)(C)(I) and (2) and § 1.1441-1(e)(4)(ix)(D).

24. Revising entries for § 1.1441-1(e)(5)(i) and

25. Adding entries for § 1.1441-1(e)(5)(v)(C)(1) through (f)(3).

26. Adding entries for § 1.1441-2(b)(3)(iii), (b)(6), and (e)(7).

27. Revising the entry for § 1.1441-3(a) and adding entries for § 1.1441-3(a)(1) and (2).

28. Revising the entry for § 1.1441-3(c)(4)(i)(C).

29. Adding entries for § 1.1441-3(g)(1) and (2).

30. Revising entry for § 1.1441-3(h) and adding entries for § 1.1441-3(h)(1) and (2) and § 1.1441-3(i).

31. Adding an entry for § 1.1441-4(a)(3)(iii); and revising entries for § 1.1441-4(b)(4) and (g).

32. Removing entries for § 1.1441-4(g)(1) through (2).

33. Adding an entry for § 1.1441-5(b)(2)(vi).

34. Revising and adding entries for § 1.1441-5(c)(1)(iv) and (v).

35. Revising entries for § 1.1441-5(c)(3)(iv) through (d)(2).

36. Revising the entry for § 1.1441-5(e)(2).

37. Adding an entry for § 1.1441-5(e)(3)(iii).

38. Revising entries for § 1.1441-5(e)(5)(iv) and (g).

39. Removing entries for § 1.1441-5(g)(1) and (2).

40. Adding entries for § 1.1441-6(b)(1)(i) and (ii).

41. Revising the entry for § 1.1441-6(c)(1).

42. Revising the entry for § 1.1441-6(h).

43. Adding an entry for § 1.1441-6(i).

44. Revising the entry for § 1.1441-7(a)(2), and adding entries for § 1.1441-7(a)(3) and (4).

45. Adding entries for § 1.1441-7(b)(3)(i) and (ii).

46. Adding entries for § 1.1441-7(b)(5)(i) through (c)(3), § 1.1441-7(b)(6)(i) through (iii), § 1.1441-7(b)(8)(i) through (iv), and § 1.1441-7(b)(9)(i) and (ii).

47. Revising entries for § 1.1441-7(b)(10) and (11) and adding entries for § 1.1441-7(b)(12) and (13).

48. Revising the entry for § .1441-7(c).

49. Adding entries for § 1.1441-7(f)(1) through (f)(2)(ii).

50. Revising entry for § 1.1441-7(g).

51. Adding an entry for § 1.1441-10.

The revisions and additions read as follows:

1.1441-0 Outline for regulations provisions for section 1441.

This section lists captions contained in §§ 1.1441-1 through 1.1441-10.

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 of the Internal Revenue Code.

(E) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3 and chapter 4.

(F) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.

(3) \* \* \*

(ii) \* \* \*

(C) Documentary evidence furnished for offshore obligation.

(iii) Presumption of U.S. or foreign status.

(A) Payments to exempt recipients.

(I) In general.

(2) Special rule for withholdable payments made to exempt recipients.

\* \* \* \* \*

(D) Payments with respect to offshore obligations.

(E) Certain payments for services.

\* \* \* \* \*

(vi) U.S. branches and territory financial institutions not treated as U.S. persons.

(vii) Joint payees.

(A) In general.

(B) Special rule for offshore obligations.

\* \* \* \* \*

(6) \* \* \*

(ii) Examples.

(7) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.

(i) General rule.

(ii) Proof that tax liability has been satisfied.

(A) In general.

(B) Special rule for establishing that income is effectively connected with the conduct of a U.S. trade or business.

(iii) Liability for interest and penalties.

(iv) Special rule for determining validity of withholding certificate containing inconsequential errors.

(v) Special effective date.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) In general.

(ii) Dual residents.

\* \* \* \* \*

(5) Financial institution and foreign financial institution (or FFI).

\* \* \* \* \*

(10) Chapter 3 of the Code (or chapter 3).

\* \* \* \* \*

(28) Nonwithholding foreign partnership (or NWP).

(29) Withholding foreign partnership (or WP).

(30) Possession of the United States or U.S. territory.

(31) Amount subject to chapter 3 withholding.

(32) EIN.

(33) Flow-through withholding certificate.

(34) Foreign payee.

(35) Intermediary withholding certificate.

(36) Nonwithholding foreign trust (or NWT).

(37) Payment with respect to an offshore obligation.

(38) Permanent residence address.

(i) In general.

(ii) Hold mail instruction.

(39) Standing instructions to pay amounts.

(40) Territory financial institution.

(41) TIN.

(42) Withholding foreign trust (or WT).

(43) Certified deemed-compliant FFI.

(44) Chapter 3 withholding rate pool.

(45) Chapter 3 status.

(46) Chapter 4 of the Code (or chapter 4).

(47) Chapter 4 status.

(48) Chapter 4 withholding rate pool.

(49) Deemed-compliant FFI.

(50) GIIN (or Global Intermediary Identification Number).

(51) NFFE.

(52) Nonparticipating FFI.

(53) Participating FFI.

(54) Preexisting obligation.

(55) Registered deemed-compliant FFI.

(56) Withholdable payment.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) In general.

(B) Requirement to collect foreign TIN and date of birth beginning January 1, 2017.

(3) \* \* \*

(iv) Withholding statement provided by nonqualified intermediary.

\* \* \* \* \*

(C) \* \* \*

(I) In general.

(2) Nonqualified intermediary withholding statement for withholdable payments.

(3) Alternative withholding statement.

(4) Example.

(D) Alternative procedures.

(I) In general.

(2) Withholding rate pools.

(i) In general.

(ii) Withholding rate pools for chapter 4 purposes.

(3) Allocation information.

(4) Failure to provide allocation information.

(5) Cure provision.

(6) Form 1042-S reporting in case of allocation failure.

(7) Liability for tax, interest, and penalties.

(8) Applicability to flow-through entities and certain U.S. branches.

(E) Notice procedures.

(v) Withholding certificate from certain U.S. branches (including territory financial institutions).

(vi) Reportable amounts.

(4) Applicable rules.

(i) Who may sign the certificate.  
 (A) In general.  
 (B) Electronic signatures.  
 (ii) Period of validity.  
 (A) General rule.  
 (1) Withholding certificates and documentary evidence.  
 (2) Documentary evidence for treaty claims and treaty statements.  
 \* \* \* \* \*

(D) \* \* \*  
 (1) Defined.  
 (2) Obligation to notify a withholding agent of a change in circumstances.  
 (3) Withholding agent's obligation with respect to a change in circumstances.  
 (iii) Retention of documentation.  
 (iv) Electronic transmission of information  
 (A) In general.  
 (B) Requirements.  
 (1) In general.  
 (2) Same information as paper Form W-8.  
 (3) Perjury statement and signature requirements.  
 (i) Perjury statement.  
 (ii) Electronic signature.  
 (4) Requests for electronic Form W-8 data.  
 (C) Form 8233.  
 (D) Forms and documentary evidence received by facsimile or email.  
 (E) Third party repositories.  
 (v) Additional procedures for certificates provided electronically.  
 \* \* \* \* \*

(viii) \* \* \*  
 (C) Reliance on a prior version of a withholding certificate.  
 (ix) Certificates to be furnished to withholding agent for each obligation unless exception applies.  
 (A) Exception for certain branch or account systems or system maintained by agent.  
 (B) Reliance on certification provided by introducing brokers.  
 (1) In general.  
 (2) Example.  
 (C) Reliance on documentation and certifications provided between principals and agents.  
 (1) Withholding agent as agent.  
 (2) Withholding agent as principal.  
 (D) Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.

(5) Qualified intermediaries.  
 (i) In general.  
 \* \* \* \* \*

(v) \* \* \*  
 (A) In general.  
 (B) Content of withholding statement.  
 (C) Withholding rate pools  
 (1) In general.  
 (2) Withholding rate pool requirements for a withholdable payment.  
 (3) Alternative procedure for U.S. non-exempt recipients.  
 (D) Example.  
 (6) Qualified derivatives dealers.  
 (f) Effective/applicability date.  
 (1) In general.  
 (2) Lack of documentation for past years.  
 (3) Section 871(m) transactions.

*§ 1.1441-2 Amounts subject to withholding.*  
 \* \* \* \* \*

(b) \* \* \*  
 (3) \* \* \*  
 (iii) Exceptions to withholding.  
 \* \* \* \* \*

(6) Dividend equivalents.  
 \* \* \* \* \*

(e) \* \* \*  
 (7) Payments of dividend equivalents.  
 (i) In general.  
 (ii) Payment.  
 (iii) Premiums and other upfront payments.  
 \* \* \* \* \*

*§ 1.1441-3 Determination of amounts to be withheld.*  
 (a) General rule.  
 (1) Withholding on gross amount.  
 (2) Coordination with chapter 4.  
 \* \* \* \* \*

(c) \* \* \*  
 (4) \* \* \*  
 (i) \* \* \*  
 (C) Coordination with REIT/QIE withholding.  
 \* \* \* \* \*

(g) \* \* \*  
 (1) Duty to withhold.  
 (2) Effective date.  
 (h) Dividend equivalents.  
 (1) Withholding on gross amount.

(2) Reliance by withholding agent on reasonable determinations.  
 (3) Effective/applicability date.  
 (i) Effective/applicability date.

*§ 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.*  
 (a) \* \* \*  
 (3) \* \* \*  
 (iii) Exception for specified notional principal contracts.  
 (b) \* \* \*  
 (4) Final payment exemption.  
 \* \* \* \* \*

(g) Effective/applicability date.

*§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.*  
 \* \* \* \* \*

(b) \* \* \*  
 (2) \* \* \*  
 (vi) Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.  
 (c) \* \* \*  
 (1) \* \* \*  
 (iv) Coordination with chapter 4 for payments made to foreign partnerships.  
 (v) Examples.  
 \* \* \* \* \*

(3) \* \* \*  
 (iv) Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.  
 (v) Withholding and reporting by a foreign partnership.  
 (d) Presumption rules.  
 (1) In general.  
 (2) Determination of partnership status as U.S. or foreign in the absence of documentation.  
 \* \* \* \* \*

(e) \* \* \*  
 (2) Payments to foreign complex trusts and foreign estates.  
 (3) \* \* \*  
 (iii) Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.  
 \* \* \* \* \*

(5) \* \* \*  
 (iv) Withholding statement provided by a foreign simple trust or foreign grantor trust and coordination with chapter 4.

\* \* \* \* \*

(g) Effective/applicability date.

§ 1.1441-6 *Claim of reduced withholding under an income tax treaty.*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Identification of limitation on benefits provisions.

(ii) Reason to know based on existence of treaty.

\* \* \* \* \*

(c) \* \* \*

(1) General rule.

\* \* \* \* \*

(h) Dividend equivalents.

(i) Effective/applicability dates.

(1) General rule.

(2) Dividend equivalents.

§ 1.1441-7 *General provisions relating to withholding agents.*

(a) \* \* \*

(2) Withholding agent with respect to dividend equivalents.

(3) Examples.

(4) Effective/applicability date.

(b) \* \* \*

(3) \* \* \*

(i) In general.

(ii) Limits on reason to know for pre-existing obligations.

\* \* \* \* \*

(5) \* \* \*

(i) Classification of U.S. status, U.S. address, or U.S. telephone number.

(ii) U.S. place of birth.

(iii) Standing instructions with respect to offshore obligations.

(6) Withholding certificate—claim of reduced rate of withholding under .

(i) Permanent residence address.

(ii) Mailing address.

(iii) Standing instructions.

(7) Documentary evidence.

(8) Documentary evidence—establishment of foreign status.

(i) Documentary evidence received prior to January 1, 2001.

(ii) Documentary evidence received after December 31, 2000.

(A) Treatment of individual's foreign status.

(B) Presumption of entity's foreign status.

(iii) U.S. place of birth.

(iv) Standing instructions with respect to offshore obligations.

(9) Documentary evidence—claim of reduced rate of withholding under treaty.

(i) Permanent residence address and mailing address.

(ii) Standing instructions.

(10) Indirect account holders.

(11) Limits on reason to know for multiple obligations belonging to a single person.

(12) Reasonable explanation supporting claim of foreign status.

(13) Additional guidance.

(c) Agent.

(1) In general.

(2) Authorized agent.

(3) Liability of withholding agent acting through an agent.

\* \* \* \* \*

(f) \* \* \*

(1) Liability of withholding agent.

(2) Exception for withholding agents that do not know of conduit financing arrangement.

(i) In general.

(ii) Examples.

(g) Effective/applicability date.

\* \* \* \* \*

§ 1.1441-10 *Withholding agents with respect to fast-pay arrangements.*

(a) In general.

(b) Exception.

(c) Liability.

(d) Examples.

(e) Effective date.

Par. 5. Section 1.1441-1 is amended by:

1. Revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), (b)(2)(iv)(B)(2) though (4), (b)(2)(iv)(C), (b)(2)(iv)(E), (b)(2)(vi), (b)(2)(vii)(B) through (b)(2)(vii)(F), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(iii)(A)(I), and (b)(3)(iii)(A)(I)(i) through (b)(3)(iii)(A)(I)(v), (b)(3)(iii)(A)(2), (b)(3)(iii)(D), (b)(3)(iv) introductory text, (b)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, (b)(4)(i), (b)(5)(ix), (b)(6), (b)(7)(i) introductory text, and (b)(7)(i)(A) through (b)(7)(i)(C).

2. Redesignating paragraph (b)(7)(ii) as (b)(7)(ii)(A) and revising it.

3. Adding reserved paragraph (b)(7)(ii)(C).

4. Revising paragraphs (b)(7)(iv) and (v) and (c) introductory text.

5. Redesignating paragraph (c)(2) as (c)(2)(i) and revising it.

6. Adding reserved paragraph (c)(2)(ii).

7. Revising paragraphs (c)(3)(ii), (c)(5), (c)(10), (c)(12), (c)(16) and (17), (c)(23), (c)(25), and (c)(28) through (37).

8. Redesignating paragraph (c)(38) as (c)(38)(i) and revising it.

9. Adding reserved paragraph (c)(38)(ii).

10. Revising paragraphs (c)(39) through (56), (d)(4), and (e)(1)(ii)(A)(2) and (3).

11. Redesignating paragraph (e)(2)(ii) as (e)(2)(ii)(A) and revising new paragraph (e)(2)(ii)(A).

12. Adding reserved paragraph (e)(2)(ii)(B).

13. Revising paragraphs (e)(3)(ii) introductory text, (e)(3)(ii)(A), (e)(3)(ii)(C), (e)(3)(ii)(D), (e)(3)(ii)(F), (e)(3)(iii) introductory text, (e)(3)(iii)(A), (e)(3)(iii)(C) through (E), and (e)(3)(iv)(A) through (e)(3)(iv)(C)(2)(v).

14. Adding paragraph (e)(3)(iv)(C)(2)(v).

15. Redesignating paragraph (e)(3)(iv)(C)(3) as (e)(3)(iv)(C)(4) and revising it.

16. Adding reserved new paragraph (e)(3)(iv)(C)(3)

17. Revising paragraphs (e)(3)(iv)(D)(I) through (6), (e)(3)(iv)(E), (e)(3)(v), and (e)(4) introductory text.

18. Redesignating paragraph (e)(4)(i) as (e)(4)(i)(A) and revising it.

19. Adding reserved paragraph (e)(4)(i)(B).

20. Revising paragraph (e)(4)(ii)(A).

22. Revising paragraphs (e)(4)(ii)(B) introductory text, (e)(4)(ii)(B)(I) through (6), and (e)(4)(ii)(B)(8) through (10).

23. Removing paragraph (e)(4)(ii)(B)(II) and redesignating paragraph (e)(4)(ii)(B)(I2) as paragraph (e)(4)(ii)(B)(II).

24. Revising paragraphs (e)(4)(ii)(C) and (D), (e)(4)(iii), and (e)(4)(iv)(A).

25. Redesignating paragraph (e)(4)(iv)(C) as (e)(4)(iv)(D) and revising it.

26. Adding reserved paragraph (e)(4)(iv)(C).

27. Adding reserved paragraph (e)(4)(iv)(E).

28. Revising paragraphs (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), (e)(4)(vii)(H), (e)(4)(vii)(I), (e)(4)(viii) introductory text, (e)(4)(viii)(B) and (C), (e)(4)(ix), (e)(5)(ii) introductory text, and (e)(5)(ii)(A) through (D).

29. Revising paragraphs (e)(5)(iii) and (iv), (e)(5)(v)(A), (e)(5)(v)(B) introductory text, and (e)(5)(v)(B)(1) through (3).

30. Redesignating paragraph (e)(5)(v)(B)(4) as (e)(5)(v)(B)(5) and revising it.

31. Revising paragraphs (e)(5)(v)(C) and (D) and (f)(1)(4).

The additions and revisions read as follows:

*§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.*

(a) *Purpose and scope.* This section, §§ 1.1441-2 through 1.1441-9, and 1.1443-1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441-2 defines the income subject to withholding under sections 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441-3 provides rules regarding the amount subject to withholding and rules for coordinating withholding under this section with withholding under section 1445 and under chapter 4 of the Code. Section 1.1441-4 provides exemptions

from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441-5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441-6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441-7 defines the term withholding agent and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441-8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441-9 and 1.1443-1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding—(1) Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30 percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraphs (e)(5) and (e)(6) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441-5(c)(2)(i)), or as a withholding foreign trust (see § 1.1441-5(e)(5)(v)). When withholding under chapter 4 was applied to a payment, the withholding obligation under this section is satisfied. See § 1.1441-3(a)(2). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner) and §§ 1.1441-4, 1.1441-5, 1.1441-6, 1.1441-8, 1.1441-9,

and 1.1443-1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for the determination of who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (e.g., as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405, or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (e.g., in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441-7(a) for a definition of withholding agent. See § 1.1441-2(a) for the determination of an amount subject to withholding. See § 1.1441-2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a

withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2) and § 1.1441-5(c)(1) and (e)(3), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (e.g., as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W-8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W-9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441-5(c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441-2(a)). However, for a payment that is both an amount subject to withholding under chapter 3 and a withholdable payment under chapter 4, first apply the rules of § 1.1471-3 for determining the payee of a withholdable payment under chapter 4 and the applicable presumptions in the absence of documentation applicable to such payments. See also § 1.6049-5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441-5(d). For definitions of

a foreign person and U.S. person, see paragraph (c)(2) of this section.

\* \* \* \* \*

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701-2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701-3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W-9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701-3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049-4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W-9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3, 4, and 61 of the Code, and section 3406. Therefore, A must furnish a Form W-8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894-1(d) and 1.1441-6(b)(2) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

\* \* \* \* \*

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch of a foreign person that is described in this paragraph (b)(2)(iv)(A)

may agree to be treated as a U.S. person for purposes of withholding on specified payments to the U.S. branch. If a U.S. branch agrees to be treated as a U.S. person with a withholding agent, it is required to act as a U.S. person with respect to all other withholding agents, including when acting as an intermediary with respect to withholdable payments for purposes of chapter 4. See § 1.1471-3(a)(3)(vi). In such cases, the U.S. branch is treated as a payee that is a U.S. person. See paragraph (C) of this section for additional requirements for the U.S. branch when treated as a payor that is a U.S. person. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042-S under § 1.1461-1(c) and § 1.1474-1(d)(1)(i) for a payment of U.S. source FDAP income that is a chapter 4 reportable amount as defined in § 1.1471-1(b)(18). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it provides to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on a Form W-8IMY as provided in paragraph (e)(3)(v) of this section and not a Form W-9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) and eligible to be treated as a U.S. person is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. In addition, a territory financial institution (including a territory financial institution that is a flow-through entity) will be treated as a U.S. branch for purposes of

this paragraph (b)(2)(iv)(A) and therefore is eligible to be treated as a U.S. person. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may be eligible for treatment as U.S. persons under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049-5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Code. Also see § 1.6049-5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Code.

(B) \* \* \*

(2) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation;

(3) As a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from a U.S. branch (or any other certificate or other appropriate documentation from another person). See § 1.1441-4(a)(2)(ii); or

(4) As a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States if the withholding agent has not obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from the U.S. branch.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a separate person for purposes of section 1441(a) and all other provisions of chapters 3 and 4 of the Code and the regulations thereunder (other than for purposes of reporting the payment to the U.S. branch under § 1.1461-1(c) and § 1.1474-1(d)(1)(i) for a chapter 4 reportable amount by a withholding agent) or for purposes of the documentation such a branch must furnish under paragraph (e)(3)(v) of this section)

for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on a payment as a U.S. person in accordance with the provisions under chapters 3 and 4 of the Code and the regulations thereunder and other applicable withholding provisions of the Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as an intermediary as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment as an intermediary on behalf of customers of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. Similarly, if a U.S. branch of an FFI treated as a U.S. person receives a payment on behalf of another branch of the FFI that is treated as a nonparticipating FFI, the U.S. branch must withhold on the payment made to the other branch as if it were a separate person to the extent required under chapter 4. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section and § 1.1441-4(a)(2)(ii).

\* \* \* \* \*

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the IRS. Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance com-

pany, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the IRS and unless the IRS is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

\* \* \* \* \*

(vi) *Other payees.* A payment to a person described in § 1.6049-4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A)(6) or (7) of this section). Further, a payment that the withholding agent can reliably associate with documentary evidence described in § 1.6049-5(c)(1) relating to the payee is treated as a payment to a foreign payee. See § 1.1441-5(b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441-5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) \* \* \*

(B) *Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity.* (1) In the case of a payment made to a nonqualified intermediary, a flow-through entity (as defined in paragraph (c)(23) of this section), or a U.S. branch described in paragraph (b)(2)(iv) of this section (other than a U.S. branch that is treated as a U.S. person), a withholding agent can reliably associate the payment with valid docu-

mentation only to the extent that, prior to the payment, the withholding agent can allocate the payment to a valid nonqualified intermediary, flow-through entity, or U.S. branch withholding certificate (and a withholding certificate provided by a nonparticipating FFI with respect to a portion of a payment that is a withholdable payment allocated to an exempt beneficial owner as described in § 1.1471-3(c)(3)(iii)(B)(4)); the withholding agent can reliably determine how much of the payment relates to valid documentation provided by a payee as determined under paragraph (c)(12) of this section (*i.e.*, a person that is not itself an intermediary, flow-through entity, or U.S. branch); and the withholding agent has sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required. See, however, paragraph (e)(3)(iv) of this section for when a nonqualified intermediary may report payees to the withholding agent in a chapter 4 withholding rate pool, in which case a withholding agent need not associate the portion of the payment attributable to such payees with documentation from each such payee. See also paragraph (e)(3)(iii) of this section for the requirements of a nonqualified intermediary withholding certificate, paragraph (e)(3)(v) of this section for the requirements of a U.S. branch withholding certificate, and §§ 1.1441-5(c)(3)(iii) and (e)(5)(iii) for the requirements of a flow-through withholding certificate (including the requirements for a withholding certificate associated with a withholdable payment). Thus, a payment cannot be reliably associated with valid documentation provided by a payee to the extent such documentation is lacking or unreliable, or to the extent that information required to allocate and report all or a portion of the payment to each payee is lacking or unreliable. If a withholding certificate attached to an intermediary, U.S. branch, or flow-through withholding certificate is another intermediary, U.S. branch, or flow-through withholding certificate, the rules of this paragraph (b)(2)(vii)(B) apply by treating the share of the payment allocable to the other intermediary, U.S. branch, or flow-through entity as if the payment were made directly to such other entity. See paragraph (e)(3)(iv)(D) of this section for rules permitting information allocating a

payment to documentation to be received after the payment is made.

(2) The rules of paragraph (b)(2)(vii)(B)(I) of this section are illustrated by the following examples. Each example illustrates a payment that is not a withholdable payment and, as a result of which, neither the chapter 4 status of the NQI nor payee specific documentation with respect to the chapter 4 status is required to be provided to the withholding agent (and no withholding applies under chapter 4 on each payment). See paragraph (e)(3)(iv)(C) of this section for the requirements of a withholding statement provided by a nonqualified intermediary that receives a withholdable payment and for an example illustrating the requirements of an NQI providing a withholding statement to a withholding agent for a withholdable payment.

*Example 1.* WA, a withholding agent, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471-2(b) (and thus the payment is not a withholdable payment) to NQI, an intermediary that is a nonqualified intermediary. NQI provides a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section. NQI does not, however, provide valid documentation from the persons on whose behalf it receives the interest payment, and, therefore, the interest payment cannot be reliably associated with valid documentation provided by a payee. WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment.

*Example 2.* The facts are the same as in *Example 1*, except that NQI does attach valid beneficial owner withholding certificates (as defined in paragraph (e)(2)(i) of this section) from A, B, C, and D establishing their statuses as foreign persons. NQI does not, however, provide WA with any information allocating the payment among A, B, C, and D and, therefore, WA cannot determine the portion of the payment that relates to each beneficial owner withholding certificate. The interest payment cannot be reliably associated with valid documentation from a payee, and WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment. See, however, paragraph (e)(3)(iv)(D) of this section providing for alternative procedures that allow a nonqualified intermediary to provide allocation information after a payment is made.

*Example 3.* The facts are the same as in *Example 2*, except that NQI provides allocation information associated with its intermediary withholding certificate indicating that 25% of the interest payment is allocable to A and 25% to B. NQI does not provide any allocation information regarding the remaining 50% of the payment. WA may treat 25% of the payment as made to A and 25% as made to B. The remaining 50% of the payment cannot be reliably associated with valid documentation from a payee, however, since NQI did not provide information allocating the payment. Thus, the remaining 50% of

the payment is subject to the presumption rules of paragraph (b)(3)(v) of this section.

*Example 4.* WA makes a payment of U.S. source interest to NQI1, an intermediary that is not a qualified intermediary. NQI1 provides WA with a valid nonqualified intermediary withholding certificate as well as valid beneficial owner withholding certificates from A and B and a valid nonqualified intermediary withholding certificate from NQI2. NQI2 has provided valid beneficial owner documentation from C sufficient to establish C's status as a foreign person. Based on information provided by NQI1, WA can allocate 20% of the interest payment to A, and 20% to B. Based on information that NQI2 provided NQI1 and that NQI1 provides to WA, WA can allocate 60% of the payment to NQI2, but can only allocate one half of that payment (30%) to C. Therefore, WA cannot reliably associate the remainder of the payment made to NQI2 (30% of the total payment) with valid documentation and must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment.

(C) *Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility—(1)* If a payment is made to a qualified intermediary that does not assume primary withholding responsibility under chapters 3 and 4 of the Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Code for the payment, a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section and the withholding agent can reliably determine the portion of the payment that relates to a chapter 3 withholding rate pool, as defined in paragraph (c)(44) of this section; a chapter 4 withholding rate pool (including for a withholdable payment as described in paragraph (e)(5)(v)(C)(2) of this section), as defined in paragraph (c)(48) of this section; or a pool attributable to U.S. exempt recipients. In the case of a withholding rate pool attributable to a U.S. non-exempt recipient, a payment cannot be reliably associated with valid documentation unless, prior to the payment, the qualified intermediary has provided the U.S. person's Form W-9 (or, in the absence of the form, the name, address, and TIN, if available, of the U.S. person) and sufficient information for the withholding agent to report the payment on Form 1099. See, however, paragraph (e)(5)

(v)(C)(3) of this section for alternative procedures for allocating payments among U.S. non-exempt recipients and paragraphs (e)(5)(v)(C)(1) and (2) of this section for when a chapter 4 withholding rate pool of U.S. payees may be provided by a qualified intermediary instead of documentation with respect to each U.S. non-exempt recipient.

(2) The rules of this paragraph (b)(2)(vii)(C) are illustrated by the following examples:

*Example 1.* WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI. QI provides WA with a valid qualified intermediary withholding certificate on which it indicates that it does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406. QI does not provide any information allocating the dividend to withholding rate pools. WA cannot reliably associate the payment with valid payee documentation and therefore must apply the presumption rules applicable to a withholdable payment under § 1.1471-3(f)(5) to determine the status of the payee for purposes of chapter 4. See *Example 2* for an application of the presumption rules under § 1.1471-3(f).

*Example 2.* WA makes a payment of U.S. source dividends that is a withholdable payment to QI, which is an NFFE. QI has 5 customers: A, B, C, D, and E, all of whom are individuals except for C. QI has obtained valid documentation from A and B establishing their entitlement to a 15% rate of tax on U.S. source dividends under an income tax treaty. C is a U.S. person that is an exempt recipient as defined in paragraph (c)(20) of this section. D and E are U.S. non-exempt recipients who have provided Forms W-9 to QI. A, B, C, D, and E are each entitled to 20% of the dividend payment. QI provides WA with a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section with which it associates the Forms W-9 from D and E. QI associates the following allocation information with its qualified intermediary withholding certificate: 40% of the payment is allocable to the 15% chapter 3 withholding rate pool, and 20% is allocable to each of D and E. QI does not provide any allocation information regarding the remaining 20% of the payment. WA cannot reliably associate 20% of the payment with valid documentation and, therefore, must apply the presumption rules applicable to a withholdable payment. Because QI is receiving a withholdable payment as an intermediary, under paragraph (b)(3)(iii) of this section WA must apply the presumption rule of § 1.1471-3(f)(5) to treat the portion of the payment that cannot reliably be associated with valid documentation as made to a non-participating FFI account holder of QI. As a result, WA is required to withhold at a 30% rate of tax under chapter 4. See § 1.1441-3(a)(2) permitting WA to credit the amount withheld under chapter 4 against the liability for tax due on the payment under section 1441 or 1442. The 40% of the payment allocable to the 15% withholding rate pool and the

portion of the payments allocable to D and E are payments that can be reliably associated with documentation.

(D) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 of the Internal Revenue Code.* (1) In the case of a payment made to a qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 of the Code with respect to that payment (but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 of the Code and section 3406), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to the withholding rate pool for which the qualified intermediary assumes primary withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. non-exempt recipient for whom the qualified intermediary has provided a Form W-9 (or, in absence of the form, the name, address, and TIN, if available, of the U.S. non-exempt recipient). See paragraph (e)(5)(iv) of this section (requiring a qualified intermediary assuming primary withholding responsibility under chapter 3 to assume primary withholding responsibility under chapter 4). See also paragraph (e)(5)(v)(C)(3) of this section for alternative allocation procedures for payments made to U.S. persons that are not exempt recipients and paragraphs (e)(5)(v)(C)(1) and (2) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees to a withholding agent instead of documentation with respect to each U.S. non-exempt recipient.

(2) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(vii)(D)(1) of this section. See also the example in paragraph (e)(5)(v)(D) for rules for reporting of U.S. non-exempt recipients when a qualified intermediary that is an FFI reports a U.S. account under chapter 4.

*Example 1.* WA makes a payment of U.S. source interest that is a withholdable payment to QI, a

qualified intermediary that is an NFFE. QI provides WA with a withholding certificate that indicates that QI will assume primary withholding responsibility under chapters 3 and 4 of the Code with respect to the payment. In addition, QI attaches a Form W-9 from A, a U.S. non-exempt recipient, as defined in paragraph (c)(21) of this section, and provides the name, address, and TIN of B, a U.S. person that is also a non-exempt recipient but who has not provided a Form W-9. QI associates a withholding statement with its qualified intermediary withholding certificate indicating that 10% of the payment is attributable to A and 10% to B, and that QI will assume primary withholding responsibility under chapters 3 and 4 with respect to the remaining 80% of the payment. WA can reliably associate the entire payment with valid documentation. Although under the presumption rule of paragraph (b)(3)(v) of this section, an undocumented person receiving U.S. source interest is generally presumed to be a foreign person, WA has actual knowledge that B is a U.S. non-exempt recipient and therefore must report the payment on Form 1099 and backup withhold on the interest payment under section 3406.

*Example 2.* The facts are the same as in *Example 1*, except that no information has been provided for the 20% of the payment that is allocable to A and B. Thus, QI has accepted withholding responsibility for 80% of the payment but has provided no information for the remaining 20%. In this case, 20% of the payment cannot be reliably associated with valid documentation, and, under paragraph (b)(3)(iii) of this section, WA must apply the presumption rule of § 1.1471-3(f)(5) to treat the payment as made to a nonparticipating FFI and withhold 30% of the gross amount of the payment (because the payment is a withholdable payment and is treated as made to a foreign payee under paragraph (b)(3)(v) of this section). See *Example 2* in paragraph (b)(2)(vii)(C)(2) and § 1.1471-3(f)(1).

(E) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3 and chapter 4.* (1) If a payment is made to a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility for the payment (but does not assume primary withholding responsibility under chapters 3 and 4 of the Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool or pools provided as part of the qualified intermediary's withholding statement and the portion of the payment for which the qualified intermediary assumes

primary Form 1099 reporting and backup withholding responsibility. See paragraph (e)(5)(v)(C)(2) of this section for when a qualified intermediary may include a chapter 4 withholding rate pool on a withholding statement provided to a withholding agent with respect to a withholdable payment.

(2) The following example illustrates the rules of paragraph (b)(2)(vii)(D)(I) of this section:

*Example.* WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI, a qualified intermediary that is a participating FFI. QI has provided WA with a valid qualified intermediary withholding certificate. QI states on its withholding statement accompanying the certificate that it assumes primary Form 1099 reporting and backup withholding responsibility but does not assume primary withholding responsibility under chapters 3 and 4 of the Code. QI represents that 15% of the dividend is subject to a 30% rate of withholding, 75% of the dividend is subject to a 15% rate of withholding. QI represents that it assumes primary Form 1099 reporting and backup withholding for the remaining 10% of the payment and will not need to provide a chapter 4 withholding rate pool with respect to this portion of the payment or documentation with respect to U.S. non-exempt recipients. WA can reliably associate the entire payment with valid documentation.

(F) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.* If a payment is made to a qualified intermediary that assumes both primary withholding responsibility under chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Code for the payment, a withholding agent can reliably associate a payment with valid documentation provided that it receives a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section. In the case of a payment made to a withholding foreign partnership or a withholding foreign trust, the withholding agent can reliably associate the payment with valid documentation to the extent it can associate the payment with a valid withholding certificate described in § 1.1441-5(c)(2)(iv) or in § 1.1441-5(e)(5)(v) (respectively).

See paragraph (e)(5)(iv) of this section, providing that a qualified intermediary assuming primary withholding responsibility under chapter 3 must also assume primary withholding responsibility under chapter 4 with respect to a withholdable payment.

(3) *Presumptions regarding payee's status in the absence of documentation—*

(i) *General rules.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (b)(2)(vii) of this section) a payment of an amount subject to withholding (as described in § 1.1441-2(a)) with valid documentation may rely on the presumptions of this paragraph (b)(3) to determine the status of the person receiving the payment as a U.S. or a foreign person and the person's other relevant characteristics (e.g., as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapters 3 and 4 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and, with respect to the reporting requirements of a participating FFI or registered deemed-compliant FFI, see chapter 4 of the Code and the related regulations. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent to which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of classification as individual, corporation, partnership, etc.—*(A) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate or that has received valid documentary evidence under §§ 1.1441-1(e)(1)(ii)(A)(2) and 1.6049-5(c)(1) or (4) but cannot determine a payee's classification from the documentary evidence must apply the rules of this paragraph (b)(3)(ii) to determine the payee's classification as an individual, trust, estate, corporation, or partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation if documentation is otherwise required to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049-4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W-8 described in § 1.1441-9(b)(2) be furnished to the withholding agent.

(B) *No documentation provided.* If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (e.g., based on the payee's name or information in the customer file). In the absence of reliable indications that the payee is an individual, a trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049-4(c)(1)(ii)(B) through (Q) if it can be so treated under § 1.6049-4(c)(1)(ii)(A)(I) or any one of the paragraphs under § 1.6049-4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049-4(c)(1)(ii)(A)(I) through (Q), then the payee shall be presumed to

be a partnership. If such a partnership is presumed to be foreign, it is not the beneficial owner of the income paid to it. See paragraph (c)(6) of this section. If such a partnership is presumed to be domestic, it is a U.S. non-exempt recipient for purposes of chapter 61 of the Code.

(C) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in § 1.6049-5(c)(1) or (c)(4), with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under § 1.6049-4(c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049-4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign person under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent will have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under § 1.6049-4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence and that states that the foreign person is the beneficial owner of the income.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a

U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3)(iv) and (v) of this section, or in § 1.1441-5(d) or (e). A withholding agent must treat a payee that is presumed or known to be a trust but for which the withholding agent cannot determine the type of trust in accordance with the presumptions specified in § 1.1441-5(e)(6) (ii). In the case of a payment that is a withholdable payment, a withholding agent must apply the presumption rule under § 1.1471-3(f) for purposes of chapter 4.

(A) *Payments to exempt recipients—(I) In general.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of § 1.6049-4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(i) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98";

(ii) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(iii) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in § 301.7701-2(b)(8)(i) of this chapter (and, in the case of a name which contains the designation "corporation" or "company," the withholding agent has a document that reasonably demonstrates the payee was incorporated in the relevant jurisdiction);

(iv) If the payment is made with respect to an offshore obligation (as defined in paragraph (c)(37) of this section); or

(v) With respect to an account opened after July 1, 2014, if the withholding agent has a telephone number for the person outside of the United States.

(2) *Special rule for withholdable payments made to exempt recipients.* Notwithstanding the provisions of paragraph (b)(3)(iii)(A)(I) of this section, a payment

that is also a withholdable payment made to an entity determined to be an exempt recipient under § 1.6049-4(c)(1)(ii)(A) (I), (F), (G), (H), (M), (O), (P), or (Q) in the case of interest (or under similar provisions in chapter 61 applicable to the type of income) shall be presumed made to a foreign payee in the absence of documentation (including documentary evidence) establishing the entity as a U.S. person. Additionally, a withholding agent may apply the rule provided in this paragraph (b)(3)(iii)(A)(2) instead of the rule in provided in paragraph (b)(3)(iii)(A)(I) of this section for all payments with respect to an obligation. The provisions of this paragraph (b)(3)(iii)(A)(2) will not apply, however, to a withholdable payment made with respect to a preexisting obligation to a payee that the withholding agent determined prior to July 1, 2014, to be a U.S. exempt recipient.

\* \* \* \* \*

(D) *Payments with respect to offshore obligations.* A payment is presumed made to a foreign payee if the payment is made outside the United States (as defined in § 1.6049-5(e)) with respect to an offshore obligation (as defined in paragraph (c)(37) of this section) and the withholding agent does not have actual knowledge that the payee is a U.S. person. See § 1.6049-5(d)(2) and (3) for exceptions to this rule.

\* \* \* \* \*

(iv) *Grace period.* A withholding agent may choose to apply the provisions of § 1.6049-5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by applying the term withholding agent instead of the term payor) to amounts described in § 1.1441-6(c)(2) and to amounts covered by a Form 8233 described in § 1.1441-4(b)(2)(ii). Thus, for these amounts, a withholding agent may choose to treat the payee as a foreign person and withhold under chapter 3 of the Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to an account. For reporting of amounts credited both before and after the grace period, see § 1.1461-1(c)(4)(i)(A). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. non-exempt recipient, then backup withholding only applies to amounts credited to the account after the expiration of the grace period. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461-2.

\* \* \* \* \*

(v) \* \* \*

(B) *Beneficial owner documentation or allocation information is lacking or unreliable.* Except as otherwise provided in this paragraph (b)(3)(v)(B), any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a nonqualified or a qualified intermediary) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section is presumed made to an unknown, undocumented foreign payee. As a result, a withholding agent must deduct and withhold 30 percent from any payment of an amount subject to withholding. If a withholding certificate attached to an intermediary certificate is another intermediary withholding certificate or a flow-through withholding certificate, the rules of this paragraph (b)(3)(v)(B) (or § 1.1441-5(d)(3) or (e)(6)(iii)) apply by treating the portion of the payment allocable to the other intermediary or flow-through entity as if it were made directly to the other intermediary or flow-through entity. Any payment of an amount subject to withholding that is presumed made to an undocumented foreign person must be reported on Form 1042-S. See § 1.1461-1(c). See § 1.6049-5(d) for payments that are not subject to withholding under chapter 3. However, in the case of a payment that is a withholdable payment made to a foreign intermediary, the presumption rules under § 1.1471-3(f)(5) shall apply.

(vi) *U.S. branches and territory financial institutions not treated as U.S. persons.* The rules of paragraph (b)(3)(v)(B) of this section shall apply to payments to a U.S. branch or a territory financial institution described in paragraph (b)(2)(iv)

(A) of this section that has provided a withholding certificate as described in paragraph (e)(3)(v) of this section on which it has not agreed to be treated as a U.S. person.

(vii) *Joint payees—(A) In general.* Except as provided in paragraph (b)(3)(vii)(B) of this section and this paragraph (b)(3)(vii)(A), if a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from all payees, the payment is presumed made to an unidentified U.S. person. If, however, a withholding agent makes a payment that is a withholdable payment and any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire amount of the payment will be treated as made to an undocumented foreign person. See paragraph (b)(3)(iii) of this section for presumption rules that apply in the case of a payment that is a withholdable payment. However, if one of the joint payees provides a Form W-9 furnished in accordance with the procedures described in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, the payment shall be treated as made to that payee. See § 31.3406(h)-2 of this chapter for rules to determine the relevant payee if more than one Form W-9 is provided. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee meets the conditions described in paragraph (b)(3)(iv) of this section.

(B) *Special rule for offshore obligations.* If a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unknown foreign payee if the payment is made outside the United States (as defined in § 1.6049-5(e)) with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)).

\* \* \* \* \*

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise—(A) General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405, or 3406 in accordance with the presumptions set forth in this

paragraph (b)(3) shall not be liable for withholding under this section even if it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3), shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

\* \* \* \* \*

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

*Example 1.* A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471-2(b) (and thus the payment is not a withholdable payment) to X, Inc. with respect to an account W maintains for X, Inc. outside the United States. W cannot reliably associate the payment to X, Inc. with documentation. Under § 1.6049-4(c)(1)(ii)(A)(J), W may treat X, Inc. as a corporation that is an exempt recipient under chapter 61. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section as applicable to a payment to an exempt recipient that is not a withholdable payment, W must presume that X, Inc. is a foreign person (because the payment is made with respect to an offshore obligation). However, W knows that X, Inc. is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions.

W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

*Example 2.* A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471-2(b) (and thus the payment is not a withholdable payment) to Y who does not qualify as an exempt recipient under § 1.6049-4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6049. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

*Example 3.* A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. with respect to an account that X, Inc. opened with W after June 30, 2014. W cannot reliably associate the payment to X, Inc. with documentation but may treat X, Inc. as an exempt recipient for purposes of this section applying the rules of § 1.6042-3(b)(1)(vii). However, because the dividend payment is a withholdable payment and W did not determine the chapter 3 status of X, Inc. before July 1, 2014, W may treat X, Inc. as a U.S. person that is an exempt recipient only if W obtains documentary evidence supporting X, Inc.'s status as a U.S. person. See paragraph (b)(3)(iii)(A)(2) of this section.

*Example 4.* A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of

withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441-4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441-6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4). The exclusions and limitations specified in this paragraph (b)(4) apply for purposes of chapter 3. Additional withholding and documentation requirements may apply to withholding agents under chapter 4 with respect to payments that are withholdable payments. See, for example, § 1.1471-2(a) requiring withholding on withholdable payments made to certain FFIs and § 1.1471-2(a)(4) for payments exempted from withholding under section 1471(a).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871-7(b)(2) or § 1.881-2(b)(2) are exempt from withholding under section 1441(a). See § 1.871-14 for regulations regarding portfolio interest and section 1441(c)(9) for the exemption from withholding for portfolio interest. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871-14(c)(1)(ii)(C). For special documentation rules regarding

foreign-targeted registered obligations described in § 1.871-14(e)(2) (and issued before January 1, 2016), see § 1.871-14(e)(3) and (4) and, in particular, § 1.871-14(e)(4)(i)(A) and (ii)(A) regarding when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and establishing foreign status for purposes of section 6049. See § 1.6049-5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871-14(b)(1) (and issued before March 19, 2012) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049-5(b)(7).

\* \* \* \* \*

(5) \* \* \*

(ix) Payments to a foreign person that are governed by section 6050W (dealing with payment card and third party network transactions) are exempt from information reporting under § 1.6050W-1(a)(5)(ii).

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches—(i) In general.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441-2(a)) shall be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (b)(6). A nonqualified intermediary, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section (other than a U.S. branch or territory financial institution that is treated as a U.S. person) shall not be required to withhold or report if it has provided a valid nonqualified intermediary withholding certificate or a U.S.

branch withholding certificate, it has provided all of the information required by paragraph (e)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461-1(c). The withholding requirement of a nonqualified intermediary under the previous sentence also excludes a case in which withholding under chapter 4 was applied by a withholding agent on the payment. See § 1.1441-3(a)(2) (coordinating withholding under chapter 3 with withholding applied under chapter 4 of the Code). A qualified intermediary's obligations to withhold and report shall be determined in accordance with its qualified intermediary withholding agreement.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(6)(i) of this section and coordinate rules for withholding that apply under chapter 4 with those that apply under chapter 3. See also paragraph (e)(3)(iv)(C) of this section for the requirements of withholding statements provided by nonqualified intermediaries.

*Example 1.* FB, a foreign bank, acts as intermediary for five different individuals, A, B, C, D, and E, each of whom owns U.S. securities that generate U.S. source dividends (that are withholdable payments). The dividends are paid by USWA, a U.S. withholding agent. FB furnished USWA with a nonqualified intermediary withholding certificate, described in paragraph (e)(3)(iii) of this section, on which FB certifies its status as a participating FFI (such that withholding under chapter 4 does not apply), to which it attached valid withholding certificates for A, B, C, D, and E. The withholding certificates from A and B claim a 15% reduced rate of withholding under an income tax treaty. C, D, and E claim no reduced rate of withholding. FB provides a withholding statement that meets all of the requirements of paragraph (e)(3)(iv) of this section, including information allocating 20% of each dividend payment to each of A, B, C, D, and E. FB does not have actual knowledge or reason to know that USWA did not withhold the correct amounts or report the dividends on Forms 1042-S to each of A, B, C, D, and E. FB is not required to withhold or to report the dividends to A, B, C, D, and E.

*Example 2.* The facts are the same as in *Example 1*, except that FB did not provide any information for USWA to determine how much of the dividend payments were made to A, B, C, D, and E. Because USWA could not reliably associate the dividend payments with documentation under paragraph (b)(2)(vii) of this section with respect to a payment that is a withholdable payment, USWA applied the presumption rule of § 1.1471-3(f)(5) and withheld 30% from all dividend payments under chapter 4 and

filed a Form 1042-S reporting the payment to an account holder of FB that is a non-participating FFI. FB is deemed to know that USWA did not report the payment to A, B, C, D, and E because it did not provide all of the information required on a withholding statement under paragraph (e)(3)(iv) of this section (*i.e.*, allocation information). Although FB is not required to withhold on the payment under this section because the full 30% withholding was imposed by USWA, it is required to report the payments on Forms 1042-S to A, B, C, D, and E. FB's intentional failure to do so will subject it to intentional disregard penalties under sections 6721 and 6722.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions—(i) General rule.* A withholding agent that cannot reliably associate a payment with valid documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441-4(a)(2)(ii) or (a)(3)(i) to treat the payment as effectively connected income;

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS;

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply; or

\* \* \* \* \*

(ii) *Proof that tax liability has been satisfied—(A) In general.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)) establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact,

appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation received after that date that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A withholding certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentence. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence, as described in § 1.1471-3(c)(5)(i), that supports the individual's claim of foreign status or documentary evidence described in § 1.1441-6(c)(4)(i) to support any treaty claim made on the certificate. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in § 1.1471-3(c)(5)(i) that supports the entity's claim of foreign status or documentary evidence described in § 1.1441-6(c)(4)(ii) to support any treaty claim made on the certificate. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to obtain from the payee a withholding certificate and affidavit supporting the claim of chapter 3 status as of the time of the payment. See, however, paragraph (b)(7)(ii)(B) of this section for special rules that apply when a withholding certificate is received after the date of the payment to claim that income is effectively connected with the conduct of a U.S. trade or business. See § 1.1471-

3(c)(7)(ii) for additional requirements that may apply under chapter 4 for documentation obtained after the date of payment of a withholdable payment.

(B) [Reserved]. For further guidance, see § 1.1441-1T(b)(7)(ii)(B).  
\* \* \* \* \*

(iv) *Special rule for determining validity of withholding certificate containing inconsequential errors.* A withholding agent may treat a withholding certificate as valid when the certificate includes an error described as an inconsequential error in § 1.1471-3(c)(7)(i) for which the withholding agent obtains documentation sufficient for supporting a payee's claim of status as a foreign person or, for a payee that is an entity, its classification to the extent permitted under § 1.1471-3(c)(7)(i). For example, if the country of residence is abbreviated in an ambiguous way on a beneficial owner withholding certificate provided to establish the beneficial owner's foreign status, a withholding agent may treat the withholding certificate as valid if it has obtained documentary evidence supporting that the beneficial owner's residence is in a country other than the United States.

(v) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).  
\* \* \* \* \*

(c) *Definitions.* The following definitions apply for purposes of sections 1441 through 1443, 1461, and regulations under those sections. For definitions of terms used in these regulations that are defined under sections 1471 through 1474, see subparagraphs (43) through (56) of this paragraph.  
\* \* \* \* \*

(2) *Foreign and U.S. person—(i) In general.* The term foreign person means any person that is not a U.S. person, including a QI branch of a U.S. financial institution (as defined in § 1.1471-1(b)(109)). Such a branch continues to be a U.S. payor for purposes of chapter 61 of the Code. See § 1.6049-5(c)(4). A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia

(including an agency or instrumentality thereof).

(ii) [Reserved]. For further guidance, see § 1.1441-1T(c)(2)(ii).

(3) \* \* \*

(ii) [Reserved]. For further guidance, see § 1.1441-1T(c)(3)(ii).  
\* \* \* \* \*

(5) *Financial institution and foreign financial institution (or FFI).* The term financial institution means a person described in § 1.1471-1(b)(50). The term foreign financial institution or FFI has the meaning set forth in § 1.1471-1(b)(47).  
\* \* \* \* \*

(10) *Chapter 3 of the Code (or chapter 3).* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code (or chapter 3) shall not include references to sections 1445 and 1446, unless the context indicates otherwise.  
\* \* \* \* \*

(12) *Payee.* For purposes of chapter 3 of the Code, the term payee of a payment is determined under paragraph (b)(2) of this section, § 1.1441-5(c)(1) (relating to partnerships), and § 1.1441-5(e)(2) and (3) (relating to trusts and estates) and includes foreign persons, U.S. exempt recipients, and U.S. non-exempt recipients. A nonqualified intermediary and a qualified intermediary (to the extent it does not assume primary withholding responsibility) are not payees if they are acting as intermediaries and not the beneficial owner of income. In addition, a flow-through entity (other than a withholding foreign partnership, withholding foreign trust, or qualified intermediary that assumes primary withholding responsibility) is not a payee unless the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States. See § 1.6049-5(d)(1) for rules to determine the payee for purposes of chapter 61 of the Code. See §§ 1.1441-1(b)(3), 1.1441-5(d), and (e)(6) and § 1.6049-5(d)(3) for presumption rules that apply if a payee's identity cannot be determined on the basis of valid documentation. For purposes of chapter 4, the term payee has the meaning set forth in § 1.1471-3(a) with respect to a withholdable payment.  
\* \* \* \* \*

(16) *Withholding certificate.* The term withholding certificate means a Form W-8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraphs (e)(3)(i) or (e)(5)(i) of this section (relating to foreign intermediaries or qualified intermediaries), § 1.1441-5(c)(2)(iv), (c)(3)(iii), and (e)(5)(iii) (relating to flow-through entities), a Form 8233 described in § 1.1441-4(b)(2), a Form W-9 as described in paragraph (d) of this section, a statement described in § 1.871-14(c)(2)(v) (relating to portfolio interest), or any other certificates that under the Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or a foreign person.

(17) *Documentary evidence; other appropriate documentation.* The terms documentary evidence or other appropriate documentation refer to documentary evidence that may be provided for payments made outside the United States with respect to offshore obligations in accordance with § 1.6049-5(c)(1) or any other evidence that under the Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See §§ 1.1441-6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049-5(c)(1) and (4) (relating to chapter 61 reporting). Also see § 1.1441-4(a)(3)(ii) regarding documentary evidence for notional principal contracts.  
\* \* \* \* \*

(23) *Flow-through entity.* A flow-through entity means any entity that is described in this paragraph (c)(23) and that may provide documentation on behalf of its partners, beneficiaries, or owners to a withholding agent. The entities described in this paragraph are a foreign partnership (other than a withholding foreign partnership), a foreign simple trust (other than a withholding foreign trust) that is described in paragraph (c)(24) of this section, a foreign grantor trust (other than a withholding foreign trust) that is described in paragraph (c)(26) of this section, or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

\* \* \* \* \*

(25) *Foreign complex trust*. A foreign complex trust is a foreign trust other than a foreign simple trust or foreign grantor trust.

\* \* \* \* \*

(28) *Nonwithholding foreign partnership (or NWP)*. A nonwithholding foreign partnership is a foreign partnership that is not a withholding foreign partnership, as defined in § 1.1441-5(c)(2)(i).

(29) *Withholding foreign partnership (or WP)*. A withholding foreign partnership is defined in § 1.1441-5(c)(2)(i).

(30) *Possessions of the United States or U.S. territory*. For purposes of the regulations under chapters 3 and 61 of the Code, the term possessions of the United States or U.S. territory means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

(31) *Amount subject to chapter 3 withholding*. An amount subject to withholding under chapter 3 is an amount described in § 1.1441-2(a).

(32) *EIN*. The term EIN means an employer identification number (also known as a federal tax identification number) described in § 301.6109-1(a)(1)(i).

(33) *Flow-through withholding certificate*. The term flow-through withholding certificate means a Form W-8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(34) *Foreign payee*. The term foreign payee means any payee other than a U.S. payee.

(35) *Intermediary withholding certificate*. The term intermediary withholding certificate means a Form W-8IMY submitted by an intermediary or qualified intermediary.

(36) *Nonwithholding foreign trust (or NWT)*. The term nonwithholding foreign trust or NWT means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(37) *Payment with respect to an offshore obligation*. The term payment with respect to an offshore obligation means a payment made outside of the United States, within the meaning of § 1.6049-5(e), with respect to an offshore obligation (as defined in § 1.6049-5(c)(1), § 1.6041-1(d), or § 1.6042-3(b) (depending on the type of payment)).

(38) *Permanent residence address*—(i) *In general*. The term permanent residence address is the address in the country of which the person claims to be a resident for purposes of that country's income tax. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, whether a person is a resident of a treaty country must be determined in the manner prescribed under the applicable treaty. See § 1.1441-6(b). The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address of the entity is the place at which the person maintains its principal office.

(ii) [Reserved]. For further guidance, see § 1.1441-1T(c)(38)(ii).

(39) *Standing instructions to pay amounts*. The term standing instructions to pay amounts has the meaning set forth in § 1.1471-1(b)(126).

(40) *Territory financial institution*. The term territory financial institution has the meaning set forth in § 1.1471-1(b)(130).

(41) *TIN*. The term TIN means the tax identifying number assigned to a person under section 6109.

(42) *Withholding foreign trust (or WT)*. The term withholding foreign trust (or WT) means a foreign grantor trust or foreign simple trust that has executed the agreement described in § 1.1441-5(e)(5)(v).

(43) *Certified deemed-compliant FFI*. The term certified deemed-compliant FFI means an FFI described in § 1.1471-5(f)(2).

(44) *Chapter 3 withholding rate pool*. The term chapter 3 withholding rate pool

has the meaning described in paragraph (e)(5)(v)(C)(I) of this section.

(45) *Chapter 3 status*. The term chapter 3 status refers to the attributes of a payee relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

(46) *Chapter 4 of the Code (or chapter 4)*. The term chapter 4 of the Code (or chapter 4) means sections 1471 through 1474 and the regulations thereunder.

(47) *Chapter 4 status*. The term chapter 4 status means a person's status as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

(48) *Chapter 4 withholding rate pool*. The term chapter 4 withholding rate pool has the meaning set forth § 1.1471-1(b)(20). For when a withholding statement may include a chapter 4 withholding rate pool of U.S. payees for purposes of this section and § 1.1441-5, however, see paragraph (e)(3)(iv)(A) of this section (for a withholding statement provided by a nonqualified intermediary) or paragraph (e)(5)(v)(C)(2) of this section (for a withholding statement provided by a qualified intermediary).

(49) *Deemed-compliant FFI*. The term deemed-compliant FFI means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471-5(f), as meeting the requirements of section 1471(b). The term deemed-compliant FFI also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(50) *GIIN (or Global Intermediary Identification Number)*. The term GIIN or Global Intermediary Identification Number means the identification number that is assigned to a participating FFI or registered deemed-compliant FFI. The term GIIN or Global Intermediary Identification Number also includes the identification number assigned to a reporting Model 1 FFI (as defined in § 1.1471-1(b)(114)) for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(51) *NFFE*. The term NFFE or non-financial foreign entity has the meaning set forth in § 1.1471-1(b)(80).

(52) *Nonparticipating FFI*. The term nonparticipating FFI means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(53) *Participating FFI*. The term participating FFI has the meaning set forth in § 1.1471-1(b)(91).

(54) *Preexisting obligation*. The term preexisting obligation has the meaning set forth in § 1.1471-1(b)(104).

(55) *Registered deemed-compliant FFI*. The term registered deemed-compliant FFI has the meaning set forth in § 1.1471-5(f)(1).

(56) *Withholdable payment*. The term withholdable payment has the meaning set forth in § 1.1473-1(a).

(d) \* \* \*

(4) *When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee*. A withholding agent that makes a payment to an intermediary (whether a qualified intermediary or nonqualified intermediary), a flow-through entity, or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section may treat the payment as made to a U.S. payee to the extent that, prior to the payment, the withholding agent can reliably associate the payment with a Form W-9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section or to the extent the withholding agent can reliably associate the payment with a Form W-8 described in paragraph (e)(3)(v) of this section that evidences an agreement to treat a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section as a U.S. person. In addition, a withholding agent may treat the payment as made to a U.S. payee only if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W-9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the withholding agent may be notified in accordance with section

3406(a)(1)(B) and the regulations under that section. See applicable procedures under section 3406(a)(1)(B) and the regulations under that section for payors who have been notified with regard to such a Form W-9. Withholding agents who have been notified in relation to other Forms W-9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter).

(e) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(2) That the payment is made outside the United States (within the meaning of § 1.6049-5(e)) with respect to an offshore obligation (within the meaning of paragraph (c)(37) of this section) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441-6(c)(3) or (4), or 1.6049-5(c)(1) relating to the beneficial owner;

(3) That the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section, and the qualified intermediary has provided sufficient information for the withholding agent to allocate the payment to a chapter 3 withholding rate pool;

\* \* \* \* \*

(2) \* \* \*

(ii) *Requirements for validity of certificate*—(A) *In general*. A beneficial owner withholding certificate is valid for purposes of a payment of an amount subject to chapter 3 withholding only if it is provided on a Form W-8 or a Form 8233 in the case of personal services income described in § 1.1441-4(b) or certain scholarship or grant amounts described in § 1.1441-4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section or such other form as the IRS may prescribe). A Form W-8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address

(as defined in § 1.1441-1(c)(38)), TIN (if required), a certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii) (including when a foreign TIN and an individual's date of birth are required). A beneficial owner withholding certificate must also include the chapter 4 status of a beneficial owner when required for chapter 4 purposes in order to be valid. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate.

(B) [Reserved]. For further guidance, see § 1.1441-1T(e)(2)(ii)(B).

(3) \* \* \*

(ii) *Intermediary withholding certificate from a qualified intermediary*. A qualified intermediary shall provide a qualified intermediary withholding certificate for withholdable payments or reportable amounts received by the qualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A qualified intermediary withholding certificate is valid only if it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the qualified intermediary, its validity has not expired, and it contains the following information, statement, and certifications—

(A) The name, permanent residence address, qualified intermediary employer identification number (QI-EIN), and the country under the laws of which the qualified intermediary is created, incorporated, or governed. If required for purposes of chapter 4 or if the qualified intermediary is a participating FFI or registered deemed-compliant FFI and certifies that it is providing (or will provide) a chapter 4 withholding rate pool of U.S. payees under § 1.6049-4(c)(4) with respect to accounts that the qualified intermediary

maintains, the withholding certificate must also include the chapter 4 status of the qualified intermediary and its GIIN (if applicable). See paragraph (e)(5)(ii) for the chapter 4 status required of a qualified intermediary, including when a qualified intermediary withholding certificate may include a chapter 4 status of limited FFI (as defined in § 1.1471-1(b)(77)). A qualified intermediary that does not act in its capacity as a qualified intermediary must not use its QI-EIN. Rather, it should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number (if any) that it uses for all other purposes and GIIN (if applicable);

\* \* \* \* \*

(C) A certification that the qualified intermediary has provided, or will provide, a withholding statement as required by paragraph (e)(5)(v) of this section;

(D) A certification that the qualified intermediary meets the requirements of § 1.6049-4(c)(4) when the qualified intermediary provides (or will provide) a withholding statement associated with its Form W-8 that allocates a payment to a chapter 4 withholding rate pool of U.S. payees that hold accounts with the qualified intermediary. Additionally, when the qualified intermediary provides a chapter 4 withholding rate pool of U.S. payees that do not hold accounts maintained by the qualified intermediary, the qualified intermediary provides a certification on the Form W-8 that the qualified intermediary has obtained (or will obtain) documentation from the intermediary or flow through entity allocating the payment to the pool to establish that the entity's status is as a participating FFI, registered deemed-compliant FFI, or qualified intermediary under § 1.1471-3(d)(4) (or, as applicable, § 1.1471-3(e)(4)(vi)(B) or § 1.1441-1(b)(2)(vii)); and

(E) Reserved.

(F) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii) or paragraph (e)(3)(v) of this section. See paragraph (e)(5)(v) of this section for the requirements of a with-

holding statement associated with the qualified intermediary withholding certificate.

(iii) *Intermediary withholding certificate from a nonqualified intermediary.* A nonqualified intermediary shall provide a nonqualified intermediary withholding certificate for reportable amounts received by the nonqualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A nonqualified intermediary withholding certificate is valid only to the extent it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the nonqualified intermediary, it contains the information, statements, and certifications described in this paragraphs (e)(3)(iii) and (iv) of this section, its validity has not expired, and the withholding certificates and other appropriate documentation for all persons to whom the certificate relates are associated with the certificate. Withholding certificates and other appropriate documentation consist of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary and flow-through withholding certificates described in paragraph (e)(3)(i) of this section, withholding foreign partnership and withholding foreign trust certificates described in § 1.1441-5(c)(2)(iv) and (e)(5)(iii), documentary evidence described in §§ 1.1441-6(c)(3) or (4) and 1.6049-5(c)(1), and any other documentation or certificates applicable under other provisions of the Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If a nonqualified intermediary is acting on behalf of another nonqualified intermediary or a flow-through entity, then the nonqualified intermediary must associate with its own withholding certificate the other nonqualified intermediary withholding certificate or the flow-through withholding certificate and separately identify all of the withholding certificates and other appropriate documentation that are associated with the withholding certificate of the other nonqualified intermediary or flow-through entity. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of

certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonqualified intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871-14(c)(2)(v) furnished for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c). The information and certifications required on a Form W-8 described in this paragraph (e)(3)(iii) are as follows—

(A) The name and permanent resident address of the nonqualified intermediary, chapter 4 status (if required for chapter 4 purposes or if the nonqualified intermediary provides the certification described in paragraph (e)(3)(iii)(D) of this section), GIIN (if applicable), and the country under the laws of which the nonqualified intermediary is created, incorporated, or governed;

\* \* \* \* \*

(C) If the nonqualified intermediary withholding certificate is used to transmit withholding certificates or other appropriate documentation for more than one person on whose behalf the nonqualified intermediary is acting, a withholding statement associated with the Form W-8 that provides all the information required by paragraph (e)(3)(iv) of this section;

(D) If the nonqualified intermediary provides a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees, a certification that the nonqualified intermediary meets the requirements of § 1.6049-4(c)(4) with respect to any payees included in such pool that hold accounts maintained (as defined in § 1.1471-5(b)(5)) by the nonqualified intermediary; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(3)(iii) or paragraph (e)(5)(iv) of this section.

(iv) *Withholding statement provided by nonqualified intermediary*—(A) *In general.* A nonqualified intermediary shall provide a withholding statement required by this paragraph (e)(3)(iv) to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts (as defined in paragraph (e)(3)(vi) of this section) or to the extent it otherwise provides the documentation of such payees to a withholding agent. A nonqualified intermediary, however, that is subject to withholding under chapter 4 due to its chapter 4 status as a nonparticipating FFI need not provide a withholding statement unless it is providing documentation to allocate a portion of the payment as made to an exempt beneficial owner as described in § 1.1471-3(c)(3)(iii)(B)(4). A nonqualified intermediary that is subject to withholding under chapter 4 due to its chapter 4 status is not required to disclose to the withholding agent information regarding persons for whom it collects reportable amounts unless it has actual knowledge that any such person is a U.S. non-exempt recipient as defined in paragraph (c)(21) of this section. Information regarding U.S. non-exempt recipients required under this paragraph (e)(3)(iv) must be provided irrespective of any requirement under foreign law that prohibits the disclosure of the identity of an account holder of a nonqualified intermediary or financial information relating to such account holder. A nonqualified intermediary is not required to provide information on a withholding statement regarding U.S. non-exempt recipients, provided that the nonqualified intermediary is a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) that identifies on the withholding statement the portion of a payment allocable to a chapter 4 withholding rate pool of U.S. payees to the extent that the nonqualified intermediary is permitted to include such U.S. payees in a pool under § 1.6049-4(c)(4)(iii). See § 1.1471-3(d)(4) for the requirements of an entity to identify itself as a participating FFI or registered deemed-compliant FFI to a withholding agent for purposes of chapter 4. Although a nonqualified intermediary is not re-

quired to provide documentation and other information required by this paragraph (e)(3)(iv) for persons other than U.S. non-exempt recipients not included in a chapter 4 withholding rate pool of U.S. payees, a withholding agent that does not receive documentation and such information must apply the presumption rules of paragraph (b) of this section, §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment) or the withholding agent shall be liable for tax, interest, and penalties. A withholding agent must apply the presumption rules even if it is not required under chapter 61 of the Code to obtain documentation to treat a payee as an exempt recipient and even though it has actual knowledge that the payee is a U.S. person. For example, if a nonqualified intermediary receives a payment that is not a withholdable payment and fails to provide a withholding agent with a Form W-9 for an account holder that is a U.S. exempt recipient that is not included in a chapter 4 withholding rate pool of U.S. payees to the extent permitted in this paragraph (e)(3)(iv)(A), the withholding agent must presume (even if it has actual knowledge that the account holder is a U.S. exempt recipient) that the account holder is an undocumented foreign person with respect to amounts subject to chapter 3 withholding. See paragraph (b)(3)(v) of this section for applicable presumptions. Therefore, the withholding agent must withhold 30 percent from the payment even though if a Form W-9 had been provided, no withholding or reporting on the payment attributable to a U.S. exempt recipient would apply. Further, a nonqualified intermediary that fails to provide the documentation and the information under this paragraph (e)(3)(iv) for another withholding agent to report the payments on Forms 1042-S (including under the requirements of § 1.1474-1(d)(2) for a payment of a chapter 4 reportable amount) and Forms 1099 is not relieved of its responsibility to file information returns. See paragraph (b)(6) of this section. Therefore, unless the nonqualified intermediary itself files such returns and provides copies to the payees, it shall be liable for penalties under sections 6721 (failure to file information returns), and 6722 (failure to furnish payee statements),

including the penalties under those sections for intentional failure to file information returns. In addition, failure to provide either the documentation or the information required by this paragraph (e)(3)(iv) results in a payment not being reliably associated with valid documentation. Therefore, the beneficial owners of the payment are not entitled to reduced rates of withholding and if the full amount required to be held under the presumption rules is not withheld by the withholding agent, the nonqualified intermediary must withhold the difference between the amount withheld by the withholding agent and the amount required to be withheld. Failure to withhold shall result in the nonqualified intermediary being liable for tax under section 1461, interest, and penalties, including penalties under section 6656 (failure to deposit) and section 6672 (failure to collect and pay over tax).

(B) *General requirements.* A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically as part of a system established by the withholding agent or nonqualified intermediary to provide the statement, however, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the nonqualified intermediary. A withholding statement may otherwise be trans-

mitted by a nonqualified intermediary via email or facsimile to a withholding agent under the requirements specified in paragraph (e)(4)(iv)(D) of this section (substituting the term withholding statement for the term Form W-8 or the term document, as applicable). A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment. A withholding agent may not treat as valid an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees described in paragraph (e)(3)(iv)(A) of this section or an allocation of a payment to a chapter 4 withholding rate pool of recalcitrant account holders described in paragraph (e)(3)(iv)(C)(2) of this section unless the withholding agent identifies the nonqualified intermediary maintaining the account (as described in § 1.1471-5(b)(5)) as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules of § 1.1471-3(d)(4). Additionally, in the case of a withholdable payment that is an amount subject to withholding made on or after April 1, 2017, a withholding agent may not treat as valid an allocation of the payment to a chapter 4 withholding rate pool of U.S. payees unless the nonqualified intermediary identifies the pool of U.S. payees as one described in § 1.1471-3(c)(3)(iii)(B)(2)(iii) (or by describing such payees consistent with the description provided in § 1.1471-3(c)(3)(ii)(B)(2)(iii)).

(C) *Content of withholding statement.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(I) *In general.* Except as otherwise provided by paragraph (e)(3)(iv)(C)(2) and (3) of this section, the withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C)(I).

(i) Except as otherwise provided in (e)(3)(iv)(A) of this section (which excludes reporting of information with respect to certain U.S. persons on the withholding statement), the withholding statement must contain the name, address, TIN (if any), and the type of documentation (documentary evidence, Form W-9, or type of Form W-8) for every person from whom documentation has been received by the nonqualified intermediary and provided to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a foreign person. See paragraphs (c)(2), (20), and (21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an intermediary, flow-through entity, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes applicable for chapter 3 purposes used for filing Forms 1042-S, if the foreign person is a recipient as defined in § 1.1461-1(c)(1)(ii).

(ii) The withholding statement must allocate each payment, by income type, to every payee required to be reported on the withholding statement for whom documentation has been provided (including U.S. exempt recipients except as provided in paragraph (e)(3)(iv)(A) of this section). Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042-S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042-S. See § 1.6049-8 (regarding reporting of bank deposit interest to certain foreign per-

sons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution described in paragraph (e)(2)(iv) of this section (other than a U.S. branch or territory financial institution treated as a U.S. person), the withholding statement must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest. If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(iii) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (e.g., treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the TINs of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441-6(b)(1) (regarding claims for treaty benefits for which a TIN is provided unless a foreign tax identifying number described in § 1.1441-6(b)(1) is provided). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441-6(c)(5) have been provided, if required, in the beneficial owner's Form W-8 or associated with such owner's documentary evidence.

(iv) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3 and chapter 61 of the Code, and section 3406.

(2) *Nonqualified intermediary withholding statement for withholdable payments.* This paragraph (e)(3)(iv)(C)(2) modifies the requirements of a withholding statement described in paragraph

(e)(3)(iv)(C)(I) of this section that is provided by a nonqualified intermediary with respect to a reportable amount that is a withholdable payment. For such a payment, the requirements applicable to a withholding statement described in paragraph (e)(3)(iv)(A) through (e)(3)(iv)(C)(I) of this section shall apply, except that—

(i) The withholding statement must include the chapter 4 status (using the applicable status code used for filing Form 1042-S) and GIIN (when required for chapter 4 purposes under § 1.1471-3(d)) of each other intermediary or flow-through entity that is a foreign person and that receives the payment, excluding an intermediary or flow-through entity that is an account holder of or interest holder in a withholding foreign partnership, withholding foreign trust, or intermediary acting as a qualified intermediary for the payment;

(ii) If the nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs and recalcitrant account holders (to the extent permitted on an FFI withholding statement described in that paragraph) in lieu of providing specific payee information with respect to such persons on the statement (including persons subject to chapter 4 withholding) as described in paragraph (e)(3)(iv)(C)(I) of this section;

(iii) If the nonqualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs;

(iv) For a payment allocated to a payee that is a foreign person (other than a person included in a chapter 4 withholding rate pool described in paragraphs (e)(3)(iv)(C)(2)(ii) and (iii) of this section) that is reported on a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) or (3), the withholding statement must in-

clude the chapter 4 status of the payee (unless an exception applies for purposes of providing such status under chapter 4) and, for a payee other than an individual, the recipient code for chapter 4 purposes used for filing Form 1042-S; and

(v) To the extent that a withholdable payment is not reportable on a Form 1042-S, Form 1099 under the rules of chapter 61, or Form 8966 “FATCA Report,” no allocation of the payment is required on the withholding statement.

(3) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(iv)(C)(3).

(4) *Example.* This example illustrates the principles of paragraph (e)(3)(iv)(C) of this section.

*Example.* WA makes a withholdable payment of U.S. source dividends to NQI, a nonqualified intermediary. NQI provides WA with a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section that includes NQI’s certification of its status for chapter 4 purposes as a participating FFI. NQI provides a withholding statement on which NQI allocates 20% of the payment to a chapter 4 withholding rate pool of recalcitrant account holders of NQI for purposes of chapter 4 and allocates 80% of the payment equally to A and B, individuals that are account holders of NQI. NQI also provides WA with valid beneficial owner withholding certificates from A and B establishing their status as foreign persons entitled to a 15% rate of withholding under an applicable income tax treaty. Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required with respect to NQI. See § 1.1471-2(a)(4). Based on the documentation NQI provided to WA with respect to A and B, WA can reliably associate the payment with valid documentation on the portion of the payment allocated to them and, because the payment is a withholdable payment, may rely on the allocation of the payment for NQI’s recalcitrant account holders in a chapter 4 withholding rate pool in lieu of payee information with respect to such account holders. See paragraph (e)(3)(iv)(C)(2) of this section for the special rules for a withholding statement provided by a nonqualified intermediary for a withholdable payment. Also see § 1.1471-2(a) for WA’s withholding requirements under chapter 4 with respect to the portion of the payment allocated to NQI’s recalcitrant account holders and § 1.1441-3(a)(2) for coordinating withholding under chapter 3 for payments to which withholding is applied under chapter 4.

(D) *Alternative procedures—(1) In general.* Under the alternative procedures of this paragraph (e)(3)(iv)(D), a nonqualified intermediary may provide information allocating a payment of a reportable amount to each payee (including U.S. exempt recipients) otherwise required under paragraph (e)(3)(iv)(B)(2) of this section after a payment is made. To use the alternative procedure of this paragraph (e)(3)(iv)(D), the nonqualified intermedi-

ary must inform the withholding agent on a statement associated with its nonqualified intermediary withholding certificate that it is using the procedure under this paragraph (e)(3)(iv)(D) and the withholding agent must agree to the procedure. If the requirements of the alternative procedure are met, a withholding agent, including the nonqualified intermediary using the procedures, can treat the payment as reliably associated with documentation and, therefore, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d) do not apply even though information allocating the payment to each payee has not been received prior to the payment. See paragraph (e)(3)(iv)(D)(7) of this section, however, for a nonqualified intermediary’s liability for tax and penalties if the requirements of this paragraph (e)(3)(iv)(D) are not met. These alternative procedures shall not be used for payments that are allocable to U.S. non-exempt recipients except as provided in paragraph (e)(3)(iv)(D)(2)(ii) of this section. Therefore, a nonqualified intermediary is required to provide a withholding agent with information allocating payments of reportable amounts to U.S. non-exempt recipients prior to the payment being made by the withholding agent.

(2) *Withholding rate pools—(i) In general.* In place of the information required in paragraph (e)(3)(iv)(C)(2) of this section allocating payments to each payee, the nonqualified intermediary must provide a withholding agent with withholding rate pool information prior to the payment of a reportable amount. The withholding statement must contain all other information required by paragraph (e)(3)(iv)(C) of this section. Further, each payee listed in the withholding statement must be assigned to an identified withholding rate pool. To the extent a nonqualified intermediary is required to provide, or does provide, documentation, the alternative procedures do not relieve the nonqualified intermediary from the requirement to provide documentation prior to the payment being made. Therefore, withholding certificates or other appropriate documentation and all information required by paragraph (e)(3)(iv)(C) of this section (other than allocation information) must be provided to a withholding agent before any

new payee receives a reportable amount. In addition, the withholding statement must be updated by assigning a new payee to a withholding rate pool prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income used to file Form 1042-S, that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method to which the nonqualified intermediary and a withholding agent agree (e.g., by establishing a separate account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). The nonqualified intermediary shall determine withholding rate pools based on valid documentation or, to the extent a payment cannot be reliably associated with valid documentation, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6) and 1.6049-5(d).

(ii) *Withholding rate pools for chapter 4 purposes.* This paragraph (e)(3)(iv)(D)(2)(ii) modifies the provisions of paragraph (e)(3)(iv)(D)(2)(i) of this section with respect to the withholding rate pools permitted for the alternative procedures described in paragraph (e)(3)(iv)(D)(1) of this section in the case of a payment that is allocable on a withholding statement to a chapter 4 withholding rate pool as described in this paragraph. In the case of a withholdable payment, a nonqualified intermediary may include reportable amounts allocable to a chapter 4 withholding rate pool (other than a chapter 4 withholding rate pool of U.S. payees) in a 30-percent rate pool together with a withholding rate pool for amounts subject to chapter 3 withholding at the 30-percent rate. For a payment of a reportable amount that is allocable to a chapter 4 withholding rate pool of U.S. payees on a withholding statement, a nonqualified intermediary may include such amount in a single withholding rate pool with the amount of the payment that is exempt from withholding under chapter 3 instead of providing documentation regarding U.S. non-exempt recipients included in the pool or separately allocating the amount to the chapter 4 withholding rate pool. To the extent that a nonqualified intermediary allocates an

amount to any chapter 4 withholding rate pool, the nonqualified intermediary is required to notify the withholding agent of the allocation before receiving the payment and is not required to provide documentation with respect to the payees included in such pool. The nonqualified intermediary shall determine the chapter 4 withholding rate pools permitted to be used under this paragraph (e)(3)(iv)(D)(2)(ii) in accordance with the nonqualified intermediary's applicable chapter 4 status and under § 1.1471-3(c)(3)(iii)(B)(2) (for an FFI withholding statement) or (c)(3)(iii)(B)(3) (for a chapter 4 withholding statement) or under § 1.6049-4(c)(4) for a chapter 4 withholding rate pool of U.S. payees (or similar applicable coordination rule in chapter 61 for payments other than interest). Additionally, the nonqualified intermediary shall identify those payees to which withholding under chapter 4 applies that are not included in a chapter 4 reporting pool (including payees that could be included in a chapter 4 withholding rate pool for whom the nonqualified intermediary chooses to provide payee specific information).

(3) *Allocation information.* The nonqualified intermediary must provide the withholding agent with sufficient information to allocate the income in each withholding rate pool to each payee (including U.S. exempt recipients or any chapter 4 withholding rate pool identified by the withholding agent under paragraph (e)(3)(iv)(D)(2)(ii) of this section) within the pool no later than January 31 of the year following the year of payment. Any payments that are not allocated to payees for whom documentation has been provided or a chapter 4 withholding rate pool referred to in the previous sentence shall be allocated to an undocumented payee in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes). Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is not required to be allocated to a U.S.

exempt recipient or a foreign payee, except as required under § 1.6049-8 (regarding reporting of deposit interest paid to certain foreign persons).

(4) *Failure to provide allocation information.* Except as provided in paragraph (e)(3)(iv)(D)(5) of this section, if a nonqualified intermediary fails to provide allocation information, if required, by January 31 for any withholding rate pool to the extent required in paragraph (e)(3)(iv)(D)(3) of this section, a withholding agent shall not apply the alternative procedures of this paragraph (e)(3)(iv)(D) to any payments of reportable amounts paid after January 31 in the taxable year following the calendar year for which allocation information was not given and any subsequent taxable year. Further, the alternative procedures shall be unavailable for any other withholding rate pool (other than a chapter 4 withholding rate pool as otherwise permitted) even though allocation information was given for that other pool. Therefore, the withholding agent must withhold on a payment of a reportable amount in accordance with the presumption rules of paragraph (b)(3) of this section, and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes), unless the nonqualified intermediary provides all of the information, including information sufficient to allocate the payment to each specific payee or chapter 4 withholding rate pool (as permitted), required by paragraph (e)(3)(iv)(A) through (C) of this section prior to the payment. A nonqualified intermediary must allocate at least 90 percent of the income required to be allocated for each withholding rate pool as required under this paragraph (e)(3)(iv)(D)(4) or the nonqualified intermediary will be treated as having failed to provide allocation information for purposes of this paragraph (e)(3)(iv)(D). For purposes of the allocation, a nonqualified intermediary is required to identify by January 31 the portion of the payment that is allocated to each chapter 4 withholding rate pool (rather than the payees included in each such pool). See paragraph (e)(3)(iv)(D)(7) of this section for liability for tax and penalties if a nonqualified intermediary fails to provide allocation information in whole or in part.

(5) *Cure provision.* A nonqualified intermediary may cure any failure to pro-

vide allocation information by providing the required allocation information to the withholding agent no later than February 14 following the calendar year of payment. If the withholding agent receives the allocation information by that date, it may apply the adjustment procedures of § 1.1461-2 (or of § 1.1474-2 for an amount withheld under chapter 4) to any excess withholding for payments made on or after February 1 and on or before February 14. Any nonqualified intermediary that fails to cure by February 14 may request the ability to use the alternative procedures of this paragraph (e)(3)(iv)(D) by submitting a request, in writing, to the IRS. The request must state the reason that the nonqualified intermediary did not comply with the alternative procedures of this paragraph (e)(3)(iv)(D) and steps that the nonqualified intermediary has taken, or will take, to ensure that no failures occur in the future. If the IRS determines that the alternative procedures of this paragraph (e)(3)(iv)(D) may apply, a determination to that effect will be issued by the IRS to the nonqualified intermediary.

(6) *Form 1042-S reporting in case of allocation failure.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for a withholding rate pool, the withholding agent must file Forms 1042-S for payments made to each payee in that pool (other than U.S. exempt recipients) in the prior calendar year by prorating the payment to each payee (including U.S. exempt recipients) listed in the withholding statement for that withholding rate pool, treating as a payee for this purpose each chapter 4 withholding rate pool identified by the nonqualified intermediary under paragraph (e)(3)(iv)(D) (2)(ii) of this section. If the nonqualified intermediary fails to allocate 10 percent or less of an amount required to be allocated for a withholding rate pool, a withholding agent shall report the unallocated amount as paid to a single unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and § 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes). The portion of the payment that can be allocated to specific recipients, as defined in § 1.1461-1(c)(1)(ii), shall be reported to

each recipient in accordance with the rules of § 1.1461-1(c) and § 1.1474-1(d)(2) (for a withholdable payment).

\* \* \* \* \*

(E) *Notice procedures.* The IRS may notify a withholding agent that the alternative procedures of paragraph (e)(3)(iv)(D) of this section are not applicable to a specified nonqualified intermediary, a U.S. branch described in paragraph (b)(2)(iv) of this section, or a flow-through entity. If a withholding agent receives such a notice, it must commence withholding under this section or chapter 4 (if applicable) in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes) unless the nonqualified intermediary, U.S. branch, or flow-through entity complies with the procedures in paragraphs (e)(3)(iv)(A) through (C) of this section. In addition, the IRS may notify a withholding agent, in appropriate circumstances, that it must apply the presumption rules of paragraph (b)(3) of this section and §§ 1.1441-5(d) and (e)(6), 1.6049-5(d), and § 1.1471-3(f)(5) (for a withholdable payment for chapter 4 purposes) to payments made to a nonqualified intermediary, a U.S. branch, or a flow-through entity even if the nonqualified intermediary, U.S. branch, or flow-through entity provides allocation information prior to the payment. A withholding agent that receives a notice under this paragraph (e)(3)(iv)(E) must commence withholding in accordance with the presumption rules, if the nonqualified intermediary, U.S. branch, or flow-through entity can demonstrate to the satisfaction of the IRS that it is capable of complying with the rules under chapter 3 of the Code and any other conditions required by the IRS.

(v) *Withholding certificate from certain U.S. branches (including territory financial institutions).* A U.S. branch certificate is a withholding certificate provided by a U.S. branch (including a territory financial institution) described in paragraph (b)(2)(iv) of this section that is

not the beneficial owner of the income. The withholding certificate is provided with respect to reportable amounts and must state that such amounts are not effectively connected with the conduct of a trade or business in the United States. The withholding certificate must either transmit the appropriate documentation for the persons for whom the branch receives the payment (*i.e.*, as an intermediary) or be provided as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information, certifications, and statements described in paragraphs (e)(3)(v)(A) through (C) of this section and in paragraphs (e)(3)(iii) and (iv) (alternative procedures) of this section, applying the term U.S. branch instead of the term nonqualified intermediary. If the certificate is furnished pursuant to an agreement to treat the U.S. branch or territory financial institution as a U.S. person (which agreement must be for purposes of chapter 4 in addition to this section in the case of a payment that is a withholdable payment), the information and certifications required on the withholding certificate are limited to the following—

(A) The name of the territory financial institution or person of which the U.S. branch is a part, the address of the territory financial institution or U.S. branch;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States;

(C) The EIN of the U.S. branch or territory financial institution;

(D) When required for chapter 4 purposes, the chapter 4 status and GIIN (if applicable) of the entity of which the U.S. branch is a part; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

\* \* \* \* \*

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W-8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding Form W-9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate*—(A) *In general.* A withholding certificate (including an acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns). A person authorized to sign a withholding certificate includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate to sign documentation on such person's behalf.

(B) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(i)(B).

(ii) *Period of validity*—(A) *General rule*—(1) *Withholding certificates and documentary evidence.* Except as provided otherwise in paragraphs (e)(4)(ii)(B) and (C) of this section and this paragraph (e)(4)(ii)(A), a withholding certificate described in paragraph (e)(2)(i) of this section, or a certificate described in § 1.871-14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c)), will re-

main valid until the earlier of the last day of the third calendar year following the year in which the withholding certificate is signed or the day that a change in circumstances occurs that makes any information on the certificate incorrect. For example, a withholding certificate signed on September 30, 2015, remains valid through December 31, 2018, unless circumstances change that make the information on the form no longer correct. Documentary evidence described in § 1.6049-5(c)(1) provided to establish a payee's foreign status shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section; however, if such documentary evidence contains an expiration date, it may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Additionally, a withholding certificate or documentary evidence with a period of validity that is valid on December 31, 2013, will not be treated as invalid based solely on the period described in this paragraph (e)(4)(ii) before January 1, 2015. Notwithstanding the validity periods prescribed by this paragraph (e)(4)(ii)(A) and paragraphs (e)(4)(ii)(B) and (C) of this section, a withholding certificate and documentary evidence will cease to be valid if a change in circumstances makes the information on the documentation incorrect.

(2) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(ii)(A)(2).

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the certificates (or parts of certificates) and documentary evidence described in paragraphs (e)(4)(ii)(B)(1) through (11) of this section shall remain valid until a change in circumstances makes the information on the documentation incorrect under paragraph (e)(4)(ii)(D)(3). See, however, § 1.1471-3(c)(6)(ii) for when a withholding certificate or documentary evidence remains valid (or is subject to renewal) when also provided with respect to a withholdable payment made to an entity (including an intermediary) for purposes of whether a withholding agent may continue to rely on the entity's claim of chapter 4 status. Addi-

tionally, the provisions of paragraphs (e)(4)(ii)(B)(1), (2), and (11) of this section do not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014. (For documentary evidence or a withholding certificate furnished after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(1) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence supporting a claim of foreign status when both are provided together by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence address or U.S. mailing address for the payee, does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and, for a payment described in § 1.6049-5(c)(1), the withholding agent has not been provided standing instructions to make a payment to an account in the United States for the obligation. For purposes of the preceding sentence, a beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status will be treated as provided together if they are provided within 30 days of each other, regardless of which the withholding agent receives first.

(2) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence provided by an entity supporting the entity's claim of foreign status, if both are received by the withholding agent before the validity period of either the withholding certificate or the documentary evidence would otherwise expire under paragraph (e)(4)(ii)(A) of this section. See, however, § 1.1471-3(c)(6)(ii) for rules regarding indefinite validity for chapter 4 purposes.

(3) A beneficial owner withholding certificate provided by an entity claiming status as a tax-exempt entity under section 501(c) that is not a foreign private foundation under section 509, provided that the withholding agent reports at least one payment annually to the entity under § 1.1461-1(c).

(4) A certificate described in paragraph (e)(3)(ii) of this section (a qualified intermediary withholding certificate) but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

(5) A certificate described in paragraph (e)(3)(iii) of this section (a nonqualified intermediary certificate), but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

(6) A certificate described in paragraph (e)(3)(v) of this section (a U.S. branch (including a territory financial institution) withholding certificate that is not provided by the beneficial owner), but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

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(8) A withholding certificate provided by a withholding foreign trust described in § 1.1441-5(e)(5)(v).

(9) A certificate described in § 1.1441-5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(10) A certificate described in § 1.1441-5(c)(3)(iii) (a withholding certificate from a nonwithholding foreign partnership) or in § 1.1441-5(e)(5)(iii) (a withholding certificate of a foreign simple or foreign grantor trust) but not including the withholding certificates, documentary evidence, statements, or other information required to be associated with the certificate; and

(11) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances—(1) Defined.* A certificate or documentation becomes invalid from the date of a change in circumstances affecting the correctness of the certificate or documentation to the ex-

tent provided in this paragraph (e)(4)(ii)(D). For purposes of this section, a person is considered to have a change in circumstances only if such change affects the person's claim of chapter 3 status. Thus, for example, a change of address is not a change in circumstances with respect to a claim of only foreign status under this paragraph (e)(4)(ii)(D) if the change is to another address outside the United States, but is a change in circumstances if the change is to an address in the United States.

(2) *Obligation to notify a withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentary evidence incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentary evidence. If an intermediary (including a U.S. branch or territory financial institution described in paragraph (b)(2)(iv)(A) of this section) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances to continue to treat the person who provided the certificate or documentary evidence under its claimed chapter 3 status.

(3) *Withholding agent's obligation with respect to a change in circumstances.* A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed, as permitted under paragraph (e)(4)(viii) of this section. A withholding agent is required to

notify any person providing documentary evidence (in lieu of a withholding certificate) of the person's obligation to notify the withholding agent of a change in circumstances. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. A withholding agent may also require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of documentation.* A withholding agent must retain each withholding certificate and other documentation for purposes of this section for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461-1. A withholding agent may retain a withholding certificate or documentary evidence that is an original, certified copy, or a scanned document (as described in paragraph (e)(4)(iv)(D) of this section). A withholding agent may also retain a withholding certificate by other means (such as microfiche) that allows a reproduction of the document provided that the withholding agent has recorded its receipt of a form described in the preceding sentence and is able to produce a hard copy of the form. See § 1.6049-5(c)(1) for the requirements for maintaining documentary evidence that also apply for purposes of determining a payee's U.S. or foreign status for purposes of chapter 3.

(iv) *Electronic transmission of information—(A) In general.* A withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W-8, an acceptable substitute Form W-8, or such other form as the IRS may prescribe. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section. See paragraph (e)(4)(iv)(D) of this section for other cases in which a Form W-8 (or other documentation) may be furnished electronically.

\* \* \* \* \*

(C) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(iv)(C).

(D) *Forms and documentary evidence received by facsimile or email.* A withholding agent may rely upon an otherwise valid Form W-8 (or documentary evidence) received by facsimile or a form or document scanned and received electronically, such as, for example, an image embedded in an email or as a Portable Document Format (.pdf) attached to an email. A withholding agent may not rely on a form or document received by such means, however, if the withholding agent knows that the form or document was transmitted to the withholding agent by a person not authorized to do so by the person required to execute the form. A withholding agent may establish other procedures to authenticate and verify a form or document sent by such means and may reject any form or document that fails to satisfy the requirements of such procedures. A taxpayer may apply this paragraph (e)(4)(iv)(D) to all of its open tax years, including tax years that are currently under examination by the IRS.

(E) [Reserved]. For further guidance, see § 1.1441-1T(e)(4)(iv)(E).

(v) *Additional procedures for certificates provided electronically.* The IRS may prescribe procedures in a revenue procedure (see § 601.601(d)(2) of this chapter) or may issue other appropriate guidance (including a written directive for revenue agents) to further prescribe the conditions by which the IRS will determine that a system developed by a withholding agent to permit beneficial owners and payees to provide Forms W-8 electronically satisfies the requirements of paragraph (e)(4)(iv)(B) of this section.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W-8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute

form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished (including those required for purposes of chapter 4). For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claims of benefits under an income tax treaty. Similarly, a withholding agent that is not required to determine the chapter 4 status of a payee providing a form may develop a substitute form that does not contain chapter 4 statuses. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W-8 or 8233) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii) for the withholding certificate to be valid for purposes of this section. A TIN is required to be stated on—

(A) A withholding certificate on which a beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441-6(c)(2) or amounts for which a foreign tax identifying number has been provided, as described in § 1.1441-6(c)(2));

\* \* \* \* \*

(F) A withholding certificate from a person representing to be a withholding foreign partnership or a withholding foreign trust;

\* \* \* \* \*

(H) A withholding certificate from a person representing to be a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section; and

(I) A withholding certificate provided by an entity acting as a qualified securities lender, as defined for purposes of chapter 3, with respect to a substitute dividend paid in a securities lending or similar transaction.

(viii) *Reliance rules.* A withholding agent may rely on the information and certifications stated on withholding certificates or other documentation without having to inquire into the veracity of this information or certification, unless it has actual knowledge or reason to know that the information or certification is incorrect. In the case of amounts described in § 1.1441-6(c)(2), a withholding agent described in § 1.1441-7(b)(3) has reason to know that the information or certifications on a certificate are incorrect only to the extent provided in § 1.1441-7(b)(4) through (6). See § 1.1441-6(b)(1) for reliance on representations regarding eligibility for a reduced rate under an income tax treaty. Paragraphs (e)(4)(viii)(A) and (B) of this section provide examples of such reliance.

\* \* \* \* \*

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information

in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (e.g., sub-account numbers that do not correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, i.e., a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(C) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate until the later of six full months after the revision date shown on the updated withholding certificate or the end of the calendar year the updated withholding certificate is issued, unless the IRS has issued guidance that indicates that the period for accepting a prior version is shortened or extended (including in the instructions to the form), such as when there is a new payee status required to be established using the form. A withholding agent may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(ix) *Certificates to be furnished to withholding agent for each obligation unless exception applies.* Unless otherwise provided in paragraphs (e)(4)(ix)(A) through (D) of this section, a withholding agent that is a financial institution with which a customer may open an account shall obtain a withholding certificate or documentary evidence on an obligation-by-obligation basis and may not rely upon such documentation collected by another person or another branch of the withholding agent.

(A) *Exception for certain branch or account systems or system maintained by agent.* A withholding agent may rely on a withholding certificate or documentary evidence furnished by a customer as part of a single branch system, universal account system, or shared account system described in § 1.1471-3(c)(8) (substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph). Furthermore, a withholding agent may rely on a shared documentation system maintained by an agent as described in § 1.1471-3(c)(9)(i) (also substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph).

(B) *Reliance on certification provided by introducing brokers—(1) In general.* A withholding agent may rely on the certification of a broker indicating the broker's determination of a payee's chapter 3 status and that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other appropriate documentation for that beneficial owner with respect to any readily tradable instrument, as defined in § 31.3406(h)-1(d) of this chapter, if the broker is a United States person (including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section) that is acting as the agent of a beneficial owner. A withholding agent may also rely on a certification described in the preceding sentence that is provided by a qualified intermediary that makes payments to beneficial owners that it receives from the withholding agent. The certification must be in writing or in electronic form and contain all of the information required of a nonqualified intermediary under paragraphs (e)(3)(iv)(B) and (C) of this section. If a broker chooses to use this paragraph (e)(4)(ix)(B), that broker will be solely responsible for applying the rules of § 1.1441-7(b) to the withholding certificates or other appropriate documentation and shall be liable for any underwithholding as a result of the broker's failure to apply such rules. See § 1.1471-3(c)(9)(iii) for a similar allowance that applies to a broker's determination of a payee's chapter 4 status for purposes of chapter 4. For purposes of this paragraph (e)(4)(ix)(B), the term *broker* means a

person treated as a broker under § 1.6045-1(a).

(2) *Example.* The following example illustrates the rules of this paragraph (e)(4)(ix)(B) with respect to a U.S. broker:

*Example.* SCO is a U.S. securities clearing organization that provides clearing services for correspondent broker, CB, a U.S. corporation. Pursuant to a fully disclosed clearing agreement, CB fully discloses the identity of each of its customers to SCO. Part of SCO's clearing duties include the crediting of income and gross proceeds of readily tradable instruments (as defined in § 31.3406(h)-1(d)) to each customer's account. For each disclosed customer that is a foreign beneficial owner, CB provides SCO with information required under paragraphs (e)(3)(iv)(B) and (C) of this section that is necessary to apply the correct rate of withholding and to file Forms 1042-S. SCO may use the representations and beneficial owner information provided by CB to determine the proper amount of withholding and to file Forms 1042-S. CB is responsible for determining the validity of the withholding certificates or other appropriate documentation under § 1.1441-1(b).

(C) *Reliance on documentation and certifications provided between principals and agents—(1) Withholding agent as agent.* A withholding agent that acts on behalf of a principal may rely upon documentation (or copies of documentation) obtained from the principal, and, with respect to a principal that is a U.S. withholding agent, a qualified intermediary (when acting as such for determining a payee's status), or a withholding foreign partnership or withholding foreign trust with respect to a partner, owner, or beneficiary in the partnership or trust, the withholding agent may rely upon certification provided by the principal for purposes of determining a payee's chapter 3 status. Thus an agent (such as a paying agent or transfer agent) may not rely upon a certification provided by a principal that is a participating FFI but is not also a qualified intermediary, withholding foreign partnership, or withholding foreign trust for purposes of this section, even though it may rely on the certification when provided solely for purposes of chapter 4 under § 1.1471-3(c)(9)(iv).

(2) *Withholding agent as principal.* A withholding agent may also rely on documentation collected by an agent of the withholding agent in order to fulfill its chapter 3 obligations because such agent's actions are imputed to the principal (the withholding agent). For example, a withholding agent may contract an agent to

collect Forms W-8 from account holders on its behalf, but the withholding agent remains liable for any tax liability resulting from a failure of the agent to comply with the requirements of chapter 3.

(D) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor for determining the chapter 3 status of an account holder of such an account. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent (or a qualified intermediary when the withholding agent is also a qualified intermediary) may also rely upon the predecessor's or transferor's determination of the account holder's chapter 3 status for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of entity classification and status is inaccurate or a change in circumstances occurs with respect to the account. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 3 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the status claimed. An acquirer that discovers at the end of the transition period that the chapter 3 status assigned by the predecessor or transferor to the account holder was incorrect and has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on future payments, if any, made to the account holder the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (e)(4)(ix)(D), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group, within the meaning of § 1.1471-5(i)(2), as the predecessor or transferor

either prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtain a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471-3(c)(v) for a similar reliance rule that applies for purposes of chapter 4.

(5) \* \* \*

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS where such person is—

(A) A foreign financial institution that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI), an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), excluding a U.S. branch of any of the foregoing entities, or any other category of FFI identified in a qualified intermediary withholding agreement as eligible to act as a qualified intermediary;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization that is either a reporting Model 1 FFI or agrees to the reporting requirements applicable to a participating FFI with respect to its U.S. accounts;

(C) [Reserved].

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement—(A) In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provi-

sions of the Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* The withholding agreement shall specify the obligations of the qualified intermediary under chapters 3 and 4 including, for a qualified intermediary that is an FFI, the documentation, withholding, and reporting obligations required of a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI as defined in § 1.1471-1(b)(114)) with respect to each branch of the qualified intermediary other than a U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section. The withholding agreement will specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (e.g., corporation or partnership), status (i.e., U.S. or foreign and chapter 4 status) of beneficial owners and payees who receive reportable amounts, reportable payments, and withholdable payments collected by the qualified intermediary for purposes of chapters 3, 4, and 61, section 3406, and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. The withholding agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the withholding agreement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the withholding agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109-1(d)(3)(iv)(A) of this chapter. The withholding agreement may specify the manner in which applicable

procedures for adjustments for under-withholding and overwithholding, including refund procedures, apply to qualified intermediaries and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. In addition, the withholding agreement shall specify the manner in which the IRS will verify compliance with the agreement, including the time and manner for which a qualified intermediary will be required to certify to the IRS regarding its compliance with the withholding agreement (including its performance of a periodic review) and the types of information required to be disclosed as part of the certification. In appropriate cases, the IRS may require review procedures be performed by an approved reviewer (in addition to those performed as part of the periodic review) and may conduct a review of the reviewer's findings. The withholding agreement may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the withholding agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the withholding agreement may specify the procedures by which amounts withheld are to be deposited, if different from the deposit procedures under the Code and applicable regulations. To determine whether to enter a withholding agreement and the terms of any particular withholding agreement, the IRS will consider the type of local know-your-customer laws and practices to which the entity is subject (if the entity is an FFI), as well as the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign entity.

(iv) *Assignment of primary withholding responsibility.* Any person (whether a U.S. person or a foreign person) who meets the definition of a withholding agent under § 1.1441-7(a) (for payments subject to chapter 3 withholding) and § 1.1473-1(d) (for withholdable payments) is required to withhold and deposit any amount withheld under §§ 1.1461-

1(a) and 1.1474-1(b) and to make the returns prescribed by §§ 1.1461-1(b) and (c), and by 1.1474-1(c), and (d). Under its qualified intermediary withholding agreement, a qualified intermediary may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of the Code and/or under chapter 61 and section 3406 of the Code. For assuming withholding obligations as described in the previous sentence, a qualified intermediary that assumes primary withholding responsibility for payments made to an account under chapter 3 is also required to assume primary withholding responsibility under chapter 4 for payments made to the account that are withholdable payments. Additionally, a qualified intermediary may represent that it assumes chapter 61 reporting and section 3406 obligations for a payment when the qualified intermediary meets the requirements of § 1.6049-4(c)(4)(i) or (ii) for the payment. If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary actually performs its primary withholding responsibilities. A qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent.

(v) *Withholding statement*—(A) *In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A

withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary withholding agreement will require the qualified intermediary to include information in its withholding statement relating to withholdable payments for purposes of withholding under chapter 4 as described in paragraph (e)(5)(v)(C)(2) of this section. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, the statement must satisfy the requirements described in paragraph (e)(3)(iv) of this section (applicable to a withholding statement provided by a nonqualified intermediary). The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For purposes of this section, a withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441-5(d) and (e)(6), and 1.6049-5(d) for a payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

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

(1) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(2) Designate those accounts for which qualified intermediary assumes primary

withholding responsibility under chapter 3 and chapter 4 of the Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406;

(3) If applicable, designate those accounts for which the qualified intermediary is acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction;

(4) [Reserved].

(5) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools*—(1) *In general.* Except to the extent it has assumed both primary withholding responsibility under chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its withholding statement the chapter 3 withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Code and section 3406. See, however, paragraph (e)(5)(v)(C)(2) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool (as described in paragraph (c)(48) of this section) with respect to a payment that is a withholdable payment. A chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is subject to a single rate of withholding paid to a payee that is a foreign person and for which withholding under chapter 4 does not apply. A chapter 3 withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (e.g., by establishing a separate account for a single chapter 3 withholding rate pool, or by dividing a payment made to a single account into portions allocable to each chapter 3 withholding rate pool). A qualified intermediary may include a separate pool for account holders that are U.S. exempt recipients or may include such accounts in a chapter 3 withholding rate pool to which withholding does not apply. The withholding statement must identify the chapter 4 exemption code (as

provided in the instructions to Form 1042-S) applicable to the chapter 3 withholding rate pools contained on the withholding statement. To the extent a qualified intermediary does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(3) of this section or the account holder is a payee that the qualified intermediary is permitted to include in a chapter 4 withholding rate pool of U.S. payees. A qualified intermediary that is a participating FFI or registered deemed-compliant FFI may include a chapter 4 withholding rate pool of U.S. payees on a withholding statement by applying the rules under paragraph (e)(3)(iv)(A) of this section (by substituting "qualified intermediary" for "nonqualified intermediary") with respect to an account that it maintains (as described in § 1.1471-5(b)(5)) for the payee of the payment. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the other intermediary or flow-through entity with the qualified intermediary's direct account holder information to determine the qualified intermediary's chapter 3 withholding rate pools and each of the qualified intermediary's chapter 4 withholding rate pools to the extent provided in its withholding agreement with the IRS.

(2) *Withholding rate pool requirements for a withholdable payment.* This paragraph (e)(5)(v)(C)(2) modifies the requirements of a withholding statement described in paragraph (e)(5)(v)(C)(1) provided by a qualified intermediary with

respect to a withholdable payment (including a reportable amount that is a withholdable payment). For such a payment, the regulations applicable to a withholding statement described in paragraph (e)(5)(v)(C)(1) of this section shall apply, except that—

(i) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to a single pool of recalcitrant account holders (without the need to subdivide into the pools described in § 1.1471-4(d)(6)), including both account holders of the qualified intermediary and of any participating FFI, registered deemed-compliant FFI, or other qualified intermediary for whom the first-mentioned qualified intermediary receives the payment, and nonparticipating FFIs (to the extent permitted) in lieu of reporting chapter 3 withholding rate pools with respect to such persons as described in paragraph (e)(5)(v)(C)(1) of this section); or

(ii) If the qualified intermediary provides a withholding statement described in § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to nonparticipating FFIs.

(3) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its withholding agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W-9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary withholding agreement, and foreign persons for which no withholding is required under chapters 3 and 4, and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees. In such a case, the qualified intermediary may also establish a separate withholding rate pool (subject to 28-percent withholding, or other applicable statutory back-up withholding tax rate)

that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W-9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(3), the qualified intermediary must provide the information required by its withholding agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary's withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(3), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the appropriate Form 1099 and the instructions accompanying the form.

(D) *Example.* The following example illustrates the application of paragraph (e)(5)(v)(C) of this section for a qualified intermediary providing chapter 4 withholding rate pools on an FFI withholding statement provided to a withholding agent.

*Example.* WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an FFI and a non-U.S. payor (as defined in § 1.6049-5(c)(5)), and A and B are account holders of QI (as defined under § 1.1471-5(a)) and are both U.S. non-exempt recipients (as defined paragraph (c)(21) of this section). Ten percent of the payment is attributable to both A and B. A has provided WA with a Form W-9, but B has not provided WA with a Form W-9. QI assumes primary withholding responsibility under chapters 3 and 4 with respect to the payment, 80 percent of which is allocable to foreign payees who are account holders other than A and B. As a participating FFI, QI is required to report with respect to its U.S. accounts under § 1.1471-4(d) (as incorporated into its qualified intermediary agreement). Provided that QI reports A's account as a U.S. account under the requirements referenced in the preceding sentence, QI is not required to provide WA with a Form W-9 from A and may instead include A in a chapter 4

withholding rate pool of U.S. payees, allocating 10% of the payment to this pool. See § 1.6049-4(c)(4)(iii) concerning when reporting under section 6049 for a payment of interest is not required when an FFI that is a non-U.S. payor reports an account holder receiving the payment under its chapter 4 requirements. With respect to B, the interest payment is subject to backup withholding under section 3406. Because B is a recalcitrant account holder of QI for withholdable payments and because QI assumes primary chapter 4 withholding responsibility, however, QI may include the portion of the payment allocated to B with the remaining 80% of the payment for which QI assumes primary withholding responsibility. WA can reliably associate the full amount of the payment based on the withholding statement and does so regardless of whether WA knows B is a U.S. non-exempt recipient that is receiving a portion of the payment. See § 31.3406(g)-1(e) (providing exemption to backup withholding when withholding was applied under chapter 4).

\* \* \* \* \*

(f) *Effective/applicability date*—(1) *In general.* Except as otherwise provided in paragraphs (e)(4)(ix)(D), (f)(2), and (f)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (e)(4)(ix)(D) applies, in which case, substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

(2) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

(3) *Section 871(m) transactions.* Paragraphs (b)(4)(xxi) through (b)(4)(xxiii), (e)(3)(ii)(E), and (e)(6) of this section apply to payments made on or after September 18, 2015.

(4) [Reserved]. For further guidance, see § 1.1441-1T(f)(4).

Par. 6. Section 1.1441-1T is added as follows:

*§ 1.1441-1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).*

(a) through (b)(7)(ii)(A) [Reserved]. For further guidance, see § 1.1441-1(a) through (b)(7)(ii)(A).

(B) *Special rules for establishing that income is effectively connected with the conduct of a U.S. trade or business.* A withholding certificate received after the date of payment to claim under § 1.1441-4(a)(1) that income is effectively connected with the conduct of a U.S. trade or business will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. The signed affidavit must also state that the beneficial owner has included the income on its U.S. income tax return for the taxable year in which it is required to report the income or, alternatively, that the beneficial owner intends to include the income on a U.S. income tax return for the taxable year in which it is required to report the income and the due date for filing such return (including any applicable extensions) is after the date on which the affidavit is signed. A certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentences.

(b)(7)(iii) through (c)(2)(i) [Reserved]. For further guidance, see § 1.1441-1(b)(7)(iii) through (c)(2)(i).

(ii) *Dual Residents.* Individuals will not be treated as U.S. persons for purposes of this section for a taxable year or any portion of a taxable year for which they are a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)-7(a)(1) of this chapter for purposes of computing their U.S. tax liability.

(c)(3) through (c)(3)(i) [Reserved]. For further guidance, see § 1.1441-1(c)(3) through (c)(3)(i).

(ii) *Nonresident alien individual.* The term nonresident alien individual means

persons described in section 7701(b)(1)(B), alien individuals who are treated as nonresident aliens pursuant to § 301.7701(b)(7) of this chapter for purposes of computing their U.S. tax liability, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(c)(4) through (c)(38)(i) [Reserved]. For further guidance, see § 1.1441–1(c)(4) through (c)(38)(i).

(ii) *Hold mail instruction.* Notwithstanding the provisions of paragraph (i) of this section, an address that is subject to a hold mail instruction can be used as a permanent residence address if the person has also provided the withholding agent with documentary evidence establishing residence in the country in which the person claims to be a resident for tax purposes. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, this is a change in circumstances requiring the person to provide the documentary evidence described in this paragraph (c)(38)(ii) in order to use the address as a permanent residence address.

(c)(39) through (e)(2)(ii)(A) [Reserved]. For further guidance, see § 1.1441–1(c)(39) through (e)(2)(ii)(A).

(B) *Requirement to collect foreign TIN and date of birth beginning January 1, 2017.* Beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account that is maintained at a U.S. branch or office of a financial institution is required to contain the account holder's foreign TIN and, in the case of an individual account holder, the account holder's date of birth in order for the withholding agent to treat such withholding certificate as valid under paragraph (e)(2) of this section. For withholding certificates associated with payments made on or after January 1, 2018, if

an account holder does not have a foreign TIN, the account holder is required to provide a reasonable explanation for its absence (e.g., the country of residence does not provide TINs) in order for the withholding certificate not to be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B). A withholding certificate that does not contain the account holder's date of birth will not be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B) if the withholding agent has the account holder's date of birth information in its files.

(e)(3) through (e)(3)(iv)(C)(2) [Reserved]. For further guidance, see § 1.1441–1(e)(3) through (e)(3)(iv)(C)(2).

(3) *Alternative withholding statement.* In lieu of a withholding statement containing all of the information described in paragraph (e)(3)(iv)(C)(1) of this section, a withholding agent may accept from a nonqualified intermediary a withholding statement that meets all of the requirements of this paragraph (e)(3)(iv)(C)(3) with respect to a payment. This alternative withholding statement may only be provided by a nonqualified intermediary that provides the withholding agent with the withholding certificates from the beneficial owners (i.e., not documentary evidence) before the payment is made.

(i) The withholding statement is not required to contain information that is also included on a withholding certificate (e.g., name, address, TIN (if any), chapter 4 status, GIIN (if any)). The withholding statement is also not required to specify the rate of withholding to which each foreign payee is subject, provided that all of the information necessary to make such determination is provided on the withholding certificate. A withholding agent that uses an alternative withholding statement may not apply a different rate from that which the withholding agent may reasonably conclude from the information on the withholding certificate.

(ii) The withholding statement must allocate the payment to every payee required to be reported as described in paragraph (e)(3)(iv)(C)(1)(ii) of this section.

(iii) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chap-

ters 3, 4, and 61 of the Code, and section 3406.

(iv) The withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee.

(e)(3)(iv)(C)(4) through (e)(4)(i)(A) [Reserved]. For further guidance, see § 1.1441–1(e)(3)(iv)(C)(4) through (e)(4)(i)(A).

(B) *Electronic Signatures.* A withholding agent, regardless of whether the withholding agent has established an electronic system pursuant to paragraph (e)(4)(iv)(A) or (e)(4)(iv)(C) of this section, may accept a withholding certificate with an electronic signature, provided the electronic signature meets the requirements of paragraph (e)(4)(iv)(B)(3)(ii). In addition, the withholding certificate must reasonably demonstrate to the withholding agent that the form has been electronically signed by the recipient identified on the form (or a person authorized to sign for the person identified on the form). For example, a withholding agent may treat as validly signed a withholding certificate that has, in the signature block, the name of the person authorized to sign, a time and date stamp, and a statement that the certificate has been electronically signed. However, a withholding agent may not treat a withholding certificate with a typed name in the signature line and no other information as validly signed.

(e)(4)(ii) through (e)(4)(ii)(A)(1) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(ii) through (e)(4)(ii)(A)(1).

(2) *Documentary evidence for treaty claims and treaty statements.* Documentary evidence described in § 1.1441–6(c)(3) or (4) and a statement regarding entitlement to treaty benefits described in § 1.1441–6(c)(5)(i) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section. Notwithstanding the validity period prescribed in this paragraph (e)(4)

(ii)(A)(2), a treaty statement will cease to be valid if a change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017, the treaty statement will expire January 1, 2019.

(e)(4)(ii)(B) through (e)(4)(iv)(B)(4) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(ii)(B) through (e)(4)(iv)(B)(4).

(C) *Form 8233*. A withholding agent may establish a system for a beneficial owner or payee to provide Form 8233 electronically, provided the system meets the requirements of paragraph (e)(4)(iv)(B)(1) through (4) of this section (replacing “Form W-8” with “Form 8233” each place it appears).

(e)(4)(iv)(D) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(iv)(D).

(E) *Third party repositories*. A withholding certificate will be considered furnished for purposes of this section (including paragraph (e)(1)(ii)(A)(1) of this section) by the person providing the certificate, and a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third party repository, if the withholding certificate was uploaded or provided to a third party repository and there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person providing the certificate (or an agent of the person providing the certificate) for the withholding agent making the request to receive the withholding certificate. Each request and authorization must be associated with a specific payment, and, as applicable, a specific obligation maintained by a withholding agent. A third party repository may also be used for withholding statements, and a withholding agent may also rely on an otherwise valid withholding statement, if the intermediary providing the withholding certificates and withholding statement through the repository provides an updated withholding statement in the event of any change in the information previously provided (e.g., a change in the composition of a partnership or a change in the allocation of payments to the partners) and ensures there are processes in place to update

withholding agents when there is a new withholding statement (and withholding certificates, as necessary) in the event of any change that would affect the validity of the prior withholding certificates or withholding statement. A third party repository, for purposes of this paragraph, is an entity that maintains withholding certificates (including certificates accompanied by withholding statements) but is not an agent of the applicable withholding agent or the person providing the certificate. The following examples illustrate the provisions of this paragraph (e)(4)(iv)(E):

*Example 1.* A, a foreign corporation, completes a Form W-8BEN-E and a Form W-8ECI and uploads the forms to X, a third party repository (X is an entity that maintains withholding certificates on an electronic data aggregation site). WA, a withholding agent, enters into a contract with A under which it will make payments to A of U.S. source FDAP that are not effectively connected with A’s conduct of a trade or business in the United States. X is not an agent of WA or A. Prior to receiving a payment, A sends WA an e-mail with a link that authorizes WA to access A’s Form W-8BEN-E on X’s system. The link does not authorize WA to access A’s Form W-8ECI. X’s system meets the requirements of a third party repository, and WA can treat the Form W-8BEN-E as furnished by A.

*Example 2.* The facts are the same as *Example 1* of this paragraph (e)(4)(iv)(E), and WA and A enter into a second contract under which WA will make payments to A that are effectively connected with A’s conduct of a trade or business in the United States. A sends WA an e-mail with a link that gives WA access to A’s Form W-8ECI on X’s system. The link in this second email does not give WA access to A’s Form W-8BEN-E. A’s e-mail also clearly indicates that the link is associated with payments received under the second contract. X’s system meets the requirements of a third party repository, and WA can treat the Form W-8ECI as furnished by A.

*Example 3.* FP is a foreign partnership that is acting on behalf of its partners, A and B, who are both foreign individuals. FP completes a Form W-8IMY and uploads it to X, a third party repository. FP also uploads Forms W-8BEN from both A and B and a valid withholding statement allocating 50% of the payment to A and 50% to B. WA is a withholding agent that makes payments to FP as an intermediary for A and B. FP sends WA an email with a link to its Form W-8IMY on X’s system. The link also provides WA access to FP’s withholding statement and A’s and B’s Forms W-8BEN. FP also has processes in place that ensure it will provide a new withholding statement or withholding certificate to X’s repository in the event of a change in the information previously provided that affects the validity of the withholding statement and that ensure it will update WA if there is a new withholding statement. X’s system meets the requirements of a third party repository, and WA can treat the Form W-8IMY (and withholding statement) as furnished by FP. In addition, because FP is acting as an agent of A

and B, the beneficial owners, WA can treat the Forms W-8BEN for A and B as furnished by A and B.

(e)(4)(v) through (f)(3) [Reserved]. For further guidance, see § 1.1441-1(e)(4)(v) through (f)(3).

(4) *Effective/applicability date*. This section applies to payments made on or after *January 6, 2017*.

(g) *Expiration date*. The applicability of this section expires on December 30, 2019.

Par. 7. Section 1.1441-2 is amended by removing paragraph (e)(7), redesignating paragraph (e)(8) as paragraph (e)(7), adding new paragraph (a)(8), and revising paragraph (f).

The revisions and additions read as follows:

*§ 1.1441-2 Amounts subject to withholding.*

(a) \* \* \*

(8) [Reserved]. For further guidance, see § 1.1441-2T(a)(8).

\* \* \* \* \*

(f) *Effective/applicability date*—(1) This section applies to payments made after December 31, 2000. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006. Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012. Paragraph (e)(8) of this section applies to payments made on or after September 18, 2015.

(2) [Reserved]. For further guidance, see § 1.1441-2T(f)(2).

Par. 8. Section 1.1441-2T is added to read as follows:

*§ 1.1441-2T Amounts subject to withholding (temporary).*

(a) through (a)(7) [Reserved]. For further guidance, see § 1.1441-2(a) through (a)(7).

(8) Amounts of United States source gross transportation income, as defined in section 887(b)(1), that is taxable under section 887(a).

(b) through (f)(1) [Reserved]. For further guidance, see § 1.1441-2(b) through (f)(1).

(2) *Effective/applicability date*. This section applies on January 6, 2017.

(g) *Expiration date.* The applicability of this section expires on December 30, 2019.

Par. 9. Section 1.1441-3 is amended by:

1. Revising paragraphs (a), (c)(4)(i), (d), and (i).

2. Removing paragraph (j).

The revisions read as follows:

*§ 1.1441-3 Determination of amounts to be withheld.*

(a) *General rule*—(1) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441-1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441-4(b)(6).

(2) *Coordination with chapter 4.* A withholding agent making a payment that is both a withholdable payment and an amount subject to withholding under § 1.1441-2(a) and that has withheld tax as required under chapter 4 from such payment is not required to withhold under this section notwithstanding paragraph (a)(1) of this section. See § 1.1474-6(b)(1) for the allowance for a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and see § 1.1474-6(b)(1) for the rule allowing a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and § 1.1474-6(b)(2) for when such withholding is considered applied by a withholding agent. If the withholdable payment is not required to be withheld upon under chapter 4, then the withholding agent must apply the provisions of § 1.1441-1 to determine whether withholding is required under sections 1441, 1442, or 1443.

\* \* \* \* \*

(c) \* \* \*

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a

corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) or other entity that is a qualified investment entity (QIE) under section 897(h)(4) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs and other entities that are QIEs, see paragraph (c)(4)(i)(C) of this section. To the extent withholding under sections 1441, 1442, or 1443 applies under this paragraph (c)(4)(i) to any portion of a distribution that is a withholdable payment, see paragraph (a)(2) for rules coordinating withholding under chapter 4.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 15 percent for distributions after February 16, 2016, and no less than 10 percent for distributions on or before February 16, 2016, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections

1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(1) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(2) Withhold under section 1445(e)(3) and § 1.1445-5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445-5(e)(3)(iv).

(C) *Coordination with REIT/QIE withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT or other entity that is a QIE that is not designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE that is treated as a capital gain under section 301(c)(3). A distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE is, however, subject to withholding under section 1445, unless the interest in the REIT or QIE is not a U.S. real property interest (e.g., an interest in a domestically controlled REIT or QIE under section 897(h)(2)). In addition, withholding is required under section 1445 on the portion of the distribution designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend to the extent that it is attributable to the sale or exchange of a U.S. real property interest. See § 1.1445-8.

\* \* \* \* \*

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding

agent must withhold an amount under § 1.1441-1 based on the entire amount paid that is necessary to ensure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that could be from sources within the United States or income subject to tax. See § 1.1471-2(a)(5) for similar rules under chapter 4 that apply to payments made to payees that are entities. The amount so withheld shall not exceed 30 percent of the amount paid. With respect to a payment described in paragraph (d)(1) or (2) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of income from sources within the United States or the taxable amount can be determined or one year from the date the amount is placed in escrow, at which time the withholding becomes due under § 1.1441-1, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441-2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441-1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441-1(b)(8) regarding adjustments in the case of overwithholding.

\* \* \* \* \*

(i) *Effective/applicability date.* Except as otherwise provided in paragraphs (g)(2) and (h)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6,

2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 as revised April 1, 2013.)

### § 1.1441-3T [Removed]

Par. 10. Section 1.1441-3T is removed.

Par. 11. Section 1.1441-4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), (b)(3), and (g) to read as follows:

#### § 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) \* \* \*

(2) \* \* \*

(ii) *Special rules for U.S. branches of foreign persons—(A) U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in § 1.1441-1(b)(2)(iv)(B)(3) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate if the withholding agent obtains an EIN for the entity, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441-1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441-1(b)(2)(iv) and (b)(6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441-1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the IRS.

\* \* \* \* \*

(b) \* \* \*

(2) *Manner of obtaining withholding exemption under tax treaty—(i) In general.* In order to obtain the exemption from withholding by reason of a tax treaty provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual

must submit a withholding certificate (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate withholding certificate must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the withholding certificate shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted withholding certificate is forwarded to the IRS. The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date with respect to facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

\* \* \* \* \*

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233, "Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual," (or successor form) supplied by the nonresident alien individual. Before accepting the statement, the withholding agent must examine the statement. If the withholding agent knows or has reason to

know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the IRS by letter, and the withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the IRS that the eligibility of the individual's compensation for the exemption is in doubt or that such compensation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph (b)(2) are illustrated by the following examples.

*Example 1.* C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C's compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

*Example 2.* D, a nonresident alien individual, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the IRS that the eligibility of D's compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

*Example 3.* E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

\* \* \* \* \*

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the IRS within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441-1 if an agreement is reached between the IRS and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

\* \* \* \* \*

(g) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

**§ 1.1441-4T [Removed]**

Par. 12. Section 1.1441-4T is removed.

Par. 13. Section 1.1441-5 is amended by:

1. Revising paragraphs (b)(2)(iii), (b)(2)(vi), (c)(1)(i) introductory text, (c)(1)(i)(C), (c)(1)(iv) and (v), (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i) and (ii), (c)(3)(iii)(A), (c)(3)(iv) and (v), (d)(2) through (4), (e)(3)(iii), (e)(5)(i) and (ii), (e)(5)(iii)(A), (e)(5)(iv) and (v), (e)(6)(ii), (f), and (g) to read as follows:

§ 1.1441-5 *Withholding on payments to partnerships, trusts, and estates.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (see paragraph (b)(2)(ii) of this section) or sections 671 through 679 (see paragraph (b)(2)(iv) of this section) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code (Code) as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is, or is required to be, distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually, distributed, the U.S. complex trust must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042-S under § 1.1461-1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

\* \* \* \* \*

(vi) *Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.* To the extent that a U.S. partnership is required to withhold on an

amount under chapter 4 with respect to a partner, beneficiary, or owner, the partnership, trust, or estate must apply the rules described in § 1.1473-1(a)(5) to determine when it must withhold on the amount under chapter 4. In a case in which withholding applies under chapter 4 to such an amount, see § 1.1441-3(a)(2) to coordinate with withholding that otherwise applies to such an amount under this paragraph (b).

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners*. Except as otherwise provided in paragraph (c)(1)(ii) or (iv) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

\* \* \* \* \*

(C) If the withholding agent can reliably associate a partner's distributive share of the payment with a qualified intermediary withholding certificate under § 1.1441-1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441-1(e)(3)(iii), or a U.S. branch certificate under § 1.1441-1(e)(3)(v) (including one provided by a territory financial institution), then the rules of § 1.1441-1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary or U.S. branch or territory financial institution;

\* \* \* \* \*

(iv) *Coordination with chapter 4 for payments made to foreign partnerships*. A withholding agent that makes a payment of U.S. source FDAP income to a foreign partnership that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473-1(a)(5)(vi) to determine when the payment is treated as made to a partner in the partnership for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign partnership, see § 1.1441-3(a)(2) to coordinate with withholding otherwise required under this paragraph (c) with respect to the amount

of the payment included in the gross income of a partner. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee include in the pool, see § 1.1441-1(e)(3)(iv)(C)(2) (substituting the term *nonwithholding foreign partnership* for the term *nonqualified intermediary*).

(v) *Examples*. The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following examples. Each example assumes that all payments are not withholdable payments and thus no withholding applies under chapter 4.

*Example 1*. FP is a nonwithholding foreign partnership organized in Country X. FP has two partners, FC, a foreign corporation, and USP, a U.S. partnership. USWH, a U.S. withholding agent, makes a payment of U.S. source interest to FP that is not a withholdable payment. FP has provided USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a Form W-9, "Request for Taxpayer Identification Number and Certification," from USP together with the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the payment of interest with the withholding certificates from FC and USP. Under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC and USP.

*Example 2*. The facts are the same as in *Example 1*, except that FP1, a nonwithholding foreign partnership, is a partner in FP rather than USP. FP1 has two partners, A and B, both foreign persons. FP provides USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a nonwithholding foreign partnership certificate from FP1. In addition, foreign beneficial owner withholding certificates from A and B are associated with the nonwithholding foreign partnership withholding certificate from FP1. FP also provides the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the interest payment with the withholding certificates provided by FC, A, and B. Therefore, under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC, A, and B.

*Example 3*. USWH makes a payment of U.S. source dividends to WFP, a withholding foreign partnership, that is not a withholdable payment. WFP has two partners, FC1 and FC2, both foreign corporations. USWH can reliably associate the payment with a valid withholding foreign partnership withholding certificate from WFP. Therefore, under paragraph (c)(1)(ii)(A) of this section, WFP is the payee of the interest.

*Example 4*. USWH makes a payment of U.S. source royalties that is not a withholdable payment to FP, a foreign partnership. USWH can reliably associate the royalties with a valid withholding cer-

tificate from FP on which FP certifies that the income is effectively connected with the conduct of a trade or business in the United States. Therefore, under paragraph (c)(1)(ii)(B) of this section, FP is the payee of the royalties.

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status*. A withholding foreign partnership is a foreign partnership that has entered into an agreement with the IRS, as described in paragraph (c)(2)(ii) of this section, with respect to distributions and guaranteed payments it makes to its partners. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it generally will not be required to attach such documentation to its withholding foreign partnership withholding certificate to the extent it is permitted to act as a withholding foreign partnership with respect to the payment under its agreement. In addition, the IRS may permit a foreign partnership to act as a qualified intermediary under § 1.1441-1(e)(5)(ii)(D) with respect to its partners in appropriate circumstances.

(ii) *Withholding agreement*. The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors as defined in § 1.6049-4(a) under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provi-

sions of the Code, except to the extent provided under the withholding agreement. Under the withholding agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109-1(d)(3)(iv)(A) of this chapter. For a foreign partnership that is an FFI, the withholding agreement will require the partnership to assume the requirements of a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1). The withholding agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to the withholding foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, the withholding agreement may allow a withholding foreign partnership to claim refunds of overwithheld amounts on behalf of its customers. In addition, the withholding agreement must specify the manner in which the IRS will verify the partnership's compliance with its agreement, including the requirements for a periodic review of the partnership's compliance with the withholding agreement and the procedures for the partnership to certify to its compliance with the withholding agreement. A withholding foreign partnership must file a return on Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and information returns on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding." The withholding agreement may also require a withholding foreign partnership to file a partnership return under section 6031(a) and partner statements under 6031(b), including for each U.S. partner to the extent required in the agreement. Additionally, a partnership that is an FFI will be required to file Form 8966, "FATCA Report" to the extent provided in the withholding agreement.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility under both chapters 3 and 4 of the Code to

the extent required in the withholding agreement. It is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (including a withholdable payment). The withholding foreign partnership will be responsible for reporting the payments under §§ 1.1461-1(c), 1.1474-1(d), and chapter 61 of the Code and filing Form 1042 (to the extent required in the withholding agreement). A withholding agent making a payment to a withholding foreign partnership is not required to withhold any amount under chapters 3 and 4 of the Code on the payment unless it has actual knowledge or reason to know that the foreign partnership is not acting as a withholding foreign partnership with respect to the payment or has not withheld to the extent required. The withholding foreign partnership shall withhold the payments under the same procedures and at the same time as prescribed for withholding by a U.S. partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4) of this section shall apply.

\* \* \* \* \*

(A) The name, permanent residence address (as described in § 1.1441-1(e)(2)(ii)), the employer identification number of the partnership, the country under the laws of which the partnership is created or governed, the chapter 4 status of the partnership if required for purposes of chapter 4 or if the partnership provides (or will provide) a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees under § 1.6049-4(c)(4) with respect to its partners, and the GIIN of the partnership (if applicable). If the partnership provides (or will provide) a chapter 4 withholding rate pool of U.S. payees as described in the preceding sentence, the partnership must certify to its chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI);

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section, and, for a partnership that is an FFI receiving a withholdable pay-

ment, a certification that the partnership is acting as a participating FFI, a registered deemed-compliant FFI, or a nonreporting IGA FFI (as defined in § 1.1471-1(b)(83)); and

\* \* \* \* \*

(3) *Nonwithholding foreign partnerships—(i) Reliance on claim of foreign partnership status.* A withholding agent may treat a person as a nonwithholding foreign partnership if it receives from that person a nonwithholding foreign partnership withholding certificate as described in paragraph (c)(3)(iii) of this section. A withholding agent that does not receive a nonwithholding foreign partnership withholding certificate or does not receive a valid withholding certificate from an entity it knows, or has reason to know, is a foreign partnership must apply the presumption rules of §§ 1.1441-1(b)(3) and 1.6049-5(d) and paragraphs (d) and (e)(6) of this section. In addition, to the extent a withholding agent cannot, prior to a payment, reliably associate the payment with valid documentation from a payee that is associated with the nonwithholding foreign partnership withholding certificate or has insufficient information to report the payment on Form 1042-S or Form 1099, to the extent reporting is required, the withholding agent must apply the presumption rules. See § 1.1441-1(b)(2)(vii)(A) and (B) for rules regarding reliable association. See, however, § 1.1441-1(e)(3)(iv)(C)(2) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool (substituting the term nonwithholding foreign partnership for the term nonqualified intermediary). See also § 1.1441-1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees. See paragraph (c)(3)(iv) of this section and § 1.1441-1(e)(3)(iv) for alternative procedures permitting allocation information to be received after a payment is made.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a nonwith-

holding foreign partnership. To the extent that a withholding agent treats a payment to a nonwithholding foreign partnership as a payment to the nonwithholding foreign partnership's partners (whether direct or indirect) in accordance with paragraph (c)(1)(i) of this section, it may rely on a claim for reduced withholding by the partner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from the partner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i), documentary evidence described in § 1.1441-6(c)(3) or (4) or § 1.6049-5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441-1(c)(6)), a Form W-9 described in § 1.1441-1(d) (for a partner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441-3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a payment). Unless a nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of a partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single nonwithholding foreign partnership withholding certificate to which the partners' certificates or other appropriate documentation are associated. Where the nonwithholding foreign partnership withholding certificate is provided for income claimed

to be effectively connected with the conduct of a trade or business in the United States under paragraph (c)(3)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

\* \* \* \* \*

(A) The name, permanent residence address (as described in § 1.1441-1(e)(2)(ii)), the employer identification number of the partnership, if any, the country under the laws of which the partnership is created or governed, and the chapter 4 status of the partnership (for a nonwithholding foreign partnership receiving a withholdable payment or providing a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the partnership (if applicable);

\* \* \* \* \*

(iv) *Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.* The provisions of § 1.1441-1(e)(3)(iv) (regarding a withholding statement) shall apply to a nonwithholding foreign partnership by substituting the term nonwithholding foreign partnership for the term nonqualified intermediary, including when a nonwithholding foreign partnership may provide to a withholding agent a withholding statement that includes a chapter 4 withholding rate pool in lieu of information with respect to each partner that is a payee of a payment.

(v) *Withholding and reporting by a foreign partnership.* A nonwithholding foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding (as defined in § 1.1441-2(a)) shall be required to withhold and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (c)(3)(v). A nonwithholding foreign partnership shall not be required to withhold and report if it has provided a valid nonwithholding foreign partnership withholding certificate, it has provided all of the information required by paragraph (c)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report

the payment correctly under § 1.1461-1(c). A nonwithholding foreign partnership is also not required to withhold and report under this paragraph (c)(3) to the extent that withholding under chapter 4 was applied to a payment that is includible in the gross income of a partner in the partnership. See also § 1.1441-3(a)(2) for coordination rules when withholding under chapter 4 has been applied to a withholdable payment. A withholding foreign partnership's obligations to withhold and report shall be determined in accordance with its withholding foreign partnership agreement.

(d) \* \* \*

(2) *Determination of partnership status as U.S. or foreign in the absence of documentation.* In the absence of a valid representation of U.S. partnership status in accordance with paragraph (b)(1) of this section or of foreign partnership status in accordance with paragraph (c)(2)(i) or (c)(3)(i) of this section, the withholding agent shall determine the classification of the payee under the presumptions set forth in § 1.1441-1(b)(3)(ii). If the withholding agent treats the payee as a partnership under § 1.1441-1(b)(3)(ii), the withholding agent shall apply the presumptions set forth in § 1.1441-1(b)(3)(iii)(A)(I) (applied by substituting the term *partnership* for the term *exempt recipient*) to determine whether to treat the partnership as a U.S. person or foreign person. For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441-1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If a nonwithholding foreign partnership has provided a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section that would be valid except that the withholding agent cannot reliably associate all or a portion of the payment with valid documentation from a partner of the partnership, then the withholding agent may apply the presumption rule of this paragraph (d)(3) with respect to all or a portion of the payment for which documentation has not been received. See § 1.1441-1(b)(2)(vii)(A) and (B) for rules regarding reliable association. The presumption rule of this paragraph (d)(3) also applies to a per-

son that is presumed to be a foreign partnership under the rule of paragraph (d)(2) of this section. Any portion of a payment that the withholding agent cannot treat as reliably associated with valid documentation from a partner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any payment that is presumed to be made to an undocumented foreign payee must be reported on Form 1042-S. See § 1.1461-1(c). For a payment described in this paragraph (d)(3) that is a withholdable payment, see § 1.1471-3(f)(5) for the presumption rule for determining the payee's chapter 4 status to determine whether withholding under chapter 4 applies to the payment.

(4) *Determination by a withholding agent of the status of its partners.* Except as otherwise provided in the agreement described in paragraph (c)(2) of this section, a withholding agent shall determine whether the partners or some other persons are the payees of the partners' distributive shares of any payment made by a withholding agent of a foreign partnership by applying the rules of § 1.1441-1(b)(2), paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership), and paragraph (e)(3) of this section (in the case of a partner that is a foreign estate or a foreign trust). Further, the provisions of paragraph (d)(3) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on a payment, it cannot reliably associate the amount with documentation for any one or more of its partners.

(e) \* \* \*

(3) \* \* \*

(iii) *Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign simple trust or foreign grantor trust that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473-1(a)(5)(vi) to determine when the payment is treated as made to a beneficiary or owner of the trust for purposes of chapter 4. In a case in which

withholding applies under chapter 4 to a withholdable payment made to a foreign simple trust or foreign grantor trust, see § 1.1441-3(a)(2) to coordinate withholding otherwise required under this paragraph (e) with respect to the amount of the payment included in the gross income of the payee of the payment. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool, see § 1.1441-1(e)(3)(iv)(C)(2) (substituting the term *nonwithholding foreign trust* for the term *nonqualified intermediary*).

\* \* \* \* \*

(5) *Foreign simple trust and foreign grantor trust—(i) Reliance on claim of foreign simple trust or foreign grantor trust status.* A withholding agent may treat a person as a foreign simple trust or foreign grantor trust if it receives from that person a foreign simple trust or foreign grantor trust withholding certificate as described in paragraph (e)(5)(iii) of this section. A withholding agent must apply the presumption rules of §§ 1.1441-1(b)(3) and 1.6049-5(d) and paragraphs (d) and (e)(6) of this section to the extent it cannot, prior to the payment, reliably associate a payment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid foreign simple trust or foreign grantor trust withholding certificate, it cannot reliably determine how much of the payment relates to valid documentation provided by a payee (e.g., a person that is not itself a nonqualified intermediary, flow-through entity, or U.S. branch) associated with the foreign simple trust or foreign grantor trust withholding certificate, or it does not have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required. See § 1.1441-1(b)(2)(vii)(A) and (B). See, however, § 1.1441-1(e)(3)(iv)(C)(2) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in a pool (substituting the term *nonwithholding foreign trust* for the term *nonqualified intermediary*). See also § 1.1441-1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees.

(ii) *Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.* This paragraph (e)(5)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign simple trust or foreign grantor trust. To the extent that a withholding agent treats a payment to a foreign simple trust or foreign grantor trust as a payment to payees other than the trust in accordance with paragraph (e)(3)(i) of this section, it may rely on a claim for reduced withholding by a beneficiary or owner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441-1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from a payee or beneficial owner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in § 1.1441-6(c)(3) or (4) or in § 1.6049-5(c)(1) (for a beneficiary or owner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441-1(c)(6)), a Form W-9 described in § 1.1441-1(d) (for a beneficiary or owner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441-3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a withholdable payment). Unless a foreign simple trust or foreign grantor trust withholding certificate is provided for income treated as income effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each payee's portion of the payment. When making a claim for several payees, the trust may present a single foreign simple trust or foreign grantor trust withhold-

ing certificate with which the payees' certificates or other appropriate documentation are associated. Where the foreign simple trust or foreign grantor trust withholding certificate is provided for income that is treated as effectively connected with the conduct of a trade or business in the United States under paragraph (e)(5)(iii)(D) of this section, the claim may be presented without having to identify any beneficiary's or grantor's distributive share of the payment.

(iii) \* \* \*

(A) The name, permanent residence address (as described in § 1.1441-1(e)(2)(ii)), the employer identification number, if required, of the trust, the country under the laws of which the trust is created, the chapter 4 status of the trust if required for purposes of chapter 4 or if the trust provides (or will provide) a withholding statement associated with the Form W-8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees under § 1.6049-4(c)(4) with respect to the nonwithholding foreign trust's owners and beneficiaries, and the GIIN of the trust (if applicable). If a nonwithholding foreign trust provides (or will provide) a chapter 4 withholding rate pool of U.S. payees as described in the preceding sentence, the trust must certify to its chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI);

\* \* \* \* \*

(iv) *Withholding statement provided by a foreign simple trust or foreign grantor trust and coordination with chapter 4.* The provisions of § 1.1441-1(e)(3)(iv) (regarding a withholding statement) shall apply to a foreign simple trust or foreign grantor trust by substituting the term *foreign simple trust* or *foreign grantor trust* for the term *nonqualified intermediary*, including when a withholding statement provided by a foreign simple trust or foreign grantor trust may include a chapter 4 withholding rate pool in lieu of information with respect to each owner or beneficiary that is a payee of a payment.

(v) *Withholding foreign trusts.* The IRS may enter into a withholding agreement with a foreign trust to treat the trust or estate as a withholding foreign trust. Such a withholding agreement shall generally

follow the same principles as a withholding agreement with a withholding foreign partnership under paragraph (c)(2)(ii) of this section. A withholding agent may treat a payment to a withholding foreign trust in the same manner the withholding agent would treat a payment (including a withholdable payment) to a withholding foreign partnership. See § 1.1441-1(e)(5)(ii)(D). For a withholding foreign trust that is an FFI, the withholding agreement will require the withholding foreign trust to assume the requirements of either a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1).

(6) \* \* \*

(ii) *Determination of status as U.S. or foreign trust or estate in the absence of documentation.* In the absence of valid documentation that establishes the U.S. status of a trust or estate under paragraph (b)(1) of this section and of documentation that establishes the foreign status of a trust or estate under paragraph (e)(4) or (e)(5)(iii) of this section, the withholding agent shall determine the classification of the payee based upon the presumptions set forth in § 1.1441-1(b)(3)(ii). If, based upon those presumptions, the withholding agent classifies the payee as a trust or estate, the withholding agent shall apply the presumptions set forth in § 1.1441-1(b)(3)(iii)(A)(I) (applied by substituting the term *trust* for the term *exempt recipient*) to determine whether the trust or estate is a U.S. person or foreign person. An undocumented payee presumed to be a foreign trust shall be presumed to be a foreign complex trust. If a withholding agent has documentary evidence that establishes that an entity is a foreign trust, but the withholding agent cannot determine whether the foreign trust is a complex trust, a simple trust, or foreign grantor trust, the withholding agent shall presume that the trust is a foreign complex trust. Notwithstanding the preceding sentence, in the case of a foreign trust with a settlor that is a U.S. person for which a withholding agent has both a U.S. address and TIN, the withholding agent shall pre-

sume that the trust is a grantor trust when it cannot determine the status of the trust as a simple trust, complex trust, or grantor trust. See § 1.1471-3(f)(4) and (5) to determine the status of the payee for purposes of chapter 4.

\* \* \* \* \*

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441-1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in § 1.1441-1(b)(3) or in paragraph (d) or (e) of this section. For a payment that is a withholdable payment, see § 1.1471-3(f) for the presumption rule for determining the payee's chapter 4 status.

(g) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR Part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR Part 1, as revised April 1, 2013.)

#### § 1.1441-5T [Removed]

Par. 14. Section 1.1441-5T is removed.

Par. 15. Section 1.1441-6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) and (iv), (c)(1), (c)(5)(i), and (i) to read as follows:

#### § 1.1441-6 *Claim of reduced withholding under an income tax treaty.*

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the require-

ments of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See, however, § 1.1471-2(a) and § 1.1472-1(b) for when withholding at source on a withholdable payment may not be reduced to account for a treaty benefit such that the beneficial owner of the payment may need to file a claim for refund to obtain a refund for the overwithheld amount of tax. See also § 1.1441-4(b)(2) for rules regarding claims of a reduced rate of withholding under an income tax treaty in the case of compensation from personal services and § 1.1441-4(c)(1) for rules regarding claims of a reduced rate of withholding under an income tax treaty in the case of scholarship and fellowship income.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. See section 894 and the regulations under section 894 to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441-1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore obligation, documentary evidence described in paragraphs (c)(3), (c)(4), and (c)(5) of this section. See § 1.6049-5(e) for the definition of payments made outside the United States and § 1.6049-5(c)(1) for the definition of an offshore obligation. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) contains informa-

tion necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) and (g) of this section, or the beneficial owner provides its foreign tax identifying number issued by its country of residence and such country has with the United States an income tax treaty or information exchange agreement in effect), includes the representations that the beneficial owner derives the income under section 894 and the regulations under section 894, if required, and with regard to a beneficial owner that is an entity, includes a statement that the entity meets the limitation on benefits provisions of the treaty, if any. For claims for treaty benefits for scholarship and fellowship income, the beneficial owner withholding certificate must contain the beneficial owner's U.S. taxpayer identifying number (not a foreign taxpayer identifying number). The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are unreliable or incorrect (applying the standards of knowledge in § 1.1441-7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441-1(e)(3)(iv) and 1.1441-5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441-1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441-1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441-1(b)(3)(iv) dealing

with a 90-day grace period shall apply for purposes of this section.

(i) [Reserved]. For further guidance, § 1.1441-6T(b)(1)(i).

(ii) [Reserved]. For further guidance, § 1.1441-6T(b)(1)(ii).

(2) *Payment to fiscally transparent entity*—(i) *In general.* If the person claiming a reduced rate of withholding under an income tax treaty is an interest holder of an entity that is considered to be fiscally transparent (as defined in the regulations under section 894) by the interest holder's jurisdiction with respect to an item of income, then, with respect to such income derived by that person through the entity, the entity shall be treated as a flow-through entity and may provide a flow-through withholding certificate with which the withholding certificate or other documentary evidence of the interest holder that supports the claim for treaty benefits is associated. In the case of a payment that is a withholdable payment, see, however, § 1.1471-3(c) for determining the payee of the payment and §§ 1.1471-2(a) and 1472-1(b) for when withholding at source may apply to the payment based on the status of the payee notwithstanding a claim for treaty benefits made under this paragraph (b)(2) by an interest holder in the payee. In such a case, the interest holder may file a claim for refund of the overwithheld amount of tax. For purposes of this paragraph (b)(2)(i), interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities with respect to that income by the interest holder's jurisdiction. See § 1.1441-1(c)(23) and (e)(3)(i) for the definition of flow-through entity and flow-through withholding certificate. The entity may provide a beneficial owner withholding certificate, or beneficial owner documentation, with respect to any remaining portion of the income to the extent the entity is receiving income and is not treated as fiscally transparent by its own jurisdiction. Further, the entity may claim a reduced rate of withholding with respect to the portion of a payment for which it is not treated as fiscally transparent if it meets all the requirements to make such a claim and, in the case of treaty benefits, it provides the documentation required by paragraph (b)(1) of this section. If dual

claims, as described in paragraph (b)(2)(iii) of this section, are made, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (e.g., portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty.

\* \* \* \* \*

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. Each of the following examples describes a payment of U.S. source royalties, which are not withholdable payments under chapter 4. See § 1.1473-1(a)(4)(iii) (describing nonfinancial payments that are not treated as withholdable payments). Thus, withholding under chapter 4 shall not apply with respect to the U.S. source royalties in any of the following examples:

*Example 1.* (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States. The treaty contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). E furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that E is a resident of country Y (within the meaning of the U.S.-Y tax treaty), is the beneficial owner of the income, derives the income under section 894 and the regulations under section 894, and is not precluded from claiming benefits by the treaty's limitation on benefits provision.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, as described in paragraph (b)(1) of this section, W may rely on the representations made by E to apply a reduced rate of withholding.

*Example 2.* (i) *Facts.* The facts are the same as under *Example 1*, except that one of E's interest holders, H, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty applicable to E is 5%. H is not fiscally transparent under country Z's tax law with respect to such income. H furnishes a beneficial owner withholding certificate to E that represents that H derives, within the meaning of section 894 and the regulations under section 894, its share of the royalty income paid to E as a resident of country Z, is the beneficial owner of the royalty income, and is not precluded from claiming treaty benefits by virtue of the limitation on benefits provision in the U.S.-Z treaty. E furnishes to W a flow-through withholding certificate described in § 1.1441-1(e)(3)(i) to which it attaches H's beneficial owner withholding certificate and a withholding statement for the portion of the payment that H claims as its distributive share of the royalty income.

E also furnishes to W a beneficial owner withholding certificate for itself for the portion of the payment that H does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, as described in paragraph (b)(1) of this section, W may rely on the documentation furnished by E to treat the royalty payment to a single foreign entity (E) as derived by different residents of tax treaty countries as a result of the claims presented under different treaties. W may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that H claims to derive as a resident of country Z and a reduced rate of 5% under the U.S.-Y treaty for the balance. However, under paragraph (b)(2)(iii) of this section, W may, at its option, treat E as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

*Example 3.* (i) *Facts.* E is a business organization formed under the laws of country X. Country X has an income tax treaty with the United States. E has two interest holders, H1, organized in country Y, and H2, organized in country Z. E receives from W, a U.S. withholding agent, a payment of U.S. source royalties and interest, with respect to an obligation issued before July 1, 2014, that is eligible for the portfolio interest exception under sections 871(h) and 881(c), provided W receives the appropriate beneficial owner statement required under section 871(h)(5). E is classified as a corporation under U.S. tax law principles. Country X, E's country of organization, treats E as an entity that is not fiscally transparent with respect to items of income under the regulations under section 894. Under the U.S.-X income tax treaty, royalties are subject to a 5% rate of withholding. Country Y, H1's country of organization, treats E as fiscally transparent with respect to items of income under section 894 and H1 as not fiscally transparent with respect to items of income. Under the country Y-U.S. income tax treaty, royalties are exempt from U.S. tax. Country Z, H2's country of organization, treats E as not fiscally transparent under section 894 with respect to items of income. E provides W with a flow-through beneficial owner withholding certificate with which it associates a beneficial owner withholding certificate from H1. H1's withholding certificate states that H1 is a resident of country Y, derives the royalty income under section 894, meets the applicable limitation on benefits provisions of the U.S.-Y treaty, and is the beneficial owner of the income. The withholding statement attached to E's flow-through withholding certificate allocates one-half of the royalty payment to H1. E also provides W with a beneficial owner withholding certificate for the interest income and the remaining one-half of the royalty income. The withholding certificate states that E is a resident of country X, derives the royalty income under section 894, meets the limitation on benefits provisions of the U.S.-X treaty, and is the beneficial owner of the income.

(ii) *Analysis.* Absent actual knowledge or reason to know that the claims are incorrect, as described in paragraph (b)(1), W may treat one-half of the royalty derived by E as subject to a 5% withholding rate and one-half of the royalty as derived by H1 and subject to no withholding. Further, it may treat all of the

interest as being paid to E and as qualifying for the portfolio interest exception. W can, at its option, treat the entire royalty as paid to E and subject it to withholding at a 5% rate of withholding. In that case, H1 would be entitled to claim a refund with respect to its one-half of the royalty.

*Example 4.* [Reserved]. For further guidance, see § 1.1441-6T(b)(2)(iv) *Example 4*.

(c) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income—(1) General rule.* In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number. In the case of a payment of income not described in paragraph (c)(2) of this section, a withholding agent may rely on a withholding certificate that includes the beneficial owner's foreign taxpayer identifying number described in paragraph (b)(1) of this section instead of the beneficial owner's taxpayer identifying number. In the case of payments of income described in paragraph (c)(2) of this section made outside the United States (as defined in § 1.6049-5(e)) with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441-1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy (microfiche, electronic scan, or similar means of electronic storage) of such documents. With respect to documentary evidence,

the withholding agent must also note in its records the date on which the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

\* \* \* \* \*

(5) \* \* \*

(i) [Reserved]. For further guidance, see § 1.1441-6T(c)(5)(i).

\* \* \* \* \*

(i) *Effective/applicability dates*—(1) *General rule.* Except as otherwise provided in paragraph (i)(2) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (c)(1) applies, in which case substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2001, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(2) *Dividend equivalents.* Paragraph (h) of this section applies to payments made on or after December 5, 2013.

(3) [Reserved]. For further guidance, see § 1.1441-6T(i)(3).

Par. 16. Section 1.1441-6T is revised to read as follows:

*§ 1.1441-6T Claim of reduced withholding under an income tax treaty (temporary).*

(a) through (b)(1) introductory text [Reserved]. For further guidance, see § 1.1441-6(a) through (b)(1) introductory text.

(i) *Identification of limitation on benefits provisions.* In conjunction with the representation that the beneficial owner meets the limitation on benefits provision of the applicable treaty, if any, required by paragraph (b)(1) of this section, a beneficial owner withholding certificate must also identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the beneficial owner relies to claim the treaty benefit. A withholding agent may rely on the beneficial owner's claim

regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

(ii) *Reason to know based on existence of treaty.* For purposes of this paragraph (b)(1), a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes a circumstance where the beneficial owner is claiming benefits under an income tax treaty that does not exist or is not in force. A withholding agent may determine whether a tax treaty is in existence and is in force by checking the list maintained on the IRS website at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z> (or any replacement page on the IRS website) or in the State Department's annual Treaties in Force publication.

(b)(2)(i) through (iv) Example 3 [Reserved]. For further guidance, see § 1.1441-6(b)(2)(i) through (b)(2)(iv) Example 3.

*Example 4. (i) Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States that contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W. E furnishes a beneficial owner withholding certificate to W claiming a reduced rate of withholding under the U.S.-Y tax treaty. However, E's beneficial owner withholding certificate does not specifically identify the limitation on benefits provision that E satisfies.

(ii) *Analysis.* Because E's withholding certificate does not specifically identify the limitation on benefits provision under the U.S.-Y tax treaty that E satisfies as required by paragraph (b)(1)(i) of this section, W cannot rely on E's withholding certificate to apply the reduced rate of withholding claimed by E.

(c) introductory text through (c)(4) [Reserved]. For further guidance, see § 1.1441-6(c) through (c)(4).

(5) *Statements regarding entitlement to treaty benefits*—(i) *Statement regarding conditions under a limitation on benefits provision.* In addition to the documentary evidence described in paragraph (c)(4)(ii) of this section, a taxpayer that is not an individual must provide a statement that it meets one or more of the conditions set forth in the limitation on benefits article (if any, or in a similar provision) contained in the applicable tax treaty and must identify the specific limitation on

benefits provision of the article (if any, or a similar provision) of the treaty upon which the taxpayer relies to claim the treaty benefit.

(c)(5)(ii) through (i)(2) [Reserved]. For further guidance, see § 1.1441-6(c)(5)(ii) through (i)(2).

(3) *Effective/applicability date.* This section applies on January 6, 2017.

(j) *Expiration date.* The applicability of this section expires on December 30, 2019

Par. 17. Section 1.1441-7 is amended by:

1. Revising paragraph (b), (c) and (f)(2)(ii).

2. Removing paragraph (f)(3).

3. Revising paragraph (g).

4. Removing paragraph (h).

The revisions read as follows:

*§ 1.1441-7 General provisions relating to withholding agents.*

\* \* \* \* \*

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is unreliable or incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or associated with, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are incorrect or unreliable and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another

provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441-1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5 (d) and (e), or 1.1441-9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441-1(b)(3)(ix) and (7). In the case of a withholding agent making a withholdable payment to a payee that the withholding agent is required to treat as a foreign entity, see § 1.1471-3(e) for standards of knowledge and §§ 1.1471-2 and 1.1472-1(b) for withholding that may apply under chapter 4. A withholding agent is allowed to apply the rules under paragraphs (b)(5) and (b)(8) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2013, to accounts opened, and obligations entered into, by an entity on or after July 1, 2014, and before January 1, 2015.

(2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the chapter 3 claims made. For an obligation other than a pre-existing obligation, a withholding agent will have reason to know that a chapter 3 claim made by the holder of the obligation (account holder) is unreliable or incorrect if any information contained in its account opening files or other files pertaining to the obligation (account information), including documentation collected for purposes of AML due diligence (as defined under § 1.1471-1(b)(4)), conflicts with the account holder's claim. A withholding agent will not, however, be considered to have reason to know that a person's chapter 3 claim is unreliable or incorrect based on documentation collected for AML due diligence until the date that is 30 days after the obligation is executed (or the

account is opened for an obligation that is an account with a financial institution).

(3) *Financial institutions—limits on reason to know—(i) In general.* For purposes of this paragraph (b)(3) and paragraphs (b)(4) through (10) of this section, the terms withholding certificate, documentary evidence, and documentation are defined in § 1.1441-1(c)(16), (17), and (18). Except as otherwise provided in paragraphs (b)(4) through (9) of this section, a withholding agent that is a financial institution under § 1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities that maintains or opens an account for a beneficial owner (a direct account holder) has reason to know that documentation provided by the direct account holder is unreliable or incorrect only if one or more of the circumstances described in paragraphs (b)(4) through (9) of this section exist. If a direct account holder has provided documentation that is unreliable or incorrect under the rules of paragraph (b)(4) through (9) of this section, the withholding agent may require new documentation. Alternatively, the withholding agent may rely on the documentation originally provided if the rules of paragraphs (b)(4) through (9) of this section permit such reliance based on additional statements and documentation obtained by the withholding agent from the beneficial owner. Paragraph (b)(10) of this section provides rules regarding reason to know for withholding agents that receive beneficial owner documentation from persons (indirect account holders) that have an account relationship with, or an ownership interest in, a direct account holder of the withholding agent. Paragraph (b)(11) of this section provides limitations on a withholding agent's reason to know for multiple obligations held by the same person. Paragraph (b)(12) of this section defines a reasonable explanation provided by an individual with respect to the individual's claim of foreign status. For rules regarding reliance on Form W-9, see § 31.3406(h)-3(e)(2) of this chapter. For payments that are withholdable payments, see § 1.1471-3(e)(3) and (4) for additional rules regarding a withholding agent's reason to know with respect to a payee's claim of chapter 4 status and § 1.1471-

3(f) for presumption rules that apply when the claim of chapter 4 status is unreliable or incorrect.

(ii) *Limits on reason to know for pre-existing obligations.* With respect to a pre-existing obligation, a withholding agent that has documented the foreign status of the direct account holder for purposes of chapter 3 or chapter 61 before July 1, 2014, may continue to rely on such documentation without regard to a U.S. phone number or U.S. place of birth. If, however, the withholding agent reviews documentation for an individual account holder claiming foreign status that contains a U.S. place of birth (as described in paragraph (b)(5)(ii) of this section) or if the withholding agent is notified of a change in circumstances under the criteria of paragraphs (b)(5) and (8) of this section (as effective on July 1, 2014), the obligation will be treated as having experienced a change in circumstances under § 1.1441-1(e)(4)(ii)(D) as of the date that the withholding agent reviews the documentation or receives the notification, and the withholding agent will then have reason to know that the documentation is unreliable or incorrect. With respect to an obligation held by an entity, a withholding agent is not required to treat the additional U.S. indicia described in this paragraph (b) as a change in circumstances under § 1.1441-1(e)(4)(ii)(D) before January 1, 2015. See § 1.1441-1(b)(3)(iv) for the grace period following a change in circumstances. For purposes of this rule, a direct account holder will be considered documented prior to July 1, 2014, without regard to whether the withholding agent obtains renewal documentation for the account holder on or after July 1, 2014, pursuant to the requirements of § 1.1441-1(e)(4)(ii)(A).

(4) *Rules applicable to withholding certificates—(i) In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the direct account holder, the withholding certificate contains any information that is inconsistent with the direct account holder's claim, the

withholding agent has account information that is inconsistent with the direct account holder's claim, or the withholding certificate lacks information necessary to establish entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a treaty country a withholding certificate shall be considered unreliable or inconsistent with an account holder's claims only if it is not reliable under the rules of paragraphs (b)(5) and (6) of this section. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

*Example 1.* F, a foreign person that has a direct account relationship with USB, a bank that is a U.S. person, provides USB with a beneficial owner withholding certificate for the purpose of claiming a reduced rate of withholding on U.S. source dividends (which is a withholdable payment). F resides in a treaty country that has a limitation on benefits provision in its income tax treaty with the United States. The withholding certificate includes a certification of F's status for chapter 4 purposes to except the payment from withholding under chapter 4, but does not contain a statement regarding limitation on benefits or deriving the income under section 894 as required by § 1.1441-6(b)(1). USB cannot rely on the withholding certificate to grant a reduced rate of withholding for chapter 3 purposes because it is incomplete with respect to the claim made by F.

*Example 2.* F, a foreign person and entity that has a direct account relationship with USB, a broker that is a U.S. person, provides USB with a withholding certificate for the purpose of claiming the portfolio interest exception under section 881(c) with respect to interest paid on an obligation issued before July 1, 2014. The payment of interest is not a withholdable payment under § 1.1471-2(b) (referring to payments made with respect to grandfathered obligations), and, therefore, withholding does not apply to the payment under chapter 4. See § 1.1441-3(c)(4)(i) for rules coordinating withholding under chapters 3 and 4. F indicates on its withholding certificate, however, that it is a partnership. USB may not treat F as a beneficial owner of the interest for purposes of the portfolio interest exception because F has indicated on its withholding certificate that it is a foreign partnership, and such entity classification is inconsistent with its claim as a beneficial owner.

(5) *Withholding certificate—establishment of foreign status.* A withholding agent has reason to know that a beneficial owner withholding certificate (as defined in § 1.1441-1(e)(2), but excluding a Form W-8ECI) provided by a direct account

holder is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person as set forth in paragraphs (b)(5)(i) through (iii) of this section.

(i) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding certificate is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its account information, the withholding certificate has a current permanent residence address (as defined in § 1.1441-1(e)(2)(ii)) in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the direct account holder notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. When any of the foregoing U.S. indicia are present, a withholding agent may nevertheless rely on the beneficial owner withholding certificate to establish the account holder's foreign status if it may do so under the provisions of paragraph (b)(5)(i)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an individual and—

(1) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable explanation, in writing, supporting the claim of foreign status (as defined in paragraph (b)(12) of this section);

(2) For a payment made outside the U.S. with respect to an offshore obligation (as described in § 1.6049-5(c)(1)), the withholding agent has in its possession or

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

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States; or

(4) For a case in which the withholding agent classified the account holder as a U.S. person in its account information, the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States.

(B) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an entity that the withholding agent does not know, or does not have reason to know, is a flow-through entity and—

(1) The withholding agent has in its possession or obtains documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(2) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(ii) *U.S. place of birth.* A withholding agent has reason to know that a withhold-

ing certificate claiming foreign status provided by a direct account holder that is an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(iii) *Standing instructions with respect to offshore obligations.* A beneficial owner withholding certificate is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) of a direct account holder that has provided standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or documentary evidence establishing foreign status described in § 1.1471-3(c)(5)(i).

(6) *Withholding certificate—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that a withholding certificate (other than Form W-9) provided by a direct account holder is unreliable or incorrect for purposes of establishing that the account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraphs (b)(6)(i) through (iii) of this section.

(i) *Permanent residence address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the beneficial owner withholding certificate is not in the country whose treaty is invoked, or the direct account holder notifies the withholding agent of a new permanent residence address that is not in the treaty country. A

withholding agent may, however, treat a direct account holder as entitled to a reduced rate of withholding under an income tax treaty if the account holder provides a reasonable explanation for the permanent residence address outside the treaty country (e.g., the address is the address of a branch of the beneficial owner located outside the treaty country in which the entity is a resident) or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) that establishes residency in a treaty country.

(ii) *Mailing address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the withholding certificate is in the applicable treaty country but the withholding certificate contains a mailing address outside the treaty country or the withholding agent has a current mailing address as part of its account information for the direct account holder that is outside the treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude a withholding agent from treating the account holder as a resident of a treaty country if such address is in the treaty country. If a withholding agent has a mailing address (whether or not contained on the withholding certificate) outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if—

(A) The withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(B) The withholding agent has in its possession, or obtains, documentation that establishes that the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);

(C) The withholding agent knows that the address outside the applicable treaty country (other than a P.O. box, or in-care-of address) is a branch of the account

holder that is an entity that is a resident of the applicable treaty country; or

(D) The withholding agent obtains a written statement from the direct account holder that reasonably establishes entitlement to treaty benefits.

(iii) *Standing instructions.* A beneficial owner withholding certificate is unreliable or incorrect to establish entitlement to a reduced rate of withholding under an income tax treaty if the direct account holder has standing instructions to pay amounts directing the withholding agent to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation, in writing, or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) establishing the account holder's residence in the applicable treaty country.

(7) *Documentary evidence.* A withholding agent shall not treat documentary evidence provided by a direct account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a direct account holder that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent shall not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules of §§ 1.1441-1(b)(3), 1.1441-5(d) and (e)(6), and 1.6049-5(d) if the documentary evidence contains information that is inconsistent with the direct account holder's claim of a reduced rate of withholding, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the documentary evidence lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if a direct account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the direct account holder's status as a foreign person and a resident of a treaty country, but the account holder fails to provide

the treaty statements required by § 1.1441-6(c)(5), the documentary evidence does not establish the direct account holder's entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a country with which the United States has an income tax treaty, documentary evidence shall be considered unreliable or incorrect only if it is not reliable under the rules of paragraph (b)(8) or (9) of this section.

(8) *Documentary evidence—establishment of foreign status.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing the direct account holder's status as a foreign person if the documentary evidence is described in paragraphs (b)(8)(i), (ii), (iii), or (iv) of this section.

(i) *Documentary evidence received prior to January 1, 2001.* A withholding agent shall not treat documentary evidence provided by a direct account holder before January 1, 2001, as valid for purposes of establishing the account holder's status as a foreign person if it has actual knowledge that the account holder is a U.S. person or if it has a mailing or residence address for the account holder in the United States. If a withholding agent has an address for the direct account holder in the United States, the withholding agent may nevertheless treat the account holder as a foreign person if it can so treat the account holder under the rules of paragraph (b)(8)(ii) of this section. See, however, paragraph (b)(3)(ii) of this section regarding changes in circumstances with respect to preexisting obligations.

(ii) *Documentary evidence received after December 31, 2000.* A withholding agent shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the direct account holder's foreign status if the withholding agent does not have a permanent residence address for the account holder. Documentary evidence is also unreliable or incorrect to establish a direct account holder's status as a foreign person if the withholding agent has classified the account holder as a U.S. person in its account information, if the withholding agent has a current mail-

ing or permanent residence address (whether or not on the documentation) for the direct account holder in the United States, the direct account holder notifies the withholding agent of a new residence or mailing address in the United States, or if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. Notwithstanding the foregoing, a withholding agent may rely on documentary evidence as establishing the direct account holder's foreign status if it may do so under the provisions of paragraph (b)(8)(ii)(A) or (B) of this section.

(A) *Treatment of individual's foreign status.* A withholding agent may treat a direct account holder that is an individual as a foreign person even if it has any of the U.S. indicia described in this paragraph for the account holder if—

(1) The withholding agent has in its possession or obtains additional documentary evidence supporting the claim of foreign status (described in § 1.1471-3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation in writing supporting the account holder's foreign status;

(2) The withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 and the Form W-8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(B) *Presumption of entity's foreign status.* A withholding agent may treat a direct account holder that is an entity (other than a flow-through entity) as a foreign person even if it has any of the U.S. indicia described in this paragraph for the account holder in the United States if—

(1) The withholding agent has in its possession or obtains documentary evidence establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country;

(2) The withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 and the Form W-8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or

(3) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049-5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(iii) *U.S. place of birth.* A withholding agent has reason to know that documentary evidence provided by a direct account holder to support an individual's foreign status is unreliable or incorrect if the withholding agent has, either on the documentary evidence or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the

United States. Alternatively, a withholding agent may treat the individual as a foreign person if the withholding agent obtains a valid beneficial owner withholding certificate on Form W-8 from the individual that establishes the account holder's foreign status, documentary evidence described in § 1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(iv) *Standing instructions with respect to offshore obligations.* Documentary evidence is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) of a direct account holder that has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or a valid beneficial owner withholding certificate claiming foreign status.

(9) *Documentary evidence—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing that a direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraph (b)(9)(i) or (ii) of this section.

(i) *Permanent residence address and mailing address.* Documentary evidence is unreliable or incorrect if the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the withholding agent has no permanent residence address for the account holder. If a withholding agent has a current mailing or current permanent residence address for the direct account holder outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if the withholding agent—

(A) Has in its possession or obtains additional documentary evidence described in § 1.1471-3(c)(5)(i) supporting the direct account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. box, an in-care-of address, or the address of a financial institution);

(B) Has in its possession or obtains documentary evidence described in § 1.1471-3(c)(5)(i) that establishes the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(C) Obtains a valid beneficial owner withholding certificate on Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(ii) *Standing instructions.* Documentary evidence is unreliable or incorrect if the direct account holder has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained outside the treaty country unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country, or a valid beneficial owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

(10) *Indirect account holders.* A withholding agent that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) has reason to know that the documentation is unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (b)(10)(i) through (iv).

(i) The withholding agent must review the withholding statement described in § 1.1441-1(e)(3)(iv) and may not rely on information in the statement to the extent the information does not support the

claims made for any payee. For this purpose, a withholding agent may not treat a payee as a foreign person if an address in the United States is provided for such payee and may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for that person is outside the applicable treaty country. Notwithstanding a U.S. address or an address outside a treaty country, the withholding agent may treat a payee as a foreign person or a foreign person as a resident of a treaty country if the withholding statement is accompanied by a valid withholding certificate and documentary evidence (as described in § 1.1471-3(c)(5)(i)) or a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or the foreign person's residency in a treaty country.

(ii) The withholding agent must review each withholding certificate in accordance with the requirements of paragraphs (b)(5) and (6) of this section and verify that the information on the withholding certificate is consistent with the information on the withholding statement required under § 1.1441-1(e)(3)(iv). If there is a discrepancy between the withholding certificate and the withholding statement, the withholding agent may choose to rely on the withholding certificate, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement or apply the presumption rules of §§ 1.1441-1(b), 1.1441-5(d) and (e)(6), 1.6049-5(d), and 1.1471-3(f) (for a withholdable payment for chapter 4 purposes) to the payment allocable to the payee who provided the withholding certificate. If the withholding agent chooses to rely upon the withholding certificate, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the withholding certificate is unreliable or inaccurate.

(iii) The withholding agent must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to deter-

mine that there is no obvious indication that the payee is a U.S. non-exempt recipient or that the documentary evidence does not establish the identity of the person who provided the documentation (e.g., the documentary evidence does not appear to be an identification document).

(iv) [Reserved]. For further guidance, see § 1.1441-7T(b)(10)(iv).

(11) *Limits on reason to know for multiple obligations belonging to a single person.* A withholding agent that maintains multiple obligations for a single person will have reason to know that a claim of foreign status for the person is inaccurate based on account information for another obligation held by the person only to the extent that—

(i) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the account information and payment information for the obligations; or

(ii) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to § 1.1441-1(e)(4)(ix).

(12) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting an individual's claim of foreign status for purposes of paragraphs (b)(5) and (8) of this section means a written statement prepared by the individual or the individual's completion of a checklist provided by the withholding agent, stating that the individual meets the requirements of one of paragraphs (b)(12)(i) through (iv) of this section.

(i) The individual certifies that he or she—

(A) Is a student at a U.S. educational institution and holds the appropriate visa;

(B) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(C) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(D) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (b)(12)(i)(A) through (C) of this section;

(ii) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in § 301.7701(b)-1(c) of this chapter (e.g., a written statement indicating the number of days present in the United States during the three-year period that includes the current year);

(iii) The individual certifies that he or she meets the closer connection exception described in § 301.7701(b)-2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(iv) With respect a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

(13) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (b) of this section to establish an account holder's status as a foreign person or a beneficial owner entitled to a reduced rate of withholding in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Agent—(1) In general.* A withholding agent may authorize an agent to fulfill its obligations under chapter 3 if the requirements of paragraph (c)(2) of this section are satisfied. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting.

(2) *Authorized agent.* An agent is an authorized agent only if—

(i) There is a written agreement between the withholding agent and the person acting as agent that clearly provides which obligations under chapter 3 that the agent is authorized to fulfill;

(ii) A Form 8655, "Reporting Agent Authorization," is filed with the IRS by a withholding agent if its agent (including any sub-agent) acts as a reporting agent for filing Form 1042 on behalf of the withholding agent and the agent (or sub-

agent) identifies itself (instead of the withholding agent) as the filer on the Form 1042;

(iii) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapters 3, 4, and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent (or for any sub-agent) and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Code.

(3) *Liability of withholding agent acting through an agent.* An authorized agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. See the instructions to Form 1042-S for the manner for filing the form when an authorized agent acts on behalf of a withholding agent. Except as otherwise provided in the QI, WP, and WT agreements, an authorized agent does not benefit from the special procedures or exceptions that may apply to a QI, WP, or WT. A withholding agent acting through an authorized agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the withholding agent. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding agent. The withholding agent's liability shall exist irrespective of the fact that the authorized agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) *Examples.* The following examples illustrate the operation of paragraph (d)(2)

of this section. Each example assumes that withholding under chapter 4 does not apply.

*Example 1.* (i) DS is a U.S. subsidiary of FP, a corporation organized in Country N, a country that does not have an income tax treaty with the United States. FS is a special purpose subsidiary of FP that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. FS is capitalized with \$10,000,000 in debt from BK, a Country N bank, and \$1,000,000 in capital from FS.

(ii) On May 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On July 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for \$10,000,000. DS continues to service the installment notes for FS, and C is not notified of the sale of its obligation and continues to make payments to DS. But for the withholding tax on payments of interest by DS to BK, DS would have borrowed directly from BK, pledging the installment notes as collateral.

(iii) The C installment note is a financing transaction, whether held by DS or by FS, and the FS note held by BK also is a financing transaction. After FS purchases the installment note, and during the time the installment note is held by FS, the transactions constitute a financing arrangement, within the meaning of § 1.881-3(a)(2)(i). BK is the financing entity, FS is the intermediate entity, and C is the financed entity. Because the participation of FS in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, FS is a conduit entity.

(iv) Because C does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), C is not required to withhold tax under section 1441. However, DS, who knows that FS's participation in the financing arrangement is pursuant to a tax avoidance plan and is a withholding agent for purposes of section 1441, is not relieved of its withholding responsibilities.

*Example 2.* Assume the same facts as in *Example 1* except that C receives a new payment booklet on which DS is described as "agent." Although C may deduce that its installment note has been sold, without more C has no reason to know of the existence of a financing arrangement. Accordingly, C is not liable for failure to withhold, although DS still is not relieved of its withholding responsibilities.

*Example 3.* (i) DC is a U.S. corporation that is in the process of negotiating a loan of \$10,000,000 from BK1, a bank located in Country N, a country that does not have an income tax treaty with the United States. Before the loan agreement is signed, DC's tax lawyers point out that interest on the loan would not be subject to withholding tax if the loan were made by BK2, a subsidiary of BK1 that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. BK1 makes a loan to BK2 to enable BK2 to make the loan to DC. Without the loan from BK1 to BK2, BK2 would not have been able to make the loan to DC.

(ii) The loan from BK1 to BK2 and the loan from BK2 to DC are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881-3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there is a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC is a party to the tax avoidance plan (and accordingly knows of its existence), DC must withhold tax under section 1441. If DC does not withhold tax on its payment of interest, BK2, a party to the plan and a withholding agent for purposes of section 1441, must withhold tax as required by section 1441.

*Example 4.* (i) DC is a U.S. corporation that has a long-standing banking relationship with BK2, a U.S. subsidiary of BK1, a bank incorporated in Country N, a country that does not have an income tax treaty with the United States. DC has borrowed amounts of as much as \$75,000,000 from BK2 in the past. On January 1, 1995, DC asks to borrow \$50,000,000 from BK2. BK2 does not have the funds available to make a loan of that size. BK2 considers asking BK1 to enter into a loan with DC but rejects this possibility because of the additional withholding tax that would be incurred. Accordingly, BK2 borrows the necessary amount from BK1 with the intention of on-lending to DC. BK1 does not make the loan directly to DC because of the withholding tax that would apply to payments of interest from DC to BK1. DC does not negotiate with BK1 and has no reason to know that BK1 was the source of the loan.

(ii) The loan from BK2 to DC and the loan from BK1 to BK2 are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881-3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. The participation of BK2 in the financing arrangement reduces the tax imposed by section 881. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), DC is not required to withhold tax under section 1441. However, BK2, who is also a withholding agent under section 1441 and who knows that the financing arrangement is a conduit financing arrangement, is not relieved of its withholding responsibilities.

(g) *Effective/applicability date*—(1) Except as otherwise provided in paragraph (a)(4) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and

contained in 26 CFR part 1, as revised April 1, 2013.)

(2) [Reserved]. For further guidance, see § 1.1441-7T(g)(2).

Par. 18. Section 1.1441-7T is revised to read as follows:

*§ 1.1441-7T General provisions relating to withholding agents (temporary).*

(a) through (b)(10)(iii) [Reserved]. For further guidance, see § 1.1441-7(a) through (b)(10)(iii).

(iv) If the beneficial owner is claiming a reduced rate of withholding under an income tax treaty, the rules of § 1.1441-6(b)(1)(ii) also apply to determine whether the withholding agent has reason to know that a claim for treaty benefits is unreliable or incorrect.

(b)(11) through (g)(1) [Reserved]. For further guidance, see § 1.1441-7(b)(11) through (g)(1).

(2) *Effective/applicability date.* This section applies on January 6, 2017.

(h) *Expiration date.* The applicability of this section expires on December 30, 2019.

Par. 19. Section 1.1461-1 is amended by:

1. Revising paragraphs (b)(1), (c)(1)(i) and (ii), (c)(2)(ii)(E), (c)(2)(ii)(H) and (I), (c)(3)(i) and (iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv) and (v), (c)(5), and (i) to read as follows:

*§ 1.1461-1 Payment and returns of tax withheld.*

\* \* \* \* \*

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042-S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011-1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042-S for the

preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. See § 1.1474-1(c) for the requirement to show the aggregate chapter 4 reportable amounts and tax withheld on Form 1042. A single Form 1042 may be filed by a withholding agent to report amounts under chapters 3 and 4, including tax withheld. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461-2, shall be stated on the return as prescribed by the form and accompanying instructions.

\* \* \* \* \*

(c) *Information returns*—(1) *Filing requirement*—(i) *In general*. A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to a payment) must make an information return on Form 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding,” (or such other form as the IRS may prescribe) to report the amounts subject to reporting, as defined in paragraph (c)(2) of this section, that were paid during the preceding calendar year. Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446-4(a) (applicable to publicly traded partnerships required to pay tax under section 1446 on distributions) must file a Form 1042-S for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446-4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through

1.1446-5 apply by reason of an election under § 1.1446-7. A Form 1042-S shall be prepared for each recipient of an amount subject to reporting and for each single type of income payment. The Form 1042-S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042-S shall be filed with the IRS on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042-S and to the transmittal form. Withholding certificates, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. Another copy of the Form 1042-S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph (c) or the instructions to the form) on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042-S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042-S relates. A withholding agent required by this section to furnish a recipient copy of Form 1042-S may furnish such copy electronically by complying with the requirements provided in § 1.6050W-2(a)(2) through (5) applicable to statements required under section 6050W (substituting the phrase “Form 1042-S” for the phrases “statement required under section 6050W” or “statements required by section 6050W(f)” each place they appear). A withholding agent that meets the requirements of that section for providing electronic copies to recipients may apply these rules to payments made in calendar year 2016.

(ii) *Recipient*—(A) *Defined*. For purposes of this section, the term *recipient* means—

(1) A beneficial owner as defined in § 1.1441-1(c)(6), including a foreign estate or a foreign complex trust, as defined in § 1.1441-1(c)(25);

(2) A qualified intermediary as defined in § 1.1441-1(e)(5)(ii);

(3) A withholding foreign partnership as defined in § 1.1441-5(c)(2) or a with-

holding foreign trust under § 1.1441-5(e)(5)(v);

(4) A territory financial institution treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A);

(5) A U.S. branch that is treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A);

(6) A nonwithholding foreign partnership or a foreign simple trust as defined in § 1.1441-1(c)(24), but only to the extent the income is (or is treated as) effectively connected with the conduct of a trade or business in the United States by such entity, or if the nonwithholding foreign partnership or foreign simple trust is also described in paragraph (c)(1)(ii)(A)(9) or (c)(1)(ii)(A)(10) of this section;

(7) A payee, as defined in § 1.1441-1(b)(2) that is presumed to be a foreign person under the presumption rules of § 1.1441-1(b)(3); 1.1441-5(d) or (e)(6), or 1.6049-5(d);

(8) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446-4 on distributions of effectively connected income. This paragraph (c)(1)(ii)(A)(8) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7.

(9) A foreign intermediary, nonwithholding foreign partnership, or nonwithholding foreign trust that is a participating FFI or registered deemed-compliant FFI with respect to a chapter 4 reporting pool of U.S. payees;

(10) A participating FFI or a registered deemed-compliant FFI that is a recipient of a withholdable payment described in § 1.1474-1(d)(1)(ii)(A)(1)(iii); and

(11) Any other person as required on Form 1042-S or the instructions to the form.

(B) *Persons that are not recipients*. A recipient does not include—

(1) A nonqualified intermediary, except with respect to a payment (or portion of a payment) for which a nonqualified intermediary that is an FFI is a recipient reporting as described in § 1.1474-1(d)(1)(ii)(A)(1)(iii), or if the nonqualified intermediary is also described in para-

graph (c)(1)(ii)(A)(9) or (c)(1)(ii)(A)(10) of this section;

(2) A payee included in a chapter 3 or chapter 4 withholding rate pool;

(3) A flow-through entity, as defined in § 1.1441-1(c)(23) (to the extent it is receiving amounts subject to reporting other than income effectively connected with the conduct of a trade or business in the United States), that is not a recipient described in paragraphs (c)(1)(ii)(A)(9) or (c)(1)(ii)(A)(10) of this section; and

(4) A U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) that is not treated as a U.S. person under that section and is not a recipient described in paragraphs (c)(1)(ii)(A)(9) or (10) of this section.

(C) *Coordination with chapter 4 reporting.* See § 1.1474-1(d)(1)(ii)(A) for persons that are defined as recipients of a withholdable payment of U.S. source FDAP income for purposes of chapter 4 in addition to the persons that are recipients under this paragraph (c)(1)(ii).

(2) \* \* \*

(ii) \* \* \*

(E) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050W and the regulations under those sections;

\* \* \* \* \*

(H) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations issued before January 1, 2016, that are described in § 1.871-14(e)(2) to the extent the documentation requirements described in § 1.871-14(e)(3) and (e)(4) are required to be satisfied (taking into account the provisions of § 1.871-14(e)(4)(ii), if applicable;

(I) Interest on a foreign-targeted bearer obligation (see §§ 1.1441-1(b)(4)(i) and 1.1441-2(a)) issued before March 19, 2012;

\* \* \* \* \*

(3) \* \* \*

(i) The name, address, taxpayer identifying number of the withholding agent, and the withholding agent's status for chapter 3 purposes (based on the status codes applicable for chapter 3 purposes provided on the form);

\* \* \* \* \*

(iii) For a payment not subject to withholding under chapter 4, the rate of withholding applied or the basis for exempting the payment from withholding under chapter 3, and the exemption applicable to the payment for chapter 4 purposes (based on the exemption codes provided on the form);

\* \* \* \* \*

(4) *Method of reporting—(i) Payments by U.S. withholding agents to recipients.* A withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary as defined in § 1.1441-1(e)(5)(ii) that makes payments of amounts subject to reporting on Form 1042-S must file a separate Form 1042-S for each recipient who receives such amount. For purposes of this paragraph (c)(4), a U.S. person includes a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) that is treated as a U.S. person. Except as may otherwise be required on Form 1042-S or the instructions to the form, only payments for which the income code, exemption code, withholding rate, and recipient code are the same may be reported on a single Form 1042-S. See paragraph (c)(4)(ii) of this section for reporting of payments made to a person that is not a recipient. See § 1.1474-1(d)(4) for additional requirements that may apply for reporting on Form 1042-S with respect to a withholdable payment that is a chapter 4 reportable amount.

(A) *Payments to beneficial owners.* If a U.S. withholding agent makes a payment directly to a beneficial owner it must complete Form 1042-S treating the beneficial owner as the recipient. Under the grace period rule of § 1.1441-1(b)(3)(iv), a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent awaits a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file a Form 1042-S to report all payments on Form 1042-S during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends. In the case of joint owners, a with-

holding agent may provide a single Form 1042-S made out to the owner whose status the U.S. withholding agent relied upon to determine the applicable rate of withholding. If, however, any one of the owners requests its own Form 1042-S, the withholding agent must furnish a Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners and the tax withheld thereon.

(B) *Payments to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.* A U.S. withholding agent that makes payments to a qualified intermediary (whether or not the qualified intermediary assumes primary withholding responsibility for purposes of chapter 3 and chapter 4 of the Code), a withholding foreign partnership, or a withholding foreign trust shall complete Forms 1042-S treating the qualified intermediary, withholding foreign partnership, or withholding foreign trust as the recipient. The U.S. withholding agent must complete a separate Form 1042-S for each chapter 3 and chapter 4 withholding rate pool with respect to each qualified intermediary. A qualified intermediary that does not assume primary withholding responsibility on all payments it receives provides information regarding the proportions of income subject to a particular withholding rate (*i.e.*, a chapter 3 withholding rate pool) to the withholding agent on a withholding statement associated with a qualified intermediary withholding certificate. In such a case, the U.S. withholding agent must complete a separate Form 1042-S for each chapter 3 and chapter 4 withholding rate pool with respect to the qualified intermediary. To the extent a qualified intermediary is required to report a payment under chapter 61, it may provide a U.S. withholding agent with information regarding withholding rate pools for U.S. non-exempt recipients (as defined under § 1.1441-1(c)(21)). Amounts paid with respect to such withholding rate pools must be reported on a Form 1099 completed for each U.S. non-exempt recipient to the extent such U.S. non-exempt recipient is subject to Form 1099 reporting and is not reported on

Form 1042-S. See, however, § 1.1441-1(e)(5)(v)(C) for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees (in lieu of reporting such payees on a withholding statement) and for the withholding rate pools (including chapter 4 withholding rate pools) otherwise reportable on a withholding statement provided by a qualified intermediary.

(C) *Amounts paid to U.S. branches treated as U.S. persons.* A U.S. withholding agent making a payment to a U.S. branch of a foreign person (including a territory financial institution) described in § 1.1441-1(b)(2)(iv)(A) shall complete Form 1042-S as follows—

(1) If the branch has provided the U.S. withholding agent with a withholding certificate that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent files Forms 1042-S treating the U.S. branch or territory financial institution as the recipient;

(2) If the branch has provided the U.S. withholding agent with a withholding certificate that transmits information regarding beneficial owners, qualified intermediaries, withholding foreign partnerships, or other recipients, the U.S. withholding agent must complete a separate Form 1042-S for each recipient whose documentation is associated with the U.S. branch's or territory financial institution's withholding certificate; or

(3) If the U.S. withholding agent cannot reliably associate a payment with a valid withholding certificate from the U.S. branch, it shall treat the U.S. branch as the recipient and report the income as effectively connected with the conduct of a trade or business in the United States except as otherwise provided in § 1.1441-1(b)(2)(iv)(B)(4).

(D) *Dual Claims.* A U.S. withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. See § 1.1441-6(b)(2)(iii). If the claims are consistent and the withholding agent accepts the multiple claims, the withholding agent must file a separate Form 1042-S for

those payments for which the entity is treated as the beneficial owner and Forms 1042-S for each of the interest holders in the entity for which the interest holder is treated as the recipient. For those payments for which the interest holder in an entity is treated as the recipient, the U.S. withholding agent shall prepare the Form 1042-S in the same manner as a payment made to a nonqualified intermediary or flow-through entity as set forth in paragraph (c)(4)(ii) of this section. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, the withholding agent must file a separate Form 1042-S for the person or persons it has chosen to treat as the recipients.

(ii) *Payments made by U.S. withholding agents to persons that are not recipients—(A) Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* If a U.S. withholding agent makes a payment to a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person), it must complete a separate Form 1042-S for each recipient to the extent the withholding agent can reliably associate a payment with valid documentation (within the meaning of § 1.1441-1(b)(2)(vii)) from the recipient which is associated with the withholding certificate provided by the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution. See § 1.1474-1(d)(4)(i) for when a withholding agent may report a chapter 4 reportable amount made to such an entity in a chapter 4 withholding rate pool. See also § 1.1441-1(e)(3)(iv)(A) for when a withholding statement provided by a nonqualified intermediary may include a chapter 4 withholding rate pool of U.S. payees. If a payment is reported by the withholding agent in a chapter 4 withholding rate pool, the withholding agent must report on Form 1042-S the nonqualified intermediary or flow-through entity as a recipient associated with the applicable chapter 4 withholding rate pool. If a payment is

made through tiers of nonqualified intermediaries or flow-through entities, the withholding agent must nevertheless complete Form 1042-S for the recipient to the extent it can reliably associate the payment with documentation from the recipient. A withholding agent that is completing a Form 1042-S for a recipient that receives a payment through a nonqualified intermediary, a flow-through entity, or a U.S. branch or territory financial institution must include on the Form 1042-S the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution from which the recipient directly receives the payment. If a U.S. withholding agent cannot reliably associate the payment, or any portion of the payment, with valid documentation from a recipient either because no such documentation has been provided or because the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution has failed to provide sufficient allocation information so that the withholding agent can associate the payment, or any portion thereof, with valid documentation, then the withholding agent must report the payments as made to an unknown recipient in accordance with the appropriate presumption rules for that payment. Thus, if the payment is not a withholdable payment and under the presumption rules the payment is presumed to be made to a foreign person, the withholding agent must generally withhold 30 percent of the payment and report the payment on Form 1042-S made out to an unknown recipient and shall also include the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution that received the payment on behalf of the unknown recipient. If, however, the recipient is presumed to be a U.S. non-exempt recipient (as defined in § 1.1441-1(c)(21)), the withholding agent must withhold on the payment as required under section 3406 and report the payment as required under chapter 61 of the Code. See § 1.1474-1(d)(4) for reporting requirements that apply to payments of chapter 4 reportable amounts paid to nonqualified intermediaries and flow-through entities. If, how-

ever, the payment is a withholdable payment, the withholding agent must report the payment as made to a chapter 4 withholding rate pool of nonparticipating FFIs in accordance with the presumption rule under § 1.1471-3(f)(5).

\* \* \* \* \*

(iv) *Reporting by a nonqualified intermediary, flow-through entity, and certain U.S. branches.* A nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441-1(e)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) is a withholding agent and must file Forms 1042-S for amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042-S will not be required, however, if another withholding agent has reported the same amount for which the nonqualified intermediary, flow-through entity, or U.S. branch would be required to file a return and the entire amount that should be withheld (including withholding and reporting in accordance with the applicable presumption rule for the payment). A nonqualified intermediary, flow-through entity, or U.S. branch must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent together with the information required for that withholding agent to reliably associate the payment with the recipient documentation or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A nonqualified intermediary or flow-through entity that is required to report a payment on Form 1042-S must follow the same rules as apply to a U.S. withholding agent under paragraphs (c)(4)(i) and (ii) of this section.

(v) *Pro rata reporting for allocation failures.* If a nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441-1(b)(2)(iv) (other than a U.S. branch or territory financial institution treated as a U.S. person) uses the alternative procedures of § 1.1441-1(e)(3)(iv)(D) and fails to provide information sufficient to allocate the amount subject to reporting paid to a withholding rate pool to the payees identified for that

pool, then the withholding agent shall report the payment in accordance with the rule provided in § 1.1441-1(e)(3)(iv)(D)(6).

\* \* \* \* \*

(5) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042-S information returns for a taxable year must file Form 1042-S returns on magnetic media. See, however, § 301.1474-1(a) of this chapter for the requirements for a withholding agent that is a financial institution to file Forms 1042-S on magnetic media. See, also, § 301.6011-2 of this chapter for requirements applicable to a withholding agent that files Forms 1042-S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

\* \* \* \* \*

(i) *Effective/applicability date.* Except as otherwise provided in paragraph (c)(2)(iii) of this section, this section shall apply to returns required for payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.1461-1T [Removed]

Par. 20. Section 1.1461-1T is removed.

Par. 21. Section 1.1461-2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

#### § 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) \* \* \*

(2) *Reimbursement of tax—(i) General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount of tax overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302-2(a)(1)(iii) for any subsequent payment

period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment to the beneficial owner or payee occurs before the earlier of the due date (not including extensions) for filing Form 1042-S for the calendar year of overwithholding or the date the Form 1042-S is actually filed with the IRS; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

\* \* \* \* \*

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

*Example 1.* (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of \$100 to N, at which time C withholds \$30 and remits the balance of \$70 to N. On February 10, 2002, prior to the time that C files its Form 1042 and Form 1042-S with respect to the payment, N furnishes a valid Form W-8 described in § 1.1441-1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15% under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only \$15 and not \$30 and requests reimbursement of \$15. Although C has already deposited the \$30 that was withheld, as required by § 1.6302-2(a)(1)(iv), C repays N in the amount of \$15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of \$30, an adjusted total tax withheld of \$15, and \$30 previously paid for such year. Pursuant to § 1.6414-1(b), C claims a credit for the overpayment of \$15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by \$15 any deposit required by § 1.6302-2 to be made of tax withheld during the calendar year 2002. The Form 1042-S required to be filed by C with respect to the dividend of \$100 paid to N in 2001 is required to show tax withheld under chapter 3 of \$30 and tax repaid to N of \$15.

*Example 2.* The facts are the same as in *Example 1*. In addition, during 2002, C makes payments to N upon which it is required to withhold \$200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302-2(a)(1)(iii), C deposits the amount of \$185 on July 15, 2002 (\$200 less the \$15 for which credit is claimed on the Form 1042 for 2001). On March 15, 2003, C Corporation files its return on Form 1042 for calendar year 2002,

which shows total tax withheld of \$200, \$185 previously deposited by C, and \$15 allowable credit.

*Example 3.* The facts are the same as in *Example 1*. Under § 1.6302-2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of \$100 between February 8 and February 15, 2002, and deposits \$75 [(\$100 × 90%) less \$15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing \$10 [(\$100-\$15) less \$75] within 3 banking days after March 15, 2002.

\* \* \* \* \*

(d) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.1461-2T [Removed]

Par. 22. Section 1.1461-2T is removed.

Par. 23. Section 1.6041-1 is amended by revising paragraphs (d)(5)(i) and (ii) and (j) to read as follows:

#### § 1.6041-1 Return of information as to payments of \$600 or more.

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(i) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a non-U.S. payor or a non-U.S. middleman and is paid and received outside the United States (as defined in § 1.6049-4(f)(16)).

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a payor that has no actual knowledge that the payee is a U.S. person and is paid and received outside the United States (as defined in § 1.6049-4(f)(16)), and the payor is—

\* \* \* \* \*

(j) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised

April 1, 2016. For payments made after December 31, 2010, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.6041-1T [Removed]

Par. 24. Section 1.6041-1T is removed.

Par. 25. Section 1.6041-4 is amended by revising paragraphs (a)(1) through (3), (a)(7), (b), and (d) to read as follows:

#### § 1.6041-4 Foreign-related items and other exceptions.

(a) \* \* \*

(1) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). Returns of information are also not required for a payment that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441-1(b) if it obtains from the intermediary or flow-through entity a withholding statement described in § 1.6049-5(b)(14) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) or specific payees to which withholding applies under chapter 4. Payments excepted from reporting under this paragraph (a)(1) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461-1(b) and (c) and, for purposes of chapter 4 of the Code, under § 1.1474-1(d)(2). The provisions in § 1.6049-5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (a)(1). The provisions in § 1.6049-5(c)(5) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (a)(1). See § 1.1441-1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441-1 shall apply by sub-

stituting the term “payor” for the term “withholding agent” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049-5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049-4(f)(16).

(3) If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6041-3(q) to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (a)(7) of this section for when reporting under section 6041 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception described in this paragraph (a)(3) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441-1(e)(5)(iii).

\* \* \* \* \*

(7) Returns of information are not required for payments with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term “a payment subject to reporting under section 6041” for the term “an interest payment”).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However, in the case of a withholdable payment (as defined in § 1.6049-4(f)(15)) made to joint payees, if any joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471-1(b)(82)). See § 1.1471-3(f)(7).

\* \* \* \* \*

(d) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2002, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.6041-4T [Removed]

Par. 26. Section 1.6041-4T is removed.

Par. 27. Section 1.6042-2 is amended by revising paragraphs (a)(1)(i) and (f) to read as follows:

§ 1.6042-2 *Returns of information as to dividends paid.*

(a) \* \* \*

(1) \* \* \*

(i) Every person who makes a payment of dividends (as defined in § 1.6042-3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than \$10 or if the payment is made to a person who is an exempt recipient described in § 1.6049-4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W-9), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)-3 of this chapter. Further, a return of information is not required under this section for—

(A) Payments with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term “dividend” for the term “interest”); or

(B) Payments made by a paying agent on behalf of a corporation described in section 1297(a) with respect to a shareholder of the corporation if—

(1) The paying agent obtains from the corporation a written certification signed by a person authorized to sign on behalf of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the paying agent relies on the provisions of paragraph (a)(1)(i)(B) of this section, and the paying agent has no reason to know the written certification is unreliable or incorrect;

(2) The paying agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI (as defined in § 1.6049-4(f)(10) or (14), respectively), or reporting Model 1 FFI (as defined in § 1.6049-4(f)(13)), in accordance with the requirements of § 1.1471-3(d)(4) (substituting the terms “paying agent” and “corporation” for the terms “withholding agent” and “payee,”

respectively) and validates that status annually;

(3) The paying agent obtains a written certification representing that the corporation shall report the payment as part of its reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) with respect to its U.S. accounts and provided the paying agent does not know that the corporation is not reporting the payment as required. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. A paying agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(4) The paying agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payments.

\* \* \* \* \*

(f) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.6042-2T [Removed]

Par. 28. Section 1.6042-2T is removed.

Par. 29. Section 1.6042-3 is amended by:

1. Revising paragraphs (b)(1)(iii) and (iv), (b)(1)(vi), and (b)(3).
2. Removing paragraph (b)(5).
3. Adding paragraph (d).

The revisions and addition read as follows:

§ 1.6042-3 *Dividends subject to reporting.*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). Returns of information are also not required for payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary in accordance with § 1.1441-1(b) if it obtains from the intermediary entity a withholding statement (described in § 1.6049-5(b)(14)) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) or to specific payees to which withholding under chapter 4 applies. Payments excepted from reporting under this paragraph (b)(1)(iii) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461-1(b) and (c) or, for chapter 4 purposes, under § 1.1474-1(d)(2). The provisions in § 1.6049-5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (b)(1)(iii). The provisions in § 1.6049-5(c) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (b)(1)(iii). The provisions of § 1.1441-1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code.

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) that are paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049-5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049-4(f)(16).

\* \* \* \* \*

(vi) If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049-4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is a dividend. See, however, § 1.6042-2(a)(1)(i)(A) for when reporting under section 6042 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception of this paragraph (b)(1)(vi) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441-1(e)(5)(iii).

\* \* \* \* \*

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However in the case of a withholdable payment (as defined in § 1.6049-4(f)(15)) made to joint payees, if any such joint payee does not appear to be an indi-

vidual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471-1(b)(82)). See § 1.1471-3(f)(7). For purposes of applying this paragraph (b)(3), the grace period described in § 1.6049-5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

\* \* \* \* \*

(d) *Effective/applicability date.* This section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013).

### § 1.6042-3T [Removed]

Par. 30. Section 1.6042-3T is removed.

Par. 31. Section 1.6045-1 is amended by:

1. Revising paragraphs (c)(3)(ii) and (xiv).
2. Removing paragraph (c)(3)(xv) and (c)(7)(v).
3. Revising paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4),
4. Removing paragraph (g)(5).
5. Adding paragraph (q).

The revisions and addition read as follows:

### § 1.6045-1 Returns of information of brokers and barter exchanges.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter); or

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term “a sale subject to reporting under

section 6045” for the term “an interest payment”).

\* \* \* \* \*

(xiv) *Certain redemptions.* No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by a person authorized to sign on behalf of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of paragraph (c)(3)(xiv) of this section, and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI (as defined in § 1.6049-4(f)(10) or (f)(14), respectively), or reporting Model 1 FFI (as defined in § 1.6049-4(f)(13)), in accordance with the requirements of § 1.1471-3(d)(4) (substituting the terms “stock transfer agent” and “corporation” for the terms “withholding agent” and “payee,” respectively) and validates that status annually;

(C) The stock transfer agent obtains a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nom-

inee, or other agent of the payee with respect to the payment.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii), as made to a foreign payee in accordance with § 1.6049-5(d)(1), or presumed to be made to a foreign payee under § 1.6049-5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049-5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The provisions in § 1.6049-5(c) regarding the definitions of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman shall also apply for purposes of this paragraph (g)(1)(i). The provisions of § 1.1441-1 shall apply by substituting the terms “broker” and “customer” for the terms “withholding agent” and “payee,” respectively, and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Code. The provisions of § 1.6049-5(d) shall apply by substituting the terms “broker” and “customer” for the terms “payor” and “payee,” respectively. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to

which the certificate pertains. The certification is not required if a broker receives documentary evidence under § 1.6049-5(c)(1) or (4).

\* \* \* \* \*

(3) \* \* \*

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441-1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049-5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049-5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman, which payment the payor or middleman can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii) or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception of this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in § 1.1441-1(e)(5)(iii).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049-5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049-5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

*Example 2.* The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

*Example 3.* The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2*. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049-5(c)(5)).

*Example 4.* The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP

is not a U.S. payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

*Example 5.* The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049-5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

*Example 6.* The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049-5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

*Example 7.* Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441-1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042-S under § 1.1461-1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. See § 1.6049-5(c)(5). Under the presumptions described in § 1.6049-5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of § 1.1441-1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S.

non-exempt recipient because the presumption of foreign status for offshore obligations under § 1.1441-1(b)(3)(iii)(D) does not apply. See paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in § 1.1471-1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under § 1.1441-1(b)(3)(iii)(D) does not apply. See § 1.6049-5(d)(2)(i).

*Example 8.* The facts are the same as in *Example 7*, except that X is a foreign corporation that is not a U.S. payor under § 1.6049-5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049-5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under § 1.6049-5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section. \* \* \* \* \*

(q) *Effective/applicability date.* Except as otherwise provided in this section, this section applies on or after January 6, 2017. (For rules that apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

#### § 1.6045-1T [Removed]

Par. 32. Section 1.6045-1T is removed.

Par. 33. Section 1.6049-4 is amended by revising paragraphs (b)(1), (c)(4), (f)(3), (f)(4)(ii), (f)(5) through (16), and (h) to read as follows:

*§ 1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.*

\* \* \* \* \*

(b) *Information to be reported—(1) Interest payments.* Except as provided in paragraphs (b)(3) and (5) of this section, in the case of interest other than original

issue discount treated as interest under § 1.6049-5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than \$10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (*i.e.*, exempt recipient) has failed to furnish a Form W-9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)-3 (Employment Tax Regulations). For reporting interest paid to certain nonresident alien individuals, see § 1.6049-8.

\* \* \* \* \*

(c) \* \* \*

(4) *Coordination of reporting with chapter 4 reporting or an applicable IGA*—(i) *U.S. accounts reported by FFIs that are non-U.S. payors.* An information return shall not be required with respect to an interest payment made by a participating FFI (including a reporting Model 2 FFI), or registered deemed-compliant FFI (including a reporting Model 1 FFI), that is a non-U.S. payor (as defined in § 1.6049-5(c)(5)) to an account holder of an account maintained by the FFI, when the payment is not subject to withholding under chapter 4 or to backup withholding under section 3406, and the conditions of paragraphs (c)(4)(i)(A), (B), or (C) of this section, as applicable, are met. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(i) to a chapter 4 withholding rate pool of U.S. payees.

(A) The FFI is a participating FFI (including a reporting Model 2 FFI) reporting the account holder of the U.S. account (as defined in § 1.1471-1(b)(133)) pursuant to either § 1.1471-4(d)(3) or (5) for the year in which the payment is made

(including reporting of the account holder's TIN).

(B) The FFI is a registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting the account holder of the U.S. account pursuant to the conditions of its applicable deemed-compliant status under § 1.1471-5(f)(1) for the year in which the payment is made (including reporting of the account holder's TIN).

(C) The FFI is a reporting Model 1 FFI reporting the account holder of the reportable U.S. account pursuant to an applicable Model 1 IGA for the year in which the payment is made (including reporting of the account holder's TIN).

(ii) *Other accounts reported by FFIs under chapter 4.* An information return shall not be required under this section with respect to a payment that is not subject to withholding under chapter 3 (as defined in § 1.1441-2(a)) or backup withholding under § 31.3406(g)-1(e) and that is made to a recalcitrant account holder of a participating FFI or registered deemed-compliant FFI (or non-consenting U.S. account of a reporting Model 2 FFI), provided that the FFI reports such account holder in accordance with the classes of account holders described in § 1.1471-4(d)(6) for the year in which the payment is made. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(ii) to a chapter 4 withholding rate pool of U.S. payees. In the case of a payment made by an FFI that is a reporting Model 1 FFI, an information return shall not be required with respect to a payment that is not subject to withholding under chapter 3 or backup withholding under § 31.3406(g)-1(e) and that is made to an account holder of the FFI if the account—

(A) Has U.S. indicia for which appropriate documentation sufficient to treat the account as held by other than a specified U.S. person has not been provided pursuant to the due diligence requirements described in an applicable Model 1 IGA, and

(B) Is therefore treated as a U.S. reportable account that the FFI is required to report pursuant to the applicable Model 1 IGA.

(iii) *Coordination of reporting exceptions with reporting of chapter 4 withholding rate pools.* For purposes of para-

graphs (c)(4)(i) and (ii) of this section, a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) receiving a payment from another payor may provide a withholding statement to the payor allocating the payment to a chapter 4 withholding rate of pool of U.S. payees only if the payment is excepted from reporting under paragraph (c)(4)(i) of this section or if the payment is both excepted from reporting under paragraph (c)(4)(ii) of this section and not subject to withholding under chapter 4. See § 1.6049-5(b)(14) (providing an exception from reporting under section 6049 to a payor that has been furnished a withholding statement from an participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and that allocates the payment to a chapter 4 withholding rate pool). Thus, for example, a U.S. payor that is a participating FFI may not allocate a payment to a chapter 4 withholding rate pool of U.S. payees on a withholding statement described in § 1.6049-5(b)(14) when the payment is made to a U.S. account maintained by the FFI, regardless of whether the FFI reports the account in accordance with § 1.1471-4(d)(3) because the U.S. payor is not excepted from reporting under this section pursuant to paragraph (c)(4)(i) of this section.

(iv) *Example.* The application of the provisions of paragraphs (c)(4)(ii) and (iii) of this section may be illustrated by the following example:

*Example.* USP is a payor that makes an interest payment that is not a withholdable payment (as defined in paragraph (f)(15) of this section) to RM2, a U.S. payor and reporting Model 2 FFI. The payment is paid and received outside of the United States and is not an amount subject to withholding under chapter 3. RM2 receives the payment as an intermediary with respect to a preexisting account held by A. RM2 has account information with respect to A which includes U.S. indicia as described in § 1.1441-7(b)(5) or (8). A does not provide consent for RM2 to report A's account. Under the presumption rules described in § 1.6049-5(d)(2)(i), RM2 is required to treat A as a U.S. non-exempt recipient. Despite this presumption rule, and because backup withholding does not apply under § 31.3406(g)-1(e), no information return shall be required with respect to the payment under paragraph (c)(4)(ii) of this section if A is reported by RM2 consistent with § 1.1471-4(d)(6) as a non-consenting account holder. Additionally, RM2 may include A in the chapter 4 withholding rate pool of U.S. payees on the withholding

statement provided to USP consistent with the requirements of paragraph (c)(4)(iii) of this section.

\* \* \* \* \*

(f) \* \* \*

(3) *Obligation*. The term *obligation* includes bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated. For the definition of the term *offshore obligation*, see paragraph (f)(9) of this section.

(4) \* \* \*

(ii) *Example*. The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

*Example*. In January 1984, Broker B, a U.S. payor, purchases on behalf of its customer, Individual A, an obligation issued by partnership in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049-5(f).

(5) *Chapter 4 withholding rate pool*. The term *chapter 4 withholding rate pool* has the meaning set forth in § 1.1471-1(b)(20). However, for determining the U.S. payees included in a chapter 4 withholding rate pool for purposes of section 6049, see paragraph (c)(4)(iii) of this section.

(6) *Foreign financial institution (or FFI)*. The term *foreign financial institution* or *FFI* means an entity described in § 1.1471-1(b)(47),

(7) *Intergovernmental agreement (or IGA)*. The term *intergovernmental agreement* or *IGA* has the meaning set forth in § 1.1471-1(b)(67) (i.e., either a *Model 1 IGA* described in § 1.1471-1(b)(78) or a *Model 2 IGA* described in § 1.1471-1(b)(79)).

(8) *Non-consenting U.S. accounts*. The term *non-consenting U.S. accounts* has the meaning set forth in an applicable *Model 2 IGA*.

(9) *Offshore obligation*. The term *offshore obligation* means an offshore obligation defined in § 1.6049-5(c)(1). For the definition of the term *obligation*, see paragraph (f)(3) of this section.

(10) *Participating FFI*. The term *participating FFI* means an FFI that is described in § 1.1471-1(b)(91).

(11) *Recalcitrant account holder*. The term *recalcitrant account holder* has the same meaning set forth in § 1.1471-1(b)(110).

(12) *Registered deemed-compliant FFI*. The term *registered deemed-*

*compliant FFI* means an FFI that is described in § 1.1471-1(b)(111).

(13) *Reporting Model 1 FFI*. The term *reporting Model 1 FFI* means an FFI that is described in § 1.1471-1(b)(114).

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

(15) *Withholdable payment*. The term *withholdable payment* means a payment described in § 1.1471-1(b)(145).

(16) *Paid and received outside the United States*—(i) *In general*. Except as otherwise provided in paragraphs (f)(16)(ii) and (iii) of this section, the term *paid and received outside the United States* means an amount that is paid by a payor or middleman outside the United States as described in § 1.6049-5(e).

(ii) *Transfers to the United States*. Without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (f)(16)(ii)(A) or (B) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address (including an amount paid with respect to a bond or a discount obligation described in § 1.6049-5(e)(4)) is not considered to be paid and received outside the United States.

(A) An amount is described in this paragraph (f)(16)(ii)(A) if it is paid by an issuer or the paying agent of the issuer with respect to an obligation that is—

(1) Issued by a U.S. payor, as defined in § 1.6049-5(c)(5);

(2) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(3) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(B) An amount is described in this paragraph (f)(16)(ii)(B) if it is paid by a U.S. middleman (as defined in § 1.6049-5(c)(5)) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(iii) *Deposits or accounts with banks and other financial institutions*. In the case of an amount paid by a bank or other financial institution with respect to a deposit or an account that is considered paid at a branch or office outside the United States as described in § 1.6049-5(e)(2),

the amount is not considered paid and received outside the United States if the institution has knowledge that the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(iv) *Examples*. The application of the provisions of paragraph (f)(16) of this section may be illustrated by the following examples:

*Example 1*. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(c)(5). A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations. FB, a foreign branch of DC, a domestic corporation, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon to FB at its office outside the United States with instructions to transfer funds to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the interest on the FC bonds is paid and received outside the United States under paragraph (f)(16)(ii) of this section and § 1.6049-5(e)(3) because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(d)(1); because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

*Example 2*. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049-5(d)(1). B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871-14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (f)(16)(ii)(A)(2) of this section. The interest on the FC bonds paid to B by FC is not paid and received outside the United States under paragraph (f)(16) of this section.

*Example 3*. The facts are the same as in *Example 2* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued

by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the interest on the FC bonds paid by DC is not paid and received outside the United States under paragraph (f)(16)(i) of this section.

\* \* \* \* \*

(h) *Effective/applicability dates.* Except as otherwise provided in paragraphs (b)(5)(ii) and (d)(3)(ii)(B) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

### § 1.6049-4T [Removed]

Par. 34. Section 1.6049-4T is removed.

Par. 35. Section 1.6049-5 is amended by:

1. Revising paragraphs (b)(6) through (8), (b)(10) through (b)(11)(ii)(A), (b)(12), (b)(14) and (15), and (c)(1)(i) through (iii).

2. Adding paragraph (c)(1)(iv).

3. Revising paragraphs (c)(2) and (3) and (c)(4) introductory text and (c)(4)(i).

4. Removing paragraph (c)(4)(ii).

5. Redesignating paragraphs (c)(4)(iii) and (iv) as paragraphs (c)(4)(ii) and (iii).

6. Revising paragraphs (c)(5)(i)(F), (c)(6), (d)(1) and (2), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), (e), and (g).

The addition and revisions read as follows:

#### *§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.*

\* \* \* \* \*

(b) \* \* \*

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section) and paid and received outside the United States. See § 1.6049-4(f)(16) for circumstances in which a payment is considered to be paid and received outside the United States.

(7) Portfolio interest, as defined in § 1.871-14(b)(1), paid with respect to obligations in bearer form described in sec-

tion 871(h)(2)(A), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111-147, or section 881(c)(2)(A), as in effect prior to the amendment by section 502 of the HIRE Act, that were issued prior to March 19, 2012, or with respect to a foreign-targeted registered obligation described in § 1.871-14(e)(2) that was issued prior to January 1, 2016, and for which the documentation requirements described in § 1.871-14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871-14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2) or 881(c)(2) that is not described in paragraph (b)(7) of this section.

\* \* \* \* \*

(10)(i) Amounts paid and received outside the United States under § 1.6049-4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that are paid by a custodian or nominee or other agent of the payee, of amounts that that it receives for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163-5(c)(2)(i)(D)(3)) and is issued in accordance with the procedures of § 1.163-5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049-4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (f)(2)(B)(ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid and received outside the United States as defined in § 1.6049-4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, and issued in

accordance with the procedures of § 1.163-5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section.

(ii) (A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than \$500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163-5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163-5(c)(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(B)(i) and (ii), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(B) of this section.  
\* \* \* \* \*

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section. However, such payments may be reportable under § 1.1461-1(b) and (c) or under § 1.1474-1(d)(2) (for a chapter 4 reportable amount (as described

in § 1.1471-1(b)(18)). The provisions of § 1.1441-1 shall apply by substituting the term “payor” for the term “withholding agent” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441-1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441-1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid on or after January 1, 2013, to a nonresident alien individual to the extent provided in § 1.6049-8.  
\* \* \* \* \*

(14) Payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441-1(b) if it obtains from the foreign intermediary or flow-through entity a withholding statement under § 1.1471-3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), § 1.1471-3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), § 1.1441-1(e)(3)(iv) (describing a withholding statement provided by a non-qualified intermediary), § 1.1441-1(e)(5)(v) (describing a withholding statement provided by a qualified intermediary), or under § 1.1441-5 (describing a withholding statement provided by a foreign partnership, foreign simple trust, or foreign grantor trust), that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool or specific payees to which withholding applies under chapter 4. The provisions of each of the foregoing sections shall apply by substituting the term “payor” for the term “withholding agent.” A payor or middleman may rely on a withholding statement provided by a foreign intermediary or flow-through entity that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049-4(c)(4)) or, with respect to a withholdable payment, a chapter 4 withholding rate pool of recalcitrant account holders (as described in § 1.1471-

4(d)(6)) provided that the payor or middleman identifies the foreign intermediary or flow-through entity that maintains the accounts (as described in § 1.1471-5(b)(5)) included in the chapter 4 withholding rate pool as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules in § 1.1471-3(d)(4) or in § 1.1471-3(e)(4)(vi)(B), as applicable, for identifying the payee of a payment (by substituting the term “payor” for the term “withholding agent”). See, however, § 1.1441-1(e)(5)(v)(C)(2)(i) for when a qualified intermediary may provide a single pool of recalcitrant account holders (without the need to subdivide into the pools described in § 1.1471-4(d)(6)). Additionally, when a foreign intermediary or flow-through entity provides to a payor or middleman a withholding statement that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool of U.S. payees, the payor or middleman may also rely on the withholding statement if the payor or middleman identifies the intermediary or flow-through entity as a qualified intermediary (as defined in § 1.1441-1(c)(15) by applying the rules described in § 1.1441-1(b)(2)(vii)) that provides the certification described in § 1.1441-1(e)(3)(ii)(D) with respect to U.S. payees that hold accounts with a foreign intermediary or flow-through entity other than the qualified intermediary providing the certification.

(15) If a foreign intermediary, as described in § 1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor, which payment the payor can reliably associate with a valid withholding certificate described in § 1.1441-1(e)(3)(ii) or (iii), or § 1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in § 1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that

are not exempt from reporting under § 1.6049-4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is interest or original issue discount. See, however, § 1.6049-4(c)(4) for when reporting under section 6049 is coordinated with reporting under chapter 4 or an applicable IGA (as defined in § 1.6049-4(f)(7)). The exception for payments described in this paragraph (b)(15) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code for the payment under the agreement described in § 1.1441-1(e)(5)(iii).

\* \* \* \* \*

(c) *Applicable rules*—(1) *Documentary evidence for offshore obligations and certain other obligations*—(i) A payor may rely on documentary evidence described in § 1.1471-3(c)(5)(i) instead of a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in § 1.6045-1(c)(2), to the extent provided in § 1.6045-1(g)(1)(i). For purposes of this section, the term *offshore obligation* means—

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in § 1.6049-4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471-5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in § 1.864-4(c)(5)(iii) (substituting the term “obligation” for the term “stock or security”).

(ii) A payor may rely on documentary evidence if the payor has established pro-

cedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor’s obligation to report under § 1.6049-4 and this section and noting in its records the date on which the document was received and reviewed. Documentary evidence furnished for a payment of an amount subject to withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under § 1.1474-1(d)(2) must contain all of the information that is necessary to complete a Form 1042-S for that payment. See §§ 1.1471-3(c) and 1.1471-4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in § 1.6049-4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in § 1.1441-1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441-1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441-1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441-1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(iv) For accounts opened on or after July 1, 2014, and before January 1, 2015, and for obligations entered into on or after July 1, 2014, and before January 1, 2015, a payor may continue to apply the rules of §§ 1.6049-5(c)(1) and (c)(4) as in effect

and contained in 26 CFR part 1 revised April 1, 2013, rather than this paragraph (c)(1) and paragraph (c)(4) of this section. A payor that applies the rules of §§ 1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to an account or obligation must also apply § 1.1441-6(c)(2) (to the extent applicable) and § 1.6049-5(e) both as in effect and contained in 26 CFR part 1 revised April, 2013, with respect to the account or obligation.

(2) *Other applicable rules*. The provisions of § 1.1441-1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term “payor” for the term “withholding agent” and disregarding the fact that the provisions under § 1.1441-1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441-1(b)(2)(vii) for provisions dealing with reliable association of a payment with documentation.

(3) *Standards of knowledge*. A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441-7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W-9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)-3(e) of this chapter (see the information and certification described in § 31.3406(h)-3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W-9). The provisions of § 1.1441-7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441-7(b)(2) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if

the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in § 1.1471-1(b)(150)) or another statement to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in § 1.1441-1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia described in § 1.1471-3(c)(6)(ii)(C)(I). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) *Statement in lieu of documentary evidence with respect to accounts.* If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (c)(4)(i) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also § 1.1471-4(c) or an applicable IGA for

additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must state, "By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days." Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or § 1.1471-3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph § 1.1471-1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under § 1.1471-3(d) (by substituting the term "payor" for the term "withholding agent") without any other documentary evidence.

(ii) *Documentation under IGA.* A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or information establishing a payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or § 1.1441-1(e)(2).

(iii) *Maintenance of documentation and written statement.* A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in § 1.1471-1(b)(4)). A payor retains a record of documentary evidence

reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in § 1.1441-7(b)(8). Any statement described in paragraph (c)(4)(i) of this section, must be retained in accordance with § 1.1471-3(c)(6)(iii).

(5) \* \* \*

(i) \* \* \*

(F) A U.S. branch or territory financial institution described in § 1.1441-1(b)(2)(iv) that is treated as a U.S. person. \* \* \* \*

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

*Example 1.* FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest under paragraph (b)(6) of this section for purposes of information reporting under section 6049 because it is not paid and received outside the United States within the meaning of § 1.6049-4(f)(16).

*Example 2.* The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W-8 in accordance with the provisions of § 1.1441-1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

*Example 3.* The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441-1(e)(1)(ii).

*Example 4.* The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. The payment by NC to D is paid and received outside of the United States under § 1.6049-4(f)(16) and therefore is not considered to be a payment of interest for purposes of section 6049 pursuant to paragraph (b)(6) of this section. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation—*

(1) *Identifying the payee.* The provisions of §§ 1.1441-1(b)(2), 1.1441-5(c)(1) and (e)(2) and (3) shall apply (by substituting the term “payor” for the term “withholding agent”) to identify the payee (other than a payee included in a chapter 4 withholding rate pool described in paragraph (b)(14) of this section) for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of an amount that is not subject to withholding under chapter 3 of the Code and that is not a withholdable payment (as defined in § 1.6049-4(f)(15)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441-1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments are as follows:

(i) The provisions of § 1.1441-1(b)(2)(ii), dealing with payments to a U.S. agent or intermediary of a foreign person, shall not apply. Thus, a payment to a U.S. agent or intermediary of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches or territory financial institution described in § 1.1441-1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch or territory financial institution is otherwise treated as a U.S. person for payments of amounts subject to withholding under chapter 3 and withholdable payments, and irrespective of the fact that the branch or territory financial institution is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation—*

(i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter 61 to which this paragraph (d)(2) applies), the provisions of § 1.1441-1(b)(3)(i) through (ix)

and § 1.1441-5(d) and (e)(6) shall apply (by substituting the term “payor” for the term “withholding agent”) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441-1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Code or are withholdable payments. The provisions of § 1.1441-1(b)(3)(iii)(D) and (vii)(B) (referencing presumption rules for payments with respect to offshore obligations) shall not apply to a payment of an amount not subject to withholding under chapter 3, unless it is an amount that is a withholdable payment made to a payee that is an entity. Thus, in the case of a withholdable payment made to an entity, the presumption rules of § 1.1441-1(b)(3)(iii)(D) and (vii)(B) shall apply regardless of whether the payment is an amount subject to withholding under chapter 3. Additionally, in the case of an amount paid outside the United States with respect to an offshore obligation described in § 1.1441-1(b)(3)(iii)(D) or (vii)(B) of an amount not subject to withholding under chapter 3 and that is treated as made to a payee that is an individual, the presumption rules of § 1.1441-1(b)(3)(iii) shall not apply, and the payee shall be presumed a U.S. person only when the payee has any of the indicia of U.S. status that are described in § 1.1441-7(b)(5) or (8). In a case in which a withholding agent makes a withholdable payment that cannot reliably be associated with documentation, see § 1.1471-3(f)(4) and (5) for determining the status of the payee for chapter 4 purposes when the payment is treated as made to a foreign entity (by substituting the term “payor” for the term “withholding agent”). The rules of § 1.1441-1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by substituting the term “payor” for the term “withholding agent.” For this purpose, the information, documentary evidence, statement, or other documentation described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441-6(c)(2) (or credits an account with broker proceeds from securities described in § 1.1441-6(c)(2)), that are reportable under section 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person (and apply the grace period described in § 1.1441-1(b)(3)(iv)) if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441-1(e)(2), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441-1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W-8 or documentary evidence of foreign status, the payor may apply the provisions of the grace period described in § 1.1441-1(b)(3)(iv), beginning on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441-1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account for purposes of this paragraph (d)(2)(ii) if the account holder already holds an account at the branch location at which the new account is opened, or if the account is treated as a consolidated obligation as defined in § 1.1471-1(b)(23) for purpose of chapter 4 to the extent the account does not receive any amounts subject to withholding under chapter 3. A new account shall also be treated as an existing account for purposes of this paragraph (d)(2)(ii) if

an account is held at another branch location if the institution maintains an account information system described in § 1.1441-1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that valid documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 28 percent (or other statutory tax rate that is applicable to backup withholding) of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account, or paid with respect to an account, during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)-3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)-3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441-1(e)(4)(iv). See § 1.1092(d)-1 for a definition of the term actively traded for purposes of this paragraph (d)(2)(ii).

(ii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate

or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W-9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. In the case of an amount that is a withholdable payment made to a joint account, however, see § 1.1471-3(f)(7) for when the payment is treated as made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471-1(b)(82)). For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Code or withholdable payments.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§ 1.1441-1(b)(3)(ii)(C) and (b)(3)(v)(A) and 1.1441-5(c) or (e) and that are subject to withholding under § 1.1441-2(a), the provisions of §§ 1.1441-1(b)(2)(v) and 1.1441-5(c)(1), (e)(2), and (3) shall apply (by substituting the term “payor” for the term “withholding agent”) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with § 1.1441-1(b)(2)(vii), the presumption rules of §§ 1.1441-1(b)(3)(v) and 1.1441-5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies). In the case of an amount that is a withholdable payment, see § 1.1471-3(c)(3) for rules to identify the payee and see § 1.1471-3(f)(5) for the presumption rule that shall apply to amounts treated as made to a foreign intermediary or flow-through entity (by substituting the term

“payor” for the term “withholding agent”). For example, where a withholdable payment is made to an intermediary under § 1.1471-3 that is treated as a nonparticipating FFI under § 1.1471-3(f)(5), the nonparticipating FFI shall be treated as the payee under § 1.1471-3(c)(3) and for purposes of this paragraph (d)(3)(i), therefore, no information return shall be required under this section.

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Code and that are not withholdable payments.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described in § 1.6049-4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount*—(A) *General rule.* A payment of U.S. source bank deposit interest not subject to chapter 4 withholding or U.S. source interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441-1(b)(3)(ii)(C), (b)(3)(v)(A), § 1.1441-5(d) or (e) (by substituting the term “payor” for the term “withholding agent”), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049-4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441-1(e)(3)(iv)(C)(2). However, a payor may rely on a withholding state-

ment provided by an intermediary described in § 1.1441-1(e)(3)(iv) (or similar withholding statement for a flow-through entity) that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049-4(c)(4)(iii)) only if it identifies the foreign intermediary or flow-through entity as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under § 1.1471-3(d)(4) (by substituting the term “payor” for the term “withholding agent”). See also § 1.6049-4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement.

\* \* \* \* \*

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the examples in this paragraph (d)(4). Unless otherwise specified in an example, the following facts apply: all FFIs, such as a nonqualified intermediary that is an FFI, are treated as participating FFIs; all payees have been identified with chapter 4 statuses that do not require withholding under chapter 4; and none of the payments are withholdable payments.

*Example 1.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States that is a withholdable payment to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a Form W-9, or withholding certificate from X as defined in § 1.1441-1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049-4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii) and

1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The presumption of U.S. status applies even though the payment is a withholdable payment (see paragraph (d)(2) of this section and § 1.1471-3(f)(2) cross referencing the presumption rules of § 1.1441-1(b)(3)). The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W-9. No withholding or reporting applies to the payment under chapter 3 or 4 of the Code.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441-2(a) or a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under § 1.6049-5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W-9, the foreign source interest is subject to backup withholding under section 3406.

*Example 3.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in § 1.1441-1(c)(16) nor does it have documentary evidence as described in § 1.1441-1(e)(1)(ii)(A)(2) and § 1.6049-5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in § 1.1441-2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441-1(b)(2) and § 1.1441-5(c) and (e) to determine the payee. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441-1(b)(3)(ii) apply to

determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and § 1.1441-5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under § 1.1441-5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30% of the interest payment under § 1.1441-1(b)(1) and report the payment on Form 1042-S in accordance with § 1.1461-1(c).

*Example 4.* (i) *Facts.* The facts are the same as in *Example 3*, except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3*. F is a withholding agent under § 1.1441-7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

*Example 5.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI. USP makes a payment outside the United States of interest from sources outside the United States with respect to an offshore obligation held by X. USP does not have a withholding certificate from X as defined in § 1.1441-1(c)(16) nor does it have documentary evidence as described in §§ 1.1471-3(c)(5)(i) and 1.6049-5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in § 1.6049-4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in § 1.1441-2(a) and is not a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the rules of §§ 1.1441-1(b)(2) and 1.1441-5(c) and (e) to determine the payee of the interest. Under § 1.1441-1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441-5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, § 1.1441-1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under § 1.1441-1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441-1(b)(3)(iii) and 1.1441-5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) of this section also states that the presumptions of foreign status for payments made with respect to offshore obligations contained in §§ 1.1441-1(b)(3)(iii)(D) and 1.1441-5(d)(2) do not apply to amounts that are not subject to withholding and that are not withholdable payments described in paragraph (d)(2)(i). Therefore, under §§ 1.1441-

1(b)(3)(iii) and 1.1441-5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits "98." Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under § 31.3406(g)-1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

*Example 6. (i) Facts.* The facts are the same as in *Example 5*, except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5*. However, F is a non-U.S. payor paying foreign source interest outside the United States, and there is no indication that the amount is received in the United States under § 1.6049-4(f)(16). Thus, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

*Example 7. (i) Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI, makes a payment of U.S. source interest that is a withholdable payment to NQI, a nonqualified intermediary as defined in § 1.1441-1(c)(14), that is a certified deemed-compliant FFI under § 1.1471-5(f)(2). The interest is paid inside the United States to an account of a bank or other financial institution maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441-1(e)(3)(iii) that includes its chapter 4 status, but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under § 1.1441-2(a). USP may treat the payment as made to a foreign intermediary under § 1.1441-1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI and may except NQI from withholding under chapter 4 of the Code given NQI's status for chapter 4 purposes as a deemed-compliant FFI. Under paragraph (d)(3)(i) of this section, USP must then apply § 1.1471-3(c)(3) to treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of § 1.1441-1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See § 1.1441-1(b)(2)(vii). As the payment is a withholdable payment, the interest is treated as paid to a nonparticipating FFI under § 1.1471-3(f)(4). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section. See § 1.1471-2(a) for the withholding requirement with respect to the payment and § 1.1474-1(d)(2) for the requirement to report the payment on Form 1042-S.

*Example 8. (i) Facts.* The facts are the same as in *Example 7*, except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section and is not a withholdable payment.

(ii) *Analysis.* Under § 1.1441-1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under § 1.1441-1(b)(2)(vii). Therefore, the pay-

ment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under § 1.1441-1(b) at a rate of 30% and is subject to reporting on Form 1042-S under § 1.1461-1(c).

*Example 9. (i) Facts.* The facts are the same as in *Example 8*, except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 8*.

*Example 10. (i) Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest (other than deposit interest) to NQI, a foreign corporation and a nonqualified intermediary as defined in § 1.1441-1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441-1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Code and is not a withholdable payment. See §§ 1.1441-2(a) and 1.1473-1(a). Under paragraph (d)(3)(ii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments described in paragraph (d)(2)(i) of this section that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in § 1.6049-4(c) absent actual knowledge that the payee is a U.S. person who is not an exempt recipient. Therefore, the foreign source interest is not subject to reporting on Form 1099.

*Example 11. (i) Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is a bank. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in § 1.1441-1(c)(14). The redemption proceeds are not paid outside of the United States as they are paid with respect to an account NQI has with a branch of a bank in the United States. See § 1.6049-5(e)(2). NQI provides a nonqualified intermediary withholding certificate as described in § 1.1441-1(e)(3)(iii) that includes a certification of its status as a registered deemed-compliant FFI but does not attach any payee documentation or a withholding statement described in § 1.1441-1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(i)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding with respect to offshore obligations contained in § 31.3406(g)-1(e) of this chapter does not apply, and the payment is subject to backup withholding.

*Example 12. (i) Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984, that mature 30 years from their issuance dates. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). Additionally, the interest is not a withholdable payment under § 1.1471-2(b) as

the interest is a payment with respect to a grandfathered obligation for purposes of chapter 4 of the Code. NQI, a U.S. payor, is a nonqualified foreign intermediary, as defined in § 1.1441-1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in § 1.1441-1(e)(3)(iii) to which it has attached a valid Form W-9 for A, and two valid beneficial owner Forms W-8, one for B and one for C. A is not an exempt recipient under § 1.6049-4(c). NQI furnishes a withholding statement, described in § 1.1441-1(e)(3)(iv), in which it allocates 20% of the U.S. source interest to A, but does not allocate the remaining 80% of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* As the interest is not a withholdable payment under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441-1(b)(2)(v) to determine the payees of the interest even though NQI has not certified its status for purposes of chapter 4 of the Code. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20% of the payment with valid documentation provided by A, P must treat 20% of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80% of the payment with valid documentation under § 1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441-1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042-S under § 1.1461-1(c).

*Example 13. (i) Facts.* The facts are the same as in *Example 12*, except that P can reliably associate 30% of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441-1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30% of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70% of the payment with valid documentation under § 1.1441-1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441-1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441-1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042-S under § 1.1461-1(c).

*Example 14.* (i) *Facts.* The facts are the same as in *Example 12*, except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii), P may treat the foreign source interest as paid to an exempt recipient as defined in § 1.6049-4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

*Example 15.* (i) *Facts.* The facts are the same as in *Example 12*, except that NQI is a non-U.S. payor.

(ii) *Analysis.* The analysis is the same as under *Example 12* with respect to B and C. However, because NQI is a non-U.S. payor, it may under § 1.6049-4(c)(4)(iii) allocate the portion of the payment to A to a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to P in lieu of furnishing the Form W-9 to P when NQI reports the payments in accordance with § 1.6049-4(c)(4)(i). In such a case, provided that P obtains a certification form confirming NQI's status as a participating FFI, P is excepted from reporting the payment under paragraph (b)(14) of this section because P can reliably associate the payment with the documentation provided by NQI.

(e) *Determination of whether amounts are considered paid outside the United States—(1) In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2) through (5) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of

the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864-4(c)(5)(i).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation issued before January 1, 2016, as described in § 1.871-14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) is illustrated by the following examples:

*Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

*Example 2.* Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864-4(c)(5)(i). The terms of C's deposit provide that it will be payable with accrued interest. Under paragraph (e)(2) of this section, FB is considered to pay the interest on C's deposit outside the United States.

*Example 3.* DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864-4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

*Example 4.* FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (e)(2) of this section.

*Example 5.* DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f), as in effect prior to the amendment by section 502 of the HIRE Act of 2010, and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871-14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A

by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

\* \* \* \* \*

(g) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

#### § 1.6049-5T [Removed]

Par. 36. Section 1.6049-5T is removed.

Par. 37. Section 1.6050N-1 is amended by revising (c)(1)(ii) to read as follows:

§ 1.6050N-1 *Statements to recipients of royalties paid after December 31, 1986.*

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Returns of information are not required for payments of royalties from sources outside the United States paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049-5(c)(5). For circumstances in which a payment is considered to be paid and received outside the United States, see § 1.6049-4(f)(16).

\* \* \* \* \*

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 38. The authority citation for part 31 continues to read in part as follows:

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

Par. 39. Section 31.3406(g)-1 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 31.3406(g)-1 *Exception for payments to certain payees and certain other payments.*

\* \* \* \* \*

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States*

*banks and brokers, and others.* For reportable payments made after June 30, 2014, a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States (as defined in § 1.6049-4(f)(16)) with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) or on gross proceeds from a sale effected outside the United States (as defined in § 1.6045-1(g)(3)(iii)), unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required on a reportable payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471-1(b)(91)) or another payor in accordance with the withholding provisions under chapter 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) of recalcitrant account holders (as described in § 1.6049-4(f)(11)), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471-4(b) or § 1.1471-2(a). For rules applicable to notional principal contracts, see § 1.6041-1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see this paragraph (e) as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(f) *Effective/applicability date.* This section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016).

#### § 31.3406(g)-1T [Removed]

Par. 40. Section 31.3406(g)-1T is removed.

Par. 41. Section 31.3406(h)-2 is amended by revising paragraph (a)(3)(i) and adding paragraph (i) to read as follows:

§ 31.3406(h)-2 *Special rules.*

(a) \* \* \*

(3) \* \* \*

(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W-8 or documentary evidence described in § 1.1441-1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions); any one of the joint owners who has not established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5; or, in the case of a withholdable payment (as defined in § 1.6049-4(f)(15)), any joint payee does not appear to be an individual as described in § 1.1471-3(f)(7). See § 1.6049-5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

\* \* \* \* \*

(i) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016.)

#### § 31.3406(h)-2T [Removed]

Par. 42. Section 31.3406(h)-2T is removed.

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 43. The authority citation for part 301 continues to read in part as follows:

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

Par. 44. Section 301.6402-3 is amended by revising paragraphs (e) and (f) to read as follows:

§ 301.6402-3 *Special rules applicable to income tax.*

\* \* \* \* \*

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax

liability for that income was fully satisfied at source through withholding under chapters 3 or 4 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 or 4 of the Code, a copy of the Form 1042-S, “Foreign Person’s U.S. Source Income subject to Withholding,” Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax,” or other statement (required under § 1.1446-3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461-1(c)(1)(i), § 1.1474-1(d)(1)(i), or § 1.1446-3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 8805 or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. No claim for refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to reimbursement or set-off procedures (described in § 1.1461-2(a)(2),(3) or § 1.1474-2(a)(3), (4) of this chapter). In addition, no claim for refund or credit may be made by a taxpayer for any amount that has been repaid to a qualified intermediary (as described in § 1.1441-1(e)(5)(ii)) or a participating FFI (as described in § 1.1471-1(b)(91)) pursuant to a collective refund filed by such entity on behalf of the taxpayer. See § 1.1441-1(e)(5)(iii) (describing a qualified intermediary agreement) and § 1.1471-4(h) (describing a collective refund). Upon request, a taxpayer must also submit such documentation as the IRS, may require establishing that the taxpayer is the beneficial owner of the income for which a claim for refund or credit is being made and verifying the grounds and facts set forth in taxpayer’s claim as required by § 301.6402-2(b)(1). See § 1.1474-5 for additional requirements that may apply in the case of a refund of tax withheld under chapter 4.

(f) *Effective/applicability date*—(1) Except as provided in paragraph (f)(2) of this section, this section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016.)

(2) References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446-3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008. References in paragraph (e) of this section to amounts withheld under chapter 4 of the Code and claims made with respect to amounts withheld under chapter 4 of the Code shall apply to withholdable payments made after June 30, 2014.

### § 301.6402-3T [Removed]

Par. 46. Section 301.6402-3T is removed.

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

Approved: December 22, 2016.

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

(Filed by the Office of the Federal Register on December 30, 2016, 4:15 p.m., and published in the issue of the Federal Register for January 6, 2017, 82 F.R. 2046)

26 CFR 1.1471-1; 26 CFR 1.1471-2; 26 CFR 1.1471-3; 26 CFR 1.1471-4; 26 CFR 1.1471-5; 26 CFR 1.1471-6; 26 CFR 1.1472-1; 26 CFR 1.1473-1; etc

## T.D. 9809

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

### Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations; final regulations; temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. This document finalizes (with changes) certain proposed regulations under chapter 4, and withdraws corresponding temporary regulations. This document also includes temporary regulations providing additional rules under chapter 4. The text of the temporary regulations also serves as the text of proposed regulations set forth in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin**. The regulations included in this document affect persons making certain U.S.-related payments to FFIs and other foreign persons and payments by FFIs to other persons.

**DATES:** *Effective date.* These regulations are effective on January 6, 2017.

*Applicability date.* For dates of applicability, see §§ 1.1471-1(c), 1.1471-2(c), 1.1471-3(g), 1.1471-4(j), 1.1471-5(l), 1.1471-6(i), 1.1472-1(h), 1.1473-1(f), 1.1474-1(j), and 1.1474-6(g).

**FOR FURTHER INFORMATION CONTACT:** Kamela Nelan at (202) 317-6942 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

#### **Paperwork Reduction Act**

The collection of information in these final and temporary regulations is contained in a number of provisions including §§ 1.1471-3, 1.1471-4, 1.1472-1, 1.1474-1, and 1.1474-6. In addition, these final and temporary regulations amend a number of collections of information set out in final regulations under chapter 4 issued in TD 9610 and temporary regulations under chapter 4 issued in TD 9657. The IRS intends that the information collection requirements of these final and temporary regulations will be satisfied by filing Forms 8957, 8966, the W-8 series of forms, W-9, 1042, 1042-S, and the 1099 series of forms, as well as certain income tax returns (for example, Forms 1040 and

1120F). As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these final and temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

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

## Background

This document contains amendments to the regulations under chapter 4 of the Code (sections 1471 through 1474) commonly known as the Foreign Account Tax Compliance Act, or FATCA. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to FFIs that do not agree to report certain information to the IRS regarding their U.S. accounts, and on certain payments to certain nonfinancial foreign entities (NFFE) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents.

On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874), and on September 10, 2013, corrections to the final regulations (September 2013 corrections) were published in the **Federal Register** (78 FR 55202). TD 9610 and the September 2013 corrections are referred to collectively in this preamble as the 2013 final regulations. On March 6, 2014, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (TD 9657) under chapter 4 in the **Federal Register** (79 FR 12812), and corrections to the temporary regulations were published in the **Federal Register** on July 1, 2014 (July 2014 corrections), and November 18, 2014 (November 2014 corrections) (79 FR 37175 and 78 FR 68619, respectively). TD 9657,

the July 2014 corrections, and the November 2014 corrections are referred to collectively in this preamble as the 2014 temporary regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12868).

On March 6, 2014, the Treasury Department and the IRS published temporary regulations (TD 9658) under chapters 3 and 61 and sections 3406 and 6402 (79 FR 12726) (temporary coordination regulations). A notice of proposed rulemaking cross-referencing the temporary coordination regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12880). The temporary coordination regulations modify certain provisions of the regulations under chapters 3 and 61 and sections 3406 and 6402 to coordinate with the 2013 final regulations and the 2014 temporary regulations.

Comments were received in response to the 2014 temporary regulations, but no public hearing was requested and none was held. After consideration of the comments received, this Treasury decision generally adopts as final regulations the 2014 temporary regulations, with the modifications described in the Summary of Comments and Explanation of Revisions and Provisions of this preamble, and removes the corresponding temporary regulations. This Treasury decision also includes corrections and makes certain modifications to the 2013 final regulations. Additionally, this Treasury decision includes temporary regulations, cross-referenced in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin**, revising certain sections of the 2013 final regulations. Following the publication of the 2014 temporary regulations, the Treasury Department and the IRS received comments suggesting changes to the 2013 final regulations. These comments are not individually discussed in the Summary of Comments and Explanation of Revisions and Provisions except where a suggestion is adopted in the temporary regulations.

Part I of the Summary of Comments and Explanation of Revisions and Provisions of this preamble summarizes comments received regarding the 2014 tempo-

rary regulations and explains the changes made to the 2013 final regulations and 2014 temporary regulations in response to those comments. Several of these revisions were described in Notice 2014–33, 2014–21 I.R.B. 1033; Notice 2015–66, 2015–41 I.R.B. 541; and Notice 2016–08, 2016–6 I.R.B. 304. Part I of the Summary of Comments and Explanation of Revisions and Provisions of this preamble also describes additional technical corrections and revisions to the 2013 final regulations and 2014 temporary regulations. Part II of the Summary of Comments and Explanation of Revisions and Provisions of this preamble summarizes the temporary regulations included in this document.

## Summary of Comments and Explanation of Revisions and Provisions

### I. Final Regulations

#### A. Comments and changes to § 1.1471–1—Scope of chapter 4 and definitions

##### 1. Branch

The 2014 temporary regulations define the term *branch* in § 1.1471–1T(b)(10) for purposes of chapter 4 by cross-referencing the definition of branch for participating FFIs in § 1.1471–4T(e)(2)(ii). However, § 1.1471–4T(e)(2)(ii) states that the definition of branch in that paragraph applies only to participating FFIs for purposes of § 1.1471–4, which is inconsistent with the cross-reference in § 1.1471–1T(b)(10) to § 1.1471–4T(e)(2)(ii) for the general definition of branch for chapter 4, and does not cover foreign branches of U.S. financial institutions. Therefore, these final regulations provide a definition of branch that applies for purposes of chapter 4 with respect to a branch of a financial institution.

##### 2. Nonreporting IGA FFI

Under the 2014 temporary regulations, the term *nonreporting IGA FFI* means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI, and an FFI that is a resident of, or located or established in, a

Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under § 1.1471-5T(f)(2). This definition of a nonreporting IGA FFI, however, excludes a nonreporting financial institution that is treated as a registered deemed-compliant FFI under Annex II of the Model 2 IGA and a nonreporting financial institution that satisfies the requirements of a deemed-compliant FFI under the chapter 4 regulations rather than the IGA. The Instructions for Form W-8BEN-E, “Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities),” state that an FFI that is treated as a nonreporting IGA FFI under an applicable IGA, including an entity treated as a registered deemed-compliant FFI under an applicable IGA, should certify its status as a nonreporting IGA FFI. The Instructions for Form W-8BEN-E also provide that a nonreporting IGA FFI claiming a deemed-compliant status under the chapter 4 regulations should certify its status as a nonreporting IGA FFI.

To provide an inclusive definition of nonreporting IGA FFI consistent with the IGAs and to coordinate with the Instructions for Form W-8BEN-E, these final regulations revise the definition of nonreporting IGA FFI in the 2014 temporary regulations to mean an FFI that is a resident of, or located or established in, a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that is a nonreporting financial institution described in Annex II of the Model 1 or Model 2 IGA, a registered deemed-compliant FFI described in § 1.1471-5(f)(1)(i)(A) through (F), a certified deemed-compliant FFI described in § 1.1471-5(f)(2)(i) through (v), or an exempt beneficial owner described in § 1.1471-6.

To coordinate with the revised definition of nonreporting IGA FFI, these final regulations modify the definition of certified deemed-compliant FFI to exclude nonreporting IGA FFIs because some nonreporting IGA FFIs are required to obtain global intermediary identification numbers (GIINs). These final regulations instead include all nonreporting IGA FFIs in the definition of deemed-compliant FFI in § 1.1471-5(f).

These final regulations also modify the documentation rules in § 1.1471-3(d)

(7)(i) to incorporate the registration requirements for certain nonreporting IGA FFIs. Under these final regulations, a withholding agent must obtain a GIIN from a nonreporting IGA FFI that is treated as a registered deemed-compliant FFI under Annex II of the Model 2 IGA or that is a registered deemed-compliant FFI described in § 1.1471-5(f)(1)(i)(A) through (F).

### 3. Preexisting Obligation (and Related Documentation Requirements)

Under the 2014 temporary regulations, the term *preexisting obligation* is defined as: (i) an obligation outstanding on the later of the date the FFI is issued a GIIN or June 30, 2014, for a withholding agent that is a participating FFI; (ii) an obligation issued prior to the later of the date of the FFI’s registration or the date the FFI is required to implement its account opening procedures, for a withholding agent that is a registered-deemed compliant FFI; and (iii) an obligation outstanding on June 30, 2014, for any other withholding agent not described in (i) and (ii).

Comments to the 2014 temporary regulations and revised Forms W-8BEN and W-8BEN-E (published shortly after the 2014 temporary regulations were published) noted difficulties for withholding agents and FFIs to document new account holders and payees by the time specified in the 2014 temporary regulations. In response to comments, Notice 2014-33 was issued and announced further transitional relief for withholding agents to treat certain new entity accounts as preexisting accounts for purposes of documenting such account holders. These final regulations implement the transitional relief by modifying the definition of a preexisting obligation to provide that a withholding agent or an FFI may treat an obligation held by an entity with the withholding agent or FFI that is issued, opened, or executed on or after July 1, 2014, and before January 1, 2015, as a preexisting obligation. However, the timeframe for documenting preexisting entity obligations in § 1.1471-4(c)(3) is unchanged; that is, the timeframes provided in § 1.1471-4(c)(3) apply to all preexisting entity obligations, including those obligations described in the preceding sentence. Furthermore, as provided in Notice 2014-

33, these final regulations specify that if a participating FFI treats an entity account opened on or after July 1, 2014, and before January 1, 2015, as a preexisting account, the FFI may not apply the exception from identification and documentation for certain low-value preexisting entity accounts under § 1.1471-4(c)(3)(iii)(A) to that account.

These final regulations also clarify the definition of a preexisting obligation in the 2014 temporary regulations to remove the references to withholding agents in the second and third sentences of § 1.1471-1(b)(104)(i) because the term *preexisting obligation* may apply to a participating FFI or registered deemed-compliant FFI that is not a withholding agent because the FFI never has control or custody of withholdable payments (as, for example, in the case of a participating FFI or registered deemed-compliant FFI that is documenting preexisting account holders). Therefore, under these final regulations, a preexisting obligation includes an obligation maintained by a participating FFI on the later of the date the FFI is issued a GIIN or June 30, 2014, and an obligation maintained by a registered deemed-compliant FFI prior to the later of the date of the FFI’s registration or the date the FFI is required to implement its account opening procedures, regardless of whether the participating FFI or registered deemed-compliant FFI is a withholding agent.

### 4. U.S. Person

The 2014 temporary regulations define the term *U.S. person* to include a person described in section 7701(a)(30), but do not specify whether a U.S. person includes a dual resident (that is, an individual who is considered a resident of the United States and also a resident of a country with which the United States has an income tax treaty). For purposes of chapter 3, a person that is a resident of a foreign country under the residence article of an income tax treaty and § 301.7701(b)-7(a)(1) (which therefore includes a person that is a dual resident) is a nonresident alien individual. See § 1.1441-1(c)(3)(ii). The Treasury Department and the IRS have determined that the treatment of dual residents

should be consistent in chapters 3 and 4 and that dual residents should be treated as non-U.S. persons for purposes of chapters 3 and 4. Accordingly, these final regulations revise the 2014 temporary regulations to provide that an individual will not be treated as a U.S. person 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 the individual's U.S. tax liability. Final regulations under chapter 3 published elsewhere in this issue of the **Bulletin** modify the definition of nonresident alien individual to provide a description of a dual resident consistent with the definition included in these final regulations (but do not change the substantive rule in chapter 3).

The regulations under chapter 3 also provide that an alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is treated as a nonresident alien individual for purposes of chapter 3. In order to have a consistent rule, these final regulations provide that a U.S. person does not include an alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States.

These final regulations also revise the definition of U.S. person to remove an unnecessary restriction on certain foreign insurance companies. The 2014 temporary regulations provide that a U.S. person includes a foreign insurance company that has made an election under section 953(d) to be treated as a U.S. person if the foreign insurance company is not a specified insurance company (as defined in § 1.1471-5(e)(1)(iv)) and is not licensed to do business in any state. The preamble to the 2014 temporary regulations explains that the definition of U.S. person in the 2013 final regulations is modified in the 2014 temporary regulations to include certain foreign insurance companies that have made an election under section 953(d) in light of the existing requirements applicable to these types of entities to report U.S. owners on the entity's U.S. income tax return. The requirement included in the

2014 temporary regulations that a U.S. person that is not a specified insurance company not be licensed to do business in any state is unnecessary because insurance companies that are not specified insurance companies are required under section 953(d) to report information regarding their U.S. owners regardless of whether they are licensed to do business in a state. These final regulations revise the 2014 temporary regulations to provide that a U.S. person includes a foreign insurance company that has made an election under section 953(d) and that is not a specified insurance company (regardless of whether such entity is licensed to do business in a state).

## 5. Withholding

The 2013 final regulations define the term *withholding* as the deduction and remittance of tax at the applicable rate from a payment. However, the definition of withholding for purposes of chapter 3 does not include remittance. See § 1.1441-1(c)(1). In order to coordinate with chapter 3, these final regulations modify the definition of withholding in the 2013 final regulations to mean the deduction and withholding of tax at the applicable rate from a payment.

### *B. Comments and changes to § 1.1471-2—Requirement to deduct and withhold tax on withholdable payments to certain FFIs*

#### 1. Requirement to Withhold on Payments to FFIs—Special Withholding Rules—Withholding Obligation of a Foreign Branch of a U.S. Financial Institution

The 2014 temporary regulations generally provide that a foreign branch of a U.S. financial institution is a withholding agent and is not an FFI. The 2014 temporary regulations also provide that a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI, and must withhold in accordance with § 1.1471-2 and § 1.1472-1(b). However, the 2014 temporary regulations do not fully coordinate such branch's withholding and documentation

obligations as a U.S. withholding agent with its obligations as a reporting Model 1 FFI. These final regulations clarify in § 1.1471-2(a)(2)(v) that a foreign branch of a U.S. financial institution is a U.S. withholding agent and a payee that is a U.S. person, and therefore has primary withholding responsibility on withholdable payments that it makes and is not subject to withholding under chapter 4 on withholdable payments that it receives. A foreign branch of a U.S. financial institution that is a reporting Model 1 FFI or that has entered into a qualified intermediary (QI) agreement may also be an FFI. The treatment of a foreign branch as an FFI, however, does not affect its withholding responsibilities as a U.S. withholding agent. These final regulations allow a foreign branch that is treated as an FFI to apply the procedures under Annex I of an applicable Model 1 or Model 2 IGA to document the chapter 4 status of a payee of a withholdable payment that is a holder of an account maintained by the branch in the Model 1 or Model 2 IGA jurisdiction.

## 2. Grandfathered Obligations

### i. Definitions

Under the 2013 final regulations, a withholdable payment does not include a payment made under a grandfathered obligation. A grandfathered obligation includes certain obligations outstanding on July 1, 2014, as well as any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) is posted to secure both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating, pro rata by value, the collateral (or each item in the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral). Comments stated that it is unduly burdensome for withholding agents that are financial institutions to comply with the pro rata rule described in the preceding sentence. As announced in Notice 2015-66, these final regulations modify the 2013 final regulations to provide that the pro rata rule is not

mandatory, and that if a withholding agent does not apply the pro rata rule, the withholding agent may allocate all withholdable payments on collateral (or a pool of collateral) to obligations that are not grandfathered and, if applicable, apply withholding to such payments.

The Treasury Department and the IRS also received comments requesting that the definition of grandfathered obligation include a new obligation that is created as a result of posting a grandfathered obligation as collateral. Under the 2013 final regulations, to the extent that a secured party is treated as the beneficial owner of a grandfathered obligation that is pledged as collateral after July 1, 2014, payments made by the secured party to the pledgor are treated as made under a newly created obligation, resulting in substitute payments. Under the 2014 temporary regulations, such substitute payments are subject to withholding if paid after January 1, 2017 (when the transitional exception from withholding for payments on collateral arrangements expires). The comment noted difficulties for certain withholding agents that are financial institutions to determine whether payments made with respect to collateral are substitute payments or payments made with respect to the collateral because collateral is frequently rehypothecated from omnibus accounts that include collateral from many counterparties. As previewed in Notice 2015-66, these final regulations amend the definition of grandfathered obligation to include any obligation that gives rise to a payment of substitute interest (as defined in § 1.861-2(a)(7)) and that arises from the payee posting collateral that is a grandfathered obligation under § 1.1471-2(b)(2)(i)(A)(I).

ii. Determination by withholding agent of grandfathered treatment—  
Determination of material modification

The 2014 temporary regulations provide that a withholding agent is required to treat a modification of an obligation as material only if the withholding agent has actual knowledge thereof, such as in the event the withholding agent receives a disclosure indicating that there has been or will be a material modification to the obligation. A comment requested that re-

ceipt of disclosure from the issuer be the only instance in which a withholding agent has actual knowledge of a material modification. The Treasury Department and the IRS considered similar comments when drafting the 2014 temporary regulations and believe that the 2014 temporary regulations strike the correct balance by providing withholding agents with a standard that is narrow in scope without limiting the circumstances when there is actual knowledge. While the expectation is that a withholding agent that is a broker might only have actual knowledge of a material modification upon receiving notice from the issuer, the Treasury Department and the IRS do not believe that it is appropriate to foreclose the possibility that a withholding agent might otherwise have actual knowledge of the material modification absent notice from the issuer. Therefore, these final regulations do not include any revisions to the determination of a material modification.

C. *Comments and changes to § 1.1471-3—Identification of payee*

1. Rules for Reliably Associating a Payment with a Withholding Certificate or Other Appropriate Documentation

i. Requirements for validity of certificates—Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)

The 2014 temporary regulations provide that a withholding agent may treat a person receiving a withholdable payment as a QI if the withholding agent can reliably associate the payment with a valid Form W-8IMY, “Certificate for Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting,” as described in § 1.1471-3(c)(3)(iii). Section 1.1471-3(c)(3)(iii) provides the requirements for a withholding certificate of an intermediary, flow-through entity, or U.S. branch. QIs must provide a qualified intermediary withholding certificate (that is, a Form W-8IMY) to a withholding agent, even when the QI is acting as a qualified derivatives dealer (QDD) under § 1.1441-1(e)(6)(i). See § 1.1441-1(e)(3)(ii) and (e)(6)(i)(A). To coordinate with the requirements of a QI that is acting as a

QDD, these final regulations provide that an intermediary, QI, flow-through entity, or U.S. branch must provide a valid Form W-8IMY to a withholding agent for chapter 4 purposes. This revision is intended only to clarify which entities provide a Form W-8IMY and does not affect the general meaning of intermediary in the chapter 4 regulations as including QIs.

The 2014 temporary regulations provide that a U.S. branch of a participating FFI or registered deemed-compliant FFI (whether or not the U.S. branch is treated as a U.S. person) must provide on its withholding certificate the GIIN assigned to the participating FFI or a registered deemed-compliant FFI. Under § 1.1441-1T(b)(2)(iv)(C) of the temporary coordination regulations, a U.S. branch of an FFI that agrees to be treated as a U.S. person is subject to the withholding, due diligence, and information reporting rules that apply to U.S. withholding agents under chapters 3 and 4 and must be either a participating FFI or registered deemed-compliant FFI to qualify for treatment as a U.S. person. Under the 2014 temporary regulations, a U.S. branch of an FFI that does not agree to be treated as a U.S. person is required to report for chapter 4 purposes under § 1.1471-4T(d)(2)(iii)(C). Due to the expiration on January 1, 2017, of the transitional rules in § 1.1471-4T(e)(2)(v) and (e)(3)(iv) (relating to limited FFI and limited branch statuses), it may become more difficult for an FFI to continue to be able to claim participating FFI or registered deemed-compliant FFI status, including when it has other branches that do not agree to comply with the requirements to be a participating FFI or registered deemed-compliant FFI, and therefore more difficult for a U.S. branch to avoid being withheld upon under chapter 4 (even though the U.S. branch is compliant with FATCA and subject to IRS examination and summons procedures in the same manner as a U.S. withholding agent).

In recognition that a U.S. branch of an FFI that agrees to be treated as a U.S. person is subject to withholding, due diligence, and information reporting requirements similar to any other U.S. withholding agent (and U.S. payor for chapter 61 reporting), these final regulations no longer require a U.S. branch of an FFI that

agrees to be treated as a U.S. person to be a participating FFI or registered deemed-compliant FFI when acting as an intermediary. Therefore, a U.S. branch of an FFI that acts as an intermediary and that agrees to be treated as a U.S. person will not need to furnish a GIIN of the FFI of which it forms a part. In order to prevent a U.S. branch that is treated as a U.S. person from acting on behalf of other branches of the FFI that are treated as nonparticipating FFIs to avoid withholding under chapter 4 on payments made to customers of such other branches, if any, regulations under chapter 3 published elsewhere in this issue of the **Bulletin** provide that the U.S. branch must withhold on payments made to the other branch to the extent required for chapter 4 purposes as if the U.S. branch were an entity separate from such other branch.

Under these final regulations, a U.S. branch that does not agree to be treated as a U.S. person is not required to be part of an FFI that is a participating FFI or registered deemed-compliant FFI, provided that such branch, when acting as an intermediary for a payment, applies the rules described in § 1.1471-4(d)(2)(iii)(C). Section 1.1471-4(d)(2)(iii)(C) of these final regulations provides that such a U.S. branch must report its U.S. accounts and accounts held by owner-documented FFIs under § 1.1471-4(d)(3), (d)(5), or (d)(6) and apply the withholding and due diligence rules in § 1.1471-4(b) and (c)(2) to all of its accounts as if the U.S. branch were a participating FFI. These final regulations do not impose the verification requirements in § 1.1471-4(f) and (g) on such U.S. branches because such branches are subject to IRS examination and summons procedures in the same manner as a U.S. withholding agent.

Under these final regulations, a withholding agent making a withholdable payment to an intermediary that is a U.S. branch of an FFI that is not treated as a U.S. person must obtain the EIN of the U.S. branch and a certification that the U.S. branch is applying the rules described in § 1.1471-4(d)(2)(iii)(C). However, for a payment made before June 30, 2017, that the withholding agent can reliably associate with valid documentation from an intermediary that is a U.S. branch of an FFI not treated as a U.S. person, the

withholding agent will not be required to obtain the certification described in the preceding sentence. Therefore, a withholding agent that has previously documented such U.S. branch will have additional time to obtain the certification that the U.S. branch is applying the rules described in § 1.1471-4(d)(2)(iii)(C).

Because a U.S. branch of an FFI treated as a U.S. person is not required to be part of a participating FFI, and a U.S. branch of an FFI not treated as a U.S. person may avoid being withheld upon under chapter 4 even if the FFI of which it is a part has one or more branches that are treated as nonparticipating FFIs, these final regulations modify the definition of the term *participating FFI* to provide that an FFI that registers to agree to the terms of an FFI agreement may only do so if it agrees that all branches of the FFI, other than a branch that is a reporting Model 1 FFI or a U.S. branch, will comply with the terms of the FFI agreement. See Revenue Procedure 2014-38, 2014-29 I.R.B. 131, as may be amended, for the FFI agreement.

The changes in these final regulations only affect a U.S. branch when it is acting as an intermediary for a payment. For a U.S. branch that receives a payment for an entity that is the beneficial owner of the payment, see § 1.1471-3(c)(3)(ii) and the Instructions for Form W-8BEN-E (requiring a U.S. branch to provide on its withholding certificate a GIIN of the participating FFI or registered deemed-compliant FFI of which it is a part or any branch of such FFI).

ii. Requirements for validity of certificates—Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)—Withholding statement—Special requirements for an FFI withholding statement

The FFI agreement permits a participating FFI to provide a withholding statement that allocates a portion of a withholdable payment to a group of account holders for whom no reporting is required on any of Form 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding,” the Form 1099 series, and Form 8966, “FATCA Report” (an *exempt payee pool*). The preamble to the FFI agreement in Revenue Procedure 2014-38 provides that the 2014 temporary regulations will be amended to

incorporate the allowance for an exempt payee pool on an FFI withholding statement. However, the preamble to the FFI agreement incorrectly adds that an FFI providing an exempt payee pool is not required to provide documentation for the payees in the pool (even though such documentation would be required for chapter 3 purposes under a similar rule in the regulations under chapter 3).

To coordinate with the allowance in the FFI agreement, these final regulations provide that an FFI may include on its FFI withholding statement an allocation of a portion of a withholdable payment to a pool of account holders (other than non-qualified intermediaries and flow-through entities) for whom no reporting is required on any of Forms 1042-S, 1099, and 8966, provided the FFI provides to the withholding agent, for each account holder in the pool: (1) payee-specific information (including chapter 4 status) and any other information required for purposes of chapter 3 or 61 on the withholding statement; and (2) documentation. For example, a participating FFI may provide on its withholding statement an exempt payee pool for a payment of U.S. source interest on a bank deposit not subject to withholding or reporting under chapter 4 that is allocable to a pool of foreign account holders (that is, a withholdable payment that is not required to be reported on any of Forms 1042-S, 1099, and 8966) and provide the withholding agent with documentation for each account holder in the pool.

Under the 2014 temporary regulations, an FFI withholding statement, a chapter 4 withholding statement, or an exempt beneficial owner withholding statement that includes payee-specific information for purposes of chapter 4 must indicate both the portion of the payment allocated to each payee and each payee’s chapter 4 status. The 2014 temporary regulations also provide that an FFI withholding statement, a chapter 4 withholding statement, or an exempt beneficial owner withholding statement must include any other information that the withholding agent needs in order to fulfill its obligations under chapter 4. Since a withholding agent is required to report the chapter 4 status code for each payee on Form 1042-S, these final regulations clarify that

the chapter 4 status of a payee shown on a withholding statement must be the applicable chapter 4 status code used to report the payee on Form 1042-S. This modification is consistent with the requirement in the temporary coordination regulations that a nonqualified intermediary withholding statement include the chapter 4 status code for each payee (excluding a payee included in a chapter 4 withholding rate pool) used for filing Form 1042-S. Additionally, to coordinate with the temporary coordination regulations, these final regulations clarify that an FFI withholding statement provided by an FFI other than an FFI acting as a QI, WP, or WT must identify the GIIN of an intermediary or flow-through entity when required under § 1.1471-3(d) and the chapter 4 status code used for filing Form 1042-S. Finally, the description of the recalcitrant account holder pool on an FFI withholding statement in § 1.1471-3(c)(3)(iii)(B)(2)(i) is revised to cross-reference § 1.1471-1(b)(20) (rather than § 1.1471-4(d)(6)) to coordinate with the revisions to § 1.1471-1T(b)(20) in the July 2014 corrections.

iii. Requirements for validity of certificates—Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)—Withholding statement—Special requirements for chapter 4 withholding statement

Under the 2014 temporary regulations, a chapter 4 withholding statement must include an allocation of the payment to each payee (other than a payee that is a nonparticipating FFI). The Treasury Department and the IRS have determined that allocation information is unnecessary for purposes of this withholding statement when there is no withholding or reporting requirement with respect to a payment. Therefore, these final regulations provide that a chapter 4 withholding statement may include an allocation of a portion of the payment to a pool of payees (rather than to each payee) for whom no reporting is required on any of Forms 1042-S, 1099, and 8966, provided that the withholding statement contains payee-specific information (including chapter 4 status) and any other information required for purposes of chapter 3 or 61,

and documentation is provided to the withholding agent for each payee in the pool.

The 2014 temporary regulations permit a chapter 4 withholding statement to include pooled allocation information with respect to payees that are nonparticipating FFIs. These final regulations clarify that when a chapter 4 withholding statement provides pooled allocation information with respect to payees that are treated as nonparticipating FFIs, the withholding agent does not need to obtain documentation for each nonparticipating FFI included in the pool. These final regulations also remove an unnecessary cross-reference to chapter 61 in § 1.1471-3(c)(3)(iii)(B)(3).

iv. Requirements for documentary evidence—Foreign status—Entity government documentation

Under the 2013 final regulations, acceptable documentary evidence supporting a claim of foreign status includes, with respect to an entity, official documentation issued by an authorized government body. However, some common types of organizational documentation may not be considered “issued” by a governmental body (for example, articles of incorporation and partnership agreements). Therefore, these final regulations revise the 2013 final regulations to provide that acceptable documentary evidence supporting a claim of foreign status includes any documentation that substantiates that the entity is actually organized or created under the laws of a foreign country.

v. Applicable rules for withholding certificates, written statements, and documentary evidence—Period of validity—Indefinite validity

A comment noted that contemporaneous receipt of a beneficial owner withholding certificate and documentary evidence is not always practical and should not be a condition for indefinite validity of a withholding certificate. The Treasury Department and the IRS agree with the comment and have determined that these rules should be revised in both chapters 3 and 4. With respect to individuals, these final regulations cross-reference § 1.1441-1(e)(4)(ii)(B) (J), which is modified in regulations

published elsewhere in this issue of the **Bulletin** to provide that a beneficial owner withholding certificate and documentary evidence supporting the individual’s claim of foreign status will be treated as provided together if they are provided within 30 days of each other, regardless of which the withholding agent receives first. With respect to entities, these final regulations incorporate the rule in § 1.1441-1(e)(4)(ii)(B)(2), which is modified in regulations published elsewhere in this issue of the **Bulletin** to provide that a beneficial owner withholding certificate and documentary evidence supporting an entity’s claim of foreign status will be valid indefinitely when both are received by the withholding agent before the validity period of either would otherwise expire (that is, both the withholding certificate and the documentary evidence are received by the withholding agent and neither has expired).

vi. Applicable rules for withholding certificates, written statements, and documentary evidence—Period of validity—Change in circumstances

Under the 2013 final regulations, a withholding agent cannot rely on a withholding certificate or documentation if it knows or has reason to know that a change in circumstances affects the correctness of the certificate or documentation. The 2013 final regulations define a change in circumstances as a change that would affect a person’s chapter 4 status and require the person whose name is on the certificate or documentation to notify the withholding agent within 30 days and provide a new certificate or documentation following a change in circumstance.

A comment requested relief from a withholding agent’s requirement to obtain new documentation from an FFI following a change in circumstances that does not affect whether withholding under chapter 4 is required on payments to the FFI. In response to the comment, these final regulations provide that a withholding agent will not have reason to know of a change in circumstances with respect to an FFI’s chapter 4 status that results solely because the jurisdiction in which the FFI

is resident, organized, or located is one that is later treated as having an IGA in effect (including a jurisdiction that had a Model 2 IGA in effect and is later treated as having a Model 1 IGA in effect). In lieu of providing a new withholding certificate to the withholding agent to document the new chapter 4 status, these final regulations allow an FFI to provide to the withholding agent oral or written confirmation (including by e-mail) of the FFI's change in its chapter 4 status within 30 days after the change in circumstances described in the preceding sentence or a change in circumstances with respect to the FFI's chapter 4 status that results solely because a jurisdiction is later treated as not having an IGA in effect. In such a case, the withholding agent must retain a record of the confirmation, which will become part of the FFI's withholding certificate or other documentation. See section II.C.1.iii of this Summary of Comments and Explanation of Revisions and Provisions for an explanation of temporary regulations on a withholding agent's reason to know of a change in circumstances if a jurisdiction ceases to be treated as having an IGA in effect.

vii. Applicable rules for withholding certificates, written statements, and documentary evidence—Electronic transmission of withholding certificate, written statement, and documentary evidence

The 2014 temporary regulations provide that a withholding agent may accept a withholding certificate, written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements of § 1.1441-1(e)(4)(iv). A comment to the temporary coordination regulations requested a modification of the effective date of § 1.1441-1(e)(4)(iv) so that withholding agents may rely upon forms or documentary evidence received electronically after March 6, 2014, even if the payment was made prior to such date. The Treasury Department and the IRS agree with this comment, and have determined that the applicability date for reliance on electronically transmitted documentation should be the same in chapters 3 and 4. In regulations published elsewhere in this issue of the **Bulletin**, the temporary coordination regulations are

modified so that § 1.1441-1(e)(4)(iv)(D) applies to any open tax year. Likewise, these final regulations provide that a taxpayer may apply § 1.1471-3(c)(6)(iv) to all of its open tax years.

viii. Applicable rules for withholding certificates, written statements, and documentary evidence—Reliance on prior versions of withholding certificates

Under the 2013 final regulations, a withholding agent can accept a prior version of a withholding certificate for six months after the revision date of an updated version of the certificate, unless the IRS has issued guidance that indicates otherwise. The temporary coordination regulations include a similar rule for chapter 3 purposes. In regulations published elsewhere in this issue of the **Bulletin**, § 1.1441-1(e)(4)(viii)(C) is modified to permit withholding agents to accept a prior version of a withholding certificate until the later of six full months after the revision date of the updated form or the end of the calendar year during which the revised version is issued, unless the Treasury Department and the IRS designate a shorter transition period. The Treasury Department and the IRS have determined that the requirements for reliance on prior versions of withholding certificates under chapter 3 should be adopted for both chapters 3 and 4. Therefore, these final regulations modify the 2013 final regulations by cross-referencing to the rule in § 1.1441-1(e)(4)(viii)(C) regarding reliance on prior versions of forms.

ix. Curing documentation errors—Curing inconsequential errors on a withholding statement

The 2013 final regulations provide that a withholding agent may treat a withholding certificate as valid, notwithstanding that the certificate contains an inconsequential error, if the withholding agent has sufficient documentation on file to supplement the information missing from the withholding certificate due to the error and such documentation is conclusive. The 2013 final regulations include an example of a withholding agent using government issued identification to cure an abbreviation of a coun-

try of residence on a withholding certificate provided by an individual, implying that any abbreviation (whether ambiguous or unambiguous) must be cured. However, since the Instructions for Form W-8BEN do not require an individual to provide the full name of a country, an unambiguous abbreviation is not an error. For consistency with chapter 3 (see § 1.1441-1(b)(7)(iv)), these final regulations revise the example to provide that an abbreviation of a country of residence is an inconsequential error that would need to be cured only if it is an ambiguous abbreviation.

## 2. Documentation Requirements to Establish a Payee's Chapter 4 Status

### i. Identification of U.S. persons—In general

The 2014 temporary regulations provide that a withholding agent receiving a Form W-9, "Request for Taxpayer Identification Number and Certification," indicating that the payee is a U.S. person that is not a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. A comment requested that the final regulations either eliminate reason to know in § 1.1471-3T(d)(2)(i) or clarify when a withholding agent would have reason to know that a Form W-9 is incorrect with respect to an entity payee. The comment also notes that it would be burdensome for withholding agents to research publicly available information to determine if the entity's claim that it is not a specified U.S. person is incorrect. The Treasury Department and the IRS believe that reason to know is the appropriate standard for Form W-9 because it is the same as the standard of knowledge applied to forms in the W-8 series and the application of reason to know to Form W-9 is already clear. Reason to know is defined generally in § 1.1471-3(e)(4) and specifically for withholding certificates in § 1.1471-3(e)(4)(ii)(A). Under § 1.1471-3(e)(4)(ii)(A), a withholding agent has reason to know that a withholding certificate is unreli-

able or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. Therefore, these final regulations do not adopt the comment.

ii. Documentation, GIIN verification, and registration of sponsored investment entities, sponsored controlled foreign corporations, and sponsored direct reporting NFFEs

These final regulations modify the procedures for withholding agents to document the chapter 4 status of a payee that is a sponsored investment entity or sponsored controlled foreign corporation described § 1.1471-5(f)(1)(i)(F) or a sponsored direct reporting NFFE described in § 1.1472-1(c)(5) (each referred to as a sponsored entity for purposes of this section I.C.2.ii) to incorporate the provisions of Notice 2015-66. Under the 2014 temporary regulations, for a transitional period that was to expire on January 1, 2016, a withholding agent may obtain the GIIN of a sponsoring entity if the sponsored entity has not yet obtained a GIIN. A comment noted that it would be difficult for withholding agents to verify the GIINs of sponsored entities by the date provided in the 2014 temporary regulations. In response to the comment, the Treasury Department and the IRS announced in Notice 2015-66 that the 2014 temporary regulations would be amended to extend the time for withholding agents to verify sponsored entity GIINs. These final regulations, therefore, extend the transitional period to apply to withholdable payments made before January 1, 2017. These final regulations also provide that a withholding agent is not required to verify the GIIN of a sponsored entity before January 1, 2017 (even if the sponsored entity obtains a GIIN before such date), if the withholding agent verifies the GIIN of the

sponsoring entity in the manner described in these final regulations.

Notice 2015-66 announced that sponsoring entities must register their sponsored entities by January 1, 2017, and, beginning on that date, sponsoring entities must use the GIIN of the sponsored entity when reporting with respect to the sponsored entity on Form 8966 and must provide the GIIN to withholding agents making payments to the sponsored entity. The Notice also informed withholding agents that they would be required to obtain GIINs of sponsored entities for payments made on or after January 1, 2017. After Notice 2015-66 was issued, comments requested additional time for withholding agents to obtain the GIIN of a sponsored entity. In response to the comments, these final regulations provide that for a payment made after December 31, 2016, to a payee that the withholding agent has documented prior to January 1, 2017, as a sponsored entity with a valid withholding certificate that includes the GIIN of the sponsoring entity, the withholding agent must obtain and verify the GIIN of the sponsored entity against the IRS FFI list by March 31, 2017. Notwithstanding the preceding sentence, a GIIN is not required for a payee that provides a valid withholding certificate prior to January 1, 2017, that identifies the payee as a sponsored FFI and includes the GIIN of the sponsoring entity if the withholding agent determines, based on information provided on the withholding certificate, that the payee is resident, organized, or located in a jurisdiction that is treated as having a Model 1 IGA in effect. A withholding certificate provided on or after January 1, 2017, by a payee that is a sponsored entity subject to a Model 1 IGA must identify the payee as a nonreporting IGA FFI or, if the payee identifies itself as a sponsored FFI, must include the payee's GIIN. As previewed in Notice 2015-66, the withholding agent may obtain a GIIN for a sponsored entity described in this paragraph by oral or written confirmation (including by e-mail) rather than obtaining a new withholding certificate, provided that the withholding agent retains a record of the confirmation, which will become part of the withholding certificate.

As announced in Notice 2015-66, and to coordinate with the transitional dates

for documentation and GIIN verification discussed in the preceding paragraph, these final regulations provide that a sponsoring entity must register each sponsored entity for which it acts by the later of January 1, 2017, or the date the sponsored entity identifies itself to a withholding agent or financial institution as having such status.

iii. Identification of participating FFIs and registered deemed-compliant FFIs—Reason to know

The 2014 temporary regulations provide rules in both § 1.1471-3T(d)(4)(v) and (e) for when a withholding agent has reason to know that a payee's claim of status as a participating FFI or registered deemed-compliant FFI is invalid or incorrect. However, § 1.1471-3T(d)(4)(v) is duplicative of the more detailed rules on reason to know in § 1.1471-3T(e). To eliminate this duplication, these final regulations modify § 1.1471-3T(d)(4)(v) to cross-reference § 1.1471-3(e) for the applicable reason to know rules.

iv. Identification of excepted NFFEs—Identification of active NFFEs

Under § 1.1472-1(b), a withholding agent making a withholdable payment to a NFFE that does not provide information on its substantial U.S. owners (or certify that it has no substantial U.S. owners) must withhold on the payment unless the NFFE is an excepted NFFE described in § 1.1472-1(c)(1) (for example, an active NFFE described in § 1.1472-1(c)(1)(iv)). A withholding agent making a withholdable payment must apply the documentation rules in § 1.1471-3(d) to determine the chapter 4 status of a payee. Specifically, under § 1.1471-3(d)(11)(ix), a withholding agent may treat a payee as an active NFFE described in § 1.1472-1(c)(1)(iv) if the NFFE provides a withholding certificate identifying itself as an active NFFE. In contrast, a reporting Model 1 FFI or reporting Model 2 FFI documenting an account for purposes of satisfying the due diligence requirements of a Model 1 or Model 2 IGA applies the procedures in Annex I of the applicable IGA to determine whether an account holder is an active or passive NFFE. The

chapter 4 regulations provide that a NFFE must determine its status under chapter 4 for purposes of documenting itself to a withholding agent making a withholdable payment to the NFFE. See § 1.1471-3(d)(11) and (12). A comment requested that the chapter 4 regulations be revised to permit a NFFE to determine its status under the Model 1 or Model 2 IGA of the jurisdiction where the NFFE is organized for purposes of certifying its status to both a withholding agent documenting a payee under the chapter 4 regulations and an FFI documenting an account holder under an applicable IGA. The Treasury Department and the IRS have decided that the chapter 4 regulations should not be revised in this regard. The due diligence procedures under the Model 1 IGA and Model 2 IGA allow financial institutions subject to an applicable IGA to document using such procedures and are not broadly intended for NFFEs. An entity resident in, or organized under the laws of, an applicable IGA jurisdiction may apply the IGA to determine its classification as an FFI or NFFE; however, it may not otherwise apply the IGA to determine whether it is an active or passive NFFE or whether it should identify controlling U.S. persons instead of substantial U.S. owners when it is documenting itself to a withholding agent making a withholdable payment to the entity.

#### v. Excepted inter-affiliate FFIs

The 2014 temporary regulations provide that an excepted inter-affiliate FFI may hold a depository account with a withholding agent that is not a member of the expanded affiliated group if the account is held in the country in which the excepted inter-affiliate FFI is operating to pay for expenses in that country. The 2014 temporary regulations also include identification rules for excepted inter-affiliate FFIs that provide that a withholding agent that is a participating FFI may treat a payee as an excepted inter-affiliate FFI if it has obtained a withholding certificate or a written statement (in the case of an offshore obligation) identifying the payee as such an entity.

Although the 2014 temporary regulations provide that an excepted inter-

affiliate FFI is permitted to hold “a depository account” in the country in which the entity is operating to pay for expenses in that country, these final regulations permit an excepted inter-affiliate FFI to hold more than one depository account in a country in which the FFI is operating to pay for expenses in that country.

In addition, the restriction on withholding agents of an excepted inter-affiliate FFI to participating FFIs in § 1.1471-3(d)(11)(xii) is inconsistent with the allowance for an excepted inter-affiliate FFI to hold a depository account with a withholding agent that is not a member of the FFI’s expanded affiliated group in § 1.1471-5(e)(5)(iv)(B). Therefore, these final regulations replace “participating FFI” with “withholding agent” in § 1.1471-3(d)(11)(xii)(A) through (C). Additionally, since an excepted inter-affiliate FFI can receive any payments from a member of the FFI’s expanded affiliated group (not only payments of U.S. source bank deposit interest), these final regulations revise the reason to know rule in § 1.1471-3(d)(11)(xii)(C) so that it is limited to withholding agents that are not members of the FFI’s expanded affiliated group.

### 3. Standards of Knowledge

#### i. GIIN verification—In general

The 2014 temporary regulations provide that a withholding agent that receives a payee’s claim of status as a participating FFI or registered deemed-compliant FFI must verify: (1) the GIIN assigned to the FFI identifying its country of residence or place of organization; or (2) with respect to a payment that is made to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI’s country of residence or organization, the GIIN assigned to the FFI identifying the country in which the branch or disregarded entity receiving the payment is located. However, a disregarded entity that is a reporting Model 1 FFI may register separately from its FFI owner and be issued its own GIIN, and the Instructions for Form W-8BEN-E require the form to include the GIIN of a disregarded entity in such a case. To account for this situation, these final regula-

tions revise § 1.1471-3T(e)(3)(i) to provide that a withholding agent making a payment to a branch (including a disregarded entity) of a participating FFI or registered deemed-compliant FFI located outside of the FFI’s country of residence or organization must confirm the GIIN of the branch (or disregarded entity) receiving the payment. In addition, § 1.1471-3(d)(4)(i) is revised to provide that a withholding certificate identifying a payee as a participating FFI, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI) must contain a GIIN described in § 1.1471-3(e)(3).

Under the 2014 temporary regulations, a withholding agent has reason to know that a withholdable payment is made to a limited branch (including a disregarded entity) of a participating FFI or registered deemed-compliant FFI when: (1) the withholding agent is directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch (including a disregarded entity) of such FFI) that is identified by such FFI as receiving the payment; and (2) the withholding agent does not receive a GIIN assigned to the FFI identifying the country in which the branch (or disregarded entity) is located. A comment noted that an FFI may direct a payment to an account held by the FFI at another financial institution at a location outside the FFI’s country of residence where the FFI does not have a branch. In response to the comment, these final regulations provide that a withholding agent is not required to apply the reason to know rule to an FFI that is an investment entity. In addition, if an FFI other than an investment entity directs a withholding agent to make a payment to an account held by the FFI and maintained by another financial institution at a location outside the jurisdiction where the FFI is resident or incorporated or the jurisdiction where the branch receiving the payment is located, the FFI must provide to the withholding agent a statement in writing that the FFI is not directing the payment to any branch of such FFI that is not a participating FFI or a registered deemed-compliant FFI. Additionally, these final regulations clarify that if a withholding agent is required to apply

the reason to know rule described in this paragraph, it must treat the branch as other than a participating FFI or registered deemed-compliant FFI.

ii. Reason to know—Reason to know regarding an entity’s chapter 4 status

The 2014 temporary regulations revised the reason to know standard for claims of chapter 4 status in the 2013 final regulations to provide that, if a withholding agent has classified an entity as engaged in a particular type of business based on its records, the withholding agent has reason to know that the chapter 4 status claimed by the entity is unreliable or incorrect if the entity’s claim conflicts with the withholding agent’s classification of the entity’s business type. The intent of the 2014 temporary regulations was to limit the reason to know rules to *only* those situations in which the classification recorded by the withholding agent is inconsistent with the chapter 4 status claimed. The preamble of the 2014 temporary regulations accurately describes this intent. These final regulations correct the 2014 temporary regulations and implement the preamble to the 2014 temporary regulations.

iii. Reason to know—Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities—In general

Under the 2013 final regulations, a withholding agent that receives documentation for a payee through an intermediary or flow-through entity is required to review the documentation by applying the standards of knowledge applicable to chapter 4. The 2014 temporary regulations permit a withholding agent to accept a Form W-8 (or a substitute Form W-8) electronically through a system established by the withholding agent that meets the requirements described in § 1.1441-1(e)(4)(iv)(B). A comment requested that withholding agents be allowed to rely on documentation that the intermediary or flow-through entity received through an electronic system established by the intermediary or flow-through entity (rather than the withholding agent) to collect documentation from a payee. In Notice

2016-08, the Treasury Department and the IRS announced an intent to modify the standards of knowledge under §§ 1.1441-7(b)(10) and 1.1471-3(e)(4)(vi)(A)(2) to allow a withholding agent to rely on a withholding certificate collected through an electronic system maintained by a non-qualified intermediary, nonwithholding foreign partnership, or nonwithholding foreign trust. However, the Treasury Department and the IRS have determined that the primary concern raised by the comment (validation and reliance on a signature on a Form W-8BEN-E) should be addressed in temporary regulations that allow withholding agents to accept forms signed electronically. See section II.C.1.i of this Summary of Comments and Explanation of Revisions and Provisions for a description of the temporary regulation on electronic signatures. In light of the new allowance for withholding agents to accept forms signed electronically, the Treasury Department and the IRS have determined that it is not necessary to modify the standards of knowledge as previewed in Notice 2016-08.

iv. Reason to know—Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities—Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities

These final regulations clarify that a withholding agent that receives documentation from an intermediary or flow-through entity that is a reporting Model 1 FFI or reporting Model 2 FFI may rely on the chapter 4 status for a payee that is determined based on payee documentation or information that is publicly available that determines the chapter 4 status of the payee if such documentation or information is permitted under an applicable IGA, provided that the withholding agent has the information necessary to report on Form 1042-S. See § 1.1441-1(e)(3)(iv)(C)(2)(iv) (requiring that a nonqualified intermediary withholding statement for a reportable amount that is a withholdable payment include the recipient code for chapter 4 purposes used for filing Form 1042-S for an entity payee). However, a

withholding agent paying an amount subject to chapter 3 withholding is still required to obtain documentation that satisfies the requirements of chapter 3. This revision is consistent with the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.

v. Reason to know—Reasonable explanation supporting claim of foreign status

The chapter 3 regulations provide that a withholding agent may rely on the foreign status of an individual account holder irrespective of certain U.S. indicia in certain cases when the account holder provides a reasonable explanation supporting the account holder’s claim of foreign status. The temporary coordination regulations provide that a reasonable explanation of foreign status is either: (1) a written statement from a payee (in which the payee may provide any explanation to support its claim of foreign status); or (2) the payee’s identification of one of the explanations on a checklist provided by the withholding agent to the payee that lists the explanations described in § 1.1441-7(b)(12)(i) through (iv). The rule in the 2013 final regulations is similar to the rule in the temporary coordination regulations, except that the 2013 final regulations provide that a reasonable explanation, whether provided in the form of a written statement from the payee or the payee’s identification of one of the explanations on a checklist provided by the withholding agent, must be one of the explanations described in § 1.1471-3(e)(4)(vii)(A) through (D) (which are identical to the explanations listed in § 1.1441-7(b)(12)(i) through (iv)). The explanations listed in § 1.1471-3(e)(4)(vii)(A) through (D) are common explanations easily reducible to a checklist on a standardized form, but are not intended to be an exhaustive list of reasonable explanations that a payee may provide to rebut the U.S. indicia on the account. Therefore, as previewed in Notice 2014-33, these final regulations amend the 2013 final regulations to be consistent with the temporary coordination regulations by cross-referencing § 1.1441-7(b)(12) for the

definition of a reasonable explanation of foreign status.

vi. Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation—Presumption of chapter 4 status for a foreign entity

The chapter 4 regulations require a withholding agent to apply the presumption rules in § 1.1471–3(f) if the withholding agent cannot reliably associate a payment with valid documentation. Under § 1.1471–3(f)(4), a withholding agent must presume that an entity payee is a nonparticipating FFI and withhold on withholdable payments to the entity if the withholding agent cannot document the entity’s chapter 4 status. A comment suggested that a reporting Model 1 FFI that receives a withholdable payment as an intermediary on behalf of, or makes a withholdable payment to, an account held by an undocumented entity should be permitted to treat such account as a U.S. reportable account and not as a nonparticipating FFI subject to withholding pursuant to the presumption rules under § 1.1471–3(f)(4). The Treasury Department and the IRS do not agree with the comment. Under Annex I of the Model 1 and Model 2 IGA, reporting Model 1 FFIs and reporting Model 2 FFIs must apply the due diligence procedures described in Annex I to document the status of their account holders under the IGA as U.S. reportable accounts, nonparticipating FFIs, or additionally in the case of a reporting Model 2 FFI, nonconsenting U.S. accounts, and if such procedures are applied, cases in which an entity account is undocumented should not arise. If a reporting Model 1 FFI or reporting Model 2 FFI does not have information in its possession or that is publicly available based on which it can reasonably determine the status of an entity account holder the FFI must obtain a self-certification to establish the status of such entity (or in some cases, a self-certification to establish the status of the controlling persons of a passive NFFE) consistent with Annex I of the applicable IGA. In cases where a reporting Model 1 FFI or reporting Model 2 FFI acts as an intermediary for a with-

holdable payment that is allocated to an entity account and is unable to document the account by obtaining such information or self-certification consistent with the procedures described in Annex I of the applicable IGA, the chapter 4 regulations provide presumption rules for withholdable payments made to such account (and if an FFI has many such undocumented accounts, the U.S. Competent Authority may determine that there is significant non-compliance with the requirements of the IGA with respect to the FFI). In such cases, the reporting Model 1 FFI or reporting Model 2 FFI must apply the presumption rules in § 1.1471–3(f) to treat such entity account as a nonparticipating FFI and provide sufficient information to the upstream withholding agent to withhold on the payment (or, if such reporting Model 1 FFI or reporting Model 2 FFI is a WP, WT, or a QI that assumes primary withholding responsibility on the payment for chapters 3 and 4, the WP, WT, or QI must withhold). Withholding on undocumented entity accounts as accounts of nonparticipating FFIs is consistent with the IGAs, which contemplates that nonparticipating FFIs would remain subject to withholding on withholdable payments received through a reporting Model 1 FFI or reporting Model 2 FFI.

#### D. Comments and changes to § 1.1471–4—FFI agreement

##### 1. Withholding Requirements—Foreign Passthru Payments

Under section 1471(b)(1)(D)(i), a participating FFI must agree to withhold on passthru payments (that is, withholdable payments and foreign passthru payments) made to recalcitrant account holders of the FFI and nonparticipating FFIs. The 2013 final regulations reserve on the definition of foreign passthru payment and provide that a participating FFI is not required to withhold tax on a foreign passthru payment made to a recalcitrant account holder or a nonparticipating FFI before the later of January 1, 2017, or the date of publication in the **Federal Register** of final regulations defining foreign passthru payment. As announced in Notice 2015–66,

this transition period is extended in order to facilitate an orderly phase-in of withholding under chapter 4. Therefore, these final regulations modify the 2013 final regulations to provide that a participating FFI is not required to withhold tax on a foreign passthru payment made to a recalcitrant account holder or a nonparticipating FFI before the later of January 1, 2019, or the date of publication in the **Federal Register** of final regulations defining the term *foreign passthru payment*.

##### 2. Due Diligence for the Identification and Documentation of Account Holders and Payees—Certifications of Responsible Officer

The 2013 final regulations require a participating FFI to certify to the IRS that the FFI has complied with the applicable due diligence requirements with respect to preexisting accounts of the FFI and that the FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date of such certification to assist account holders in the avoidance of chapter 4. Under the 2013 final regulations, this certification must be made no later than 60 days following the date that is two years after the effective date of the participating FFI’s FFI agreement. As announced in Notice 2016–08, these final regulations modify the time for an FFI to make this certification by providing that the certification must be submitted to the IRS by the due date of the FFI’s first certification of compliance required under § 1.1471–4(f)(3). Additionally, in order to mitigate any increased burden caused by the modified due date (for example, if an FFI has undergone changes in management personnel since August 6, 2011), these final regulations require a participating FFI to certify that it did not have any formal or informal practices or procedures in place from August 6, 2011, through the date that is two years after the effective date of the FFI’s FFI agreement (rather than the date when the certification is due). These final regulations also reinstate a sentence that was unintentionally removed in § 1.1471–4(c)(7) in the September 2013 corrections requiring a participating FFI to certify that it did not have any practices or procedures

to assist account holders in avoidance of chapter 4.

### 3. Account Reporting

#### i. Reporting requirements in general—Accounts subject to reporting

Comments requested an exemption from filing Form 8966 for a participating FFI that is a partnership filing Form 1065 and Schedule K-1 to report its U.S. partners. While the forms collect some overlapping information, the Schedule K-1 does not provide all of the same information as Form 8966. In particular, Form 8966 collects information about both direct and indirect owners of a passive NFFE, while Form 1065 and Schedule K-1 only identifies direct partners. Therefore, the Treasury Department and the IRS at this time do not believe that it would be appropriate to provide an exemption for partnerships from having to file Form 8966 on behalf of its U.S. partners. The Treasury Department and the IRS will evaluate the information received on Forms 8966 filed with the IRS and may assess the utility of that information, taking into account any information filed on Form 1065 and Schedule K-1 and any other relevant information about offshore activities of U.S. persons that are filed with the IRS.

#### ii. Reporting requirements in general—Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional)

Under § 1.1471-4(d)(2)(ii)(F), a participating FFI that maintains an account of a nonparticipating FFI must report to the IRS foreign reportable amounts paid to or with respect to the account for each of calendar years 2015 and 2016. A foreign reportable amount is defined in the 2014 temporary regulations as a foreign source payment described in § 1.1471-4(d)(4)(iv) (which includes gross proceeds). In lieu of reporting foreign reportable amounts, a participating FFI may report all income, gross proceeds, and redemptions (irrespective of source) paid to the nonparticipating FFI's account by the par-

ticipating FFI during the year. Under a transitional rule in § 1.1471-4(d)(7)(ii)(B), a participating FFI is not required to report gross proceeds paid to a U.S. account or an account held by an owner-documented FFI in the 2015 calendar year. As announced in Notice 2016-08, these final regulations provide that a participating FFI is not required to report gross proceeds from the sale or redemption of property paid or credited to a custodial account that are paid to or with respect to an account held by a nonparticipating FFI for calendar year 2015. This exception applies regardless of whether the FFI is reporting foreign reportable amounts or all income, gross proceeds, and redemptions. These final regulations also remove an incorrect reference to a registered deemed-compliant FFI in the first sentence of § 1.1471-4(d)(2)(ii)(F).

#### iii. Reporting of accounts under section 1471(c)(1)—Accounts held by U.S. owned foreign entities

Under the 2013 final regulations, a participating FFI is required to report each U.S. account, which is defined as an account held by one or more specified U.S. persons or U.S. owned foreign entities. With respect to U.S. owned foreign entities, the Treasury Department and the IRS intended for participating FFIs to report only substantial U.S. owners of NFFEs that are passive NFFEs (defined in § 1.1471-1(b)(94)). Accordingly, these final regulations revise the reporting requirements for participating FFIs to clarify that FFIs are required to report on accounts held by passive NFFEs that are U.S. owned foreign entities. Conforming changes have also been made throughout these final regulations.

#### iv. Election to perform chapter 61 reporting—In general—Election to report in a manner similar to section 6047(d)

The 2013 final regulations allow a participating FFI to elect to report cash value insurance contracts or annuity contracts that are U.S. accounts in a manner similar to section 6047(d), but require that such reporting include the account balance or value of the account. In contrast, a participating FFI that elects to perform chapter

61 reporting on a U.S. account other than a cash value insurance contract or annuity contract does not need to report the account balance or value. These final regulations remove the requirement for an FFI that elects to report a U.S. account that is a cash value insurance contract or annuity contract under section 6047(d) to report the account balance or value in order to achieve parity with the election to report other U.S. accounts under chapter 61. This revision reduces burden on FFIs electing to report U.S. accounts that are cash value insurance contracts or annuity contracts on Form 1099-R, "Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," in lieu of Form 8966.

### 4. Expanded Affiliated Group Requirements—Limited Branches and Limited FFIs

#### i. Term of limited branch status and limited FFI status (transitional)

The 2014 temporary regulations require that each member of an expanded affiliated group have a chapter 4 status of participating FFI, deemed-compliant FFI, or exempt beneficial owner in order for any member of such group to obtain a chapter 4 status of participating FFI or registered deemed-compliant FFI. Each member of the group (except a certified deemed-compliant FFI or exempt beneficial owner) must also agree to the status for which it applies for all of its branches. For a transitional period, an expanded affiliated group may include an FFI that cannot comply with the requirements of a participating FFI if certain conditions specified in the regulations are satisfied (limited FFI). Another transitional rule allows an FFI to have a branch that cannot satisfy all the requirements of a participating FFI if certain requirements specified in the regulations are satisfied (limited branch).

Under the 2013 final regulations, the transitional period for limited branch or limited FFI status expires on December 31, 2015. In Notice 2015-66, the Treasury Department and the IRS announced that this transitional period will be extended in order to provide FFIs and other stakeholders additional time to determine

whether to continue operating in jurisdictions where limited branches or limited FFIs exist. Accordingly, these final regulations extend the availability of limited branch status and limited FFI status until December 31, 2016.

#### ii. Conditions for limited branch and limited FFI status

One of the conditions in the 2013 final regulations for limited FFI or limited branch status is that the FFI or branch agree that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group (and, with respect to a limited branch, any other branch of the FFI). A comment noted that this restriction prevents certain FFIs from agreeing to the conditions of limited status. In response to this comment and as previewed in Notice 2014–33, these final regulations relax this restriction by permitting a limited FFI or limited branch to open U.S. accounts for persons resident in the same jurisdiction in which the limited FFI is a resident or organized, or the limited branch is located or operating, and accounts for nonparticipating FFIs that are resident in the same jurisdiction, provided that: (1) the limited FFI or limited branch does not solicit U.S. accounts or accounts for nonparticipating FFIs from persons not resident in the same jurisdiction in which such limited FFI is resident or organized or such limited branch is located or operating; and (2) the FFI or branch is not used by any FFI in its expanded affiliated group to circumvent the obligations of such FFI under section 1471.

#### iii. Conditions for limited FFI status—Registration

A comment stated that certain jurisdictions prohibit FFIs resident in, or organized under the laws of, the jurisdiction from registering with the IRS for the status of limited FFI. As previewed in Notice 2015–66, these final regulations provide that a prohibition from registration will not prevent an FFI from becoming a limited FFI if certain conditions specified in these final regulations are satisfied. A

member of the FFI's expanded affiliated group that is a U.S. financial institution, participating FFI, or reporting Model 1 FFI must register on the FATCA registration website as a lead FI and identify the FFI as a limited FFI. If the limited FFI is prohibited from being identified by its legal name on the FATCA registration website, the lead FI may use the term *limited FFI* in place of the FFI's name and indicate the FFI's jurisdiction of residence or organization. By identifying a limited FFI on its FATCA registration as described in the preceding sentences, the lead FI is confirming that the limited FFI has represented that it will meet the conditions for limited FFI status and has agreed to notify the lead FI within 30 days of the date that the FFI ceases to meet the requirements of a limited FFI or the date that the FFI can comply with the requirements of a participating FFI or deemed-compliant FFI (in which case the FFI will separately register for that status). If the lead FI receives a notification described in the preceding sentence or otherwise knows that the limited FFI has not complied with the conditions for limited FFI status or can comply with the requirements of a participating FFI or deemed-compliant FFI, these final regulations require the lead FI to remove the FFI from its registration and maintain a record of the date on which the FFI ceased to be a limited FFI and (if applicable) the circumstances of the limited FFI's non-compliance, which will be available to the IRS upon request.

### 5. Verification

#### i. Certification of compliance—In general

The 2013 final regulations provide that the responsible officer of a participating FFI must submit the certification of compliance required in § 1.1471–4(f)(3) to the IRS six months following the end of each certification period. As previewed in Notice 2016–08, to conform the time for submitting the certification of compliance to the time specified in the FFI agreement, these final regulations provide that the certification of compliance must be submitted on or before July 1 of the calendar year following the end of each certification period. The IRS intends to publish

instructions for making this certification, which will require an FFI to complete and submit the certification electronically through the FATCA registration website. Accordingly, these final regulations specify that a responsible officer of a participating FFI must make a certification of effective internal controls or qualified certification on the form and in the manner prescribed by the IRS.

In addition, § 1.1471–4(f)(3)(i) states that if the participating FFI has failed to remediate any material failures as of the date of the certification, the FFI must make the qualified certification described in § 1.1471–4(f)(3)(iii). However, § 1.1471–4(f)(3)(iii) provides that the responsible officer must make the qualified certification if it has identified either an event of default or a material failure that the participating FFI has not corrected as of the date of the certification. These final regulations conform these sections by modifying § 1.1471–4(f)(3)(i) so that a qualified certification must be made if the FFI has identified an event of default (in addition to a material failure) that has not been corrected as of the date of the certification.

#### ii. IRS review of compliance—General inquiries

The 2014 temporary regulations provide that the IRS, based upon the information reporting forms described in § 1.1471–4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) (Form 8966 or Form 1099) filed with the IRS for each calendar year, may request additional information with respect to the information reported on the forms or may request the account statements described in § 1.1471–4(d)(4)(v). The 2014 temporary regulations are silent on whether the IRS can request such information if the FFI does not file information reporting forms for the calendar year.

As described in the preamble to the 2014 temporary regulations, the 2014 temporary regulations add a second sentence to § 1.1471–4T(f)(4)(i) to “further allow the IRS to request additional information to determine an FFI's compliance with the applicable FFI agreement.” The Treasury Department and the IRS did not intend for the 2014 temporary regulations

to be limited such that the IRS cannot request information if the FFI fails to file the specified information reporting forms. Thus, these final regulations clarify that IRS requests for additional information under § 1.1471-4(f)(4)(i) may be based on the absence of any information reporting forms filed by the FFI with the IRS for the calendar year, and that the IRS may request additional information with respect to the information reported or required to be reported, including confirmation that the FFI has no reporting requirements.

#### *E. Comments and changes to § 1.1471-5—Definitions applicable to section 1471*

##### 1. Definition of U.S. Account

Comments requested that the definition of a U.S. account exclude accounts held by U.S. individuals resident in the same jurisdiction as the FFI with which the account is held. This comment is not adopted. The U.S. federal income tax system largely relies on voluntary compliance, and third party information reporting of the financial accounts of U.S. taxpayers is used to encourage voluntary compliance. For this reason, U.S. financial institutions are generally required to report under chapter 61 U.S. and foreign source investment income paid to account holders that are U.S. individuals. However, before FATCA, FFIs (in particular, non-U.S. payors) generally were not required to report foreign source payments made to U.S. taxpayers. The information reporting required by FATCA is intended to address the use of foreign accounts to facilitate tax evasion, and also to strengthen the integrity of the voluntary compliance system by placing U.S. taxpayers with accounts held with FFIs in a comparable position to U.S. taxpayers with accounts held with U.S. financial institutions. This is the case even for U.S. taxpayers resident abroad, since U.S. citizens and U.S. resident aliens are subject to U.S. income tax on their worldwide income regardless of where they reside and regardless of whether their accounts are maintained by U.S. financial institutions or FFIs. The Treasury Department and the IRS have also decided that the risk of U.S. tax

avoidance by a U.S. taxpayer holding an account with an FFI exists regardless of whether the U.S. taxpayer holds an account in his or her foreign country of residence or another foreign country.

##### 2. Definition of FFI

Under the 2013 final regulations, FFI means, with respect to any entity that is not resident in a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution that is a foreign entity; and, with respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, FFI means any entity that is treated as a financial institution pursuant to such IGA. Because some IGAs use an organizational test, rather than a residence test, to determine whether a financial institution is covered by the IGA, these final regulations modify the definition of FFI to refer to an entity that is (or is not) resident in, or organized under the laws of, as applicable, a country that has in effect an IGA. In addition, with respect to an entity resident in a country that has in effect a Model 1 or Model 2 IGA, these final regulations modify the definition of FFI to mean an entity that is treated as a FATCA Partner Financial Institution under the IGA, not any entity that is treated as a financial institution under the IGA, because the term *financial institution* in the IGAs includes a U.S. financial institution. Finally, these final regulations cross-reference § 1.1471-2(a)(2)(v) for when a foreign branch of a U.S. financial institution is an FFI. See section I.B.1 of this Summary of Comments and Explanation of Revisions and Provisions for an explanation of the changes to § 1.1471-2(a)(2)(v).

##### 3. Definition of Financial Institution

###### i. Exclusions—Excepted nonfinancial group entities—In general

One of the requirements for an excepted nonfinancial group entity is that the entity cannot be formed in connection with or availed of by certain arrangements or investment vehicles. The 2014 temporary regulations provide that an entity will not be considered to have been formed in connection with or availed of by an ar-

rangement or investment vehicle if the entity existed at least six months prior to its acquisition by the arrangement or investment vehicle and, prior to the acquisition, regularly conducted activities in the ordinary course of business. A comment noted that the phrase “ordinary course of business” is unclear with respect to a holding company, captive finance company, or treasury center. In response to the comment, these final regulations clarify the 2014 temporary regulations by cross-referencing § 1.1471-5(e)(5)(i)(C), (D), or (E) (as applicable) to describe the activities of a holding company, captive finance company, or treasury center.

###### ii. Exclusions—Excepted nonfinancial group entities—Nonfinancial group

A comment noted that the treatment of receivables related to financing to customers as passive assets makes it difficult for an expanded affiliated group to qualify as a nonfinancial group, even if the receivables are originated by a captive finance company in the expanded affiliated group. The Treasury Department and the IRS believe that certain receivables related to financing to customers should not make a group ineligible to qualify as a nonfinancial group because customer financing is common in some nonfinancial businesses and is not necessarily indicative of a financial business. Further, customer financing is a permissible activity for a captive finance company, but status as a captive finance company is only relevant for qualifying as a nonfinancial group entity. Therefore, these final regulations exclude from the passive income and asset tests in § 1.1471-5(e)(5)(i)(B)(I) receivables that are notes issued by customers to a member of the expanded affiliated group that is a captive finance company to finance the customer’s purchase of inventory or goods manufactured by a member of the expanded affiliated group.

A comment noted that it is difficult for a nonfinancial group operating on a non-calendar fiscal year basis to measure its income and assets on a calendar year basis in order to determine whether it meets the income and asset tests in § 1.1471-5(e)(5)(i)(B)(I). In response to the comment, these final regulations provide that the income and asset tests should be per-

formed for the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending December 31 (or the end of the fiscal year of one or more members of the group) of the year preceding the year in which the determination is made.

A comment requested elimination of the requirement that each FFI in a nonfinancial group be a participating FFI or deemed-compliant FFI. The Treasury Department and the IRS believe that a limitation on the types of FFIs that can be members of nonfinancial groups is necessary to prevent an excepted nonfinancial group entity from acting as a “blocker” for a nonparticipating FFI. The Treasury Department and the IRS also note that the rules for a participating FFI group similarly prohibit nonparticipating FFI members. However, since the 2014 temporary regulations permit participating FFI groups to include exempt beneficial owners (see § 1.1471-4T(e)(1)), these final regulations provide the same allowance for exempt beneficial owners to be members of nonfinancial groups.

A comment described situations in which an acquisition of an entity by a member of the expanded affiliated group or a change in chapter 4 status of a member of an expanded affiliated group may disqualify the group as a nonfinancial group. The comment requested a grace period for certain unintentional disqualifications from nonfinancial group status. The Treasury Department and the IRS agree with the comment and have determined that the rules for an acquisition or a change in chapter 4 status of a member of a nonfinancial group should not be stricter than those for a participating FFI group. The FFI agreement allows 90 days for a lead FI of an FFI group to inform the IRS of an acquisition or sale of a member of the FFI group or a change affecting the chapter 4 status of a member of the group before the acquisition or change becomes an event of default. In response to the comment and for consistency with the treatment of FFI groups, these final regulations provide that a change affecting the chapter 4 status of a member of a nonfinancial group, or an acquisition by a member of the expanded affiliated group of an FFI that does not have a permissible chapter 4 status, disqualifies the group as

a nonfinancial group 90 days after such change or acquisition.

#### 4. Deemed-Compliant FFIs

##### i. Preexisting account certifications by registered deemed-compliant FFIs

The 2013 final regulations require a registered deemed-compliant FFI that is a local FFI or restricted fund to make a certification to the IRS regarding its review of preexisting accounts that it is required to review as a condition of its status as a registered deemed-compliant FFI. The certification by a restricted fund regarding its preexisting accounts must be completed by the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, but no due date for the certification of a local FFI regarding its preexisting accounts is specified. In Notice 2016-08, the Treasury Department and the IRS announced that the due date for the preexisting account certifications of restricted funds and local FFIs would be modified to on or before July 1 of the calendar year following the end of the certification period to provide FFIs with additional time to prepare their certifications and to streamline compliance. Accordingly, these final regulations provide that a preexisting account certification by a local FFI or restricted fund must be submitted by the due date of the FFI’s first certification of compliance required under § 1.1471-5(f)(1)(ii)(B). See section I.E.4.iii of this Summary of Comments and Explanation of Revisions and Provisions for the timing of certifications of compliance by registered deemed-compliant FFIs.

##### ii. Registered deemed-compliant FFIs—Sponsored investment entities and controlled foreign corporations

Under the 2013 final regulations, an FFI may not be a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle if it is a QI, WP, or WT. In Notice 2016-42, 2016-29 I.R.B. 67, the Treasury Department and the IRS announced that they are considering including in the WP Agreement an allowance for consolidated periodic reviews and certifications for WPs that are FFIs, similar to

the allowance for QIs (see section 10.02(B) of the QI Agreement in Revenue Procedure 2014-39, 2014-29 I.R.B. 150 (as may be amended)). In order to accommodate an allowance for consolidated periodic reviews and certifications for WPs, these final regulations provide that a WP may be a sponsored investment entity to the extent permitted in the WP Agreement if the WP otherwise meets the requirements for status as a sponsored investment entity.

The 2013 final regulations provide that a sponsoring entity of a sponsored investment entity or controlled foreign corporation must be authorized to act on behalf of the FFI “to fulfill the requirements of the FFI agreement.” See § 1.1471-5(f)(1)(i)(F)(3)(i). However, the 2013 final regulations also provide that the sponsoring entity must agree to perform, on behalf of the FFI, “all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI.” See § 1.1471-5(f)(1)(i)(F)(3)(iv). Because a sponsored FFI does not enter into an FFI agreement with the IRS, these final regulations modify § 1.1471-5(f)(1)(i)(F)(3)(i) to conform with § 1.1471-5(f)(1)(i)(F)(3)(iv).

The preamble to the 2014 temporary regulations states that the 2014 temporary regulations revise the 2013 final regulations to clarify that a sponsoring entity will not be jointly and severally liable for a sponsored FFI’s withholding and reporting obligations under chapter 4, even if the sponsoring entity performs these responsibilities on behalf of such FFI, unless the sponsoring entity is also a withholding agent that is separately liable for such obligations. The text of the 2014 temporary regulations, however, inaccurately provides that a sponsoring entity of a sponsored FFI will not be liable for any failure to comply with the obligations contained in § 1.1471-5(f)(1)(i)(F)(3) or (f)(2)(iii)(D) (as applicable) unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to “a payment made to the sponsored FFI” (emphasis added). In order to correct this inconsistency between the preamble and the text of the 2014 temporary regulations, these final regulations revise the 2014

temporary regulations to provide that a sponsoring entity that is a withholding agent is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of (rather than to) a sponsored FFI. This revision does not affect a sponsoring entity's liability as a withholding agent for payments unrelated to the sponsoring entity's obligations as a sponsoring entity of a sponsored FFI. This change is made in § 1.1471-5(f)(1)(i)(F)(5) for sponsoring entities of sponsored investment entities and controlled foreign corporations and in § 1.1471-5(f)(2)(iii)(E) for sponsoring entities of sponsored, closely held investment vehicles.

### iii. Registered deemed-compliant FFIs—Procedural requirements for registered deemed-compliant FFIs—Certification requirement

Under the 2014 temporary regulations, a responsible officer of a registered deemed-compliant FFI must periodically certify to the IRS that all of the requirements of the deemed-compliant status claimed by the FFI have been satisfied since the later of the date that the registered deemed-compliant FFI registers, or June 30, 2014. The 2014 temporary regulations provide that the certification is made every three years, but do not specify the date when the certification is due. The 2014 temporary regulations also allow a registered deemed-compliant FFI to make a certification on behalf of all registered deemed-compliant FFIs in the same expanded affiliated group.

As previewed in Notice 2016-08, these final regulations provide that a registered deemed-compliant FFI makes its certification on or before July 1 of the calendar year following the end of each certification period (consistent with the timing for certifications of compliance made by participating FFIs included in these final regulations). These final regulations also provide that the first certification period begins on the later of the date the FFI registers as a deemed-compliant FFI and is issued a GIIN, or June 30, 2014, and ends on the close of the third full calendar year following this date. Each subsequent certification period is the three calendar year period following the

previous certification period. Under these final regulations, the FFI will certify to its compliance with the requirements of the deemed-compliant status during the certification period (rather than all periods since the later of the date that the FFI registers, or June 30, 2014).

In addition, these final regulations provide that the certification of compliance must be made on the form and in the manner prescribed by the IRS (consistent with the requirements for certifications of compliance by participating FFIs included in these final regulations). These final regulations also clarify that if a responsible officer of a registered deemed-compliant FFI makes the certification collectively for the FFI's expanded affiliated group, the certification must provide that all of the requirements for the deemed-compliant status claimed by each member of the expanded affiliated group that is a registered deemed-compliant FFI (other than a member that is a reporting Model 1 FFI or deemed-compliant FFI under an applicable Model 1 IGA) have been satisfied during the certification period.

### iv. Certified deemed-compliant FFIs—Sponsored, closely held investment vehicles

A comment requested a three-year grace period during which a sponsored, closely held investment vehicle that becomes noncompliant with the requirements of its deemed-compliant status may retain its chapter 4 status. The Treasury Department and the IRS believe that a bright line rule is necessary for enforcement with respect to certified deemed-compliant FFIs because these entities do not register or certify directly to the IRS regarding their compliance. Further, the Treasury Department and the IRS do not believe that the consequences of a termination of deemed-compliant status would be unduly burdensome for these entities because an FFI that is unable to meet the requirements of a sponsored, closely held investment vehicle may nevertheless become compliant with chapter 4 and avoid being withheld on by entering into an FFI agreement with the IRS. Therefore, this comment is not adopted.

### v. Certified deemed-compliant FFIs—Limited life debt investment entities (transitional)

In response to comments to the 2013 final regulations, the 2014 temporary regulations include significant revisions to the requirements for limited liability debt investment entities (LLDIEs) in order to accommodate industry practices and expand the types of securitization vehicles that qualify as LLDIEs. Since the 2014 temporary regulations were published, the Treasury Department and the IRS have received additional comments requesting modifications to the requirements for LLDIEs. One comment noted that it is unclear under the laws of certain foreign jurisdictions whether a person has authority to fulfill the requirements of a participating FFI. The comment requested that an FFI be permitted to base the determination of authority solely on whether or not the FFI's trust documents contain an explicit reference to the obligations of a participating FFI. The Treasury Department and the IRS do not believe that this would be an appropriate test because it is unlikely that a trust document would have an explicit reference to the obligations of a participating FFI prior to 2013, thereby undermining the rule.

The 2014 temporary regulations provide that substantially all of the assets of an LLDIE must consist of debt instruments or interests therein. The Treasury Department and the IRS received comments that borrowers on a debt instrument held by the LLDIE may encounter financial trouble such that the lender may foreclose or restructure the debt or the borrower may enter bankruptcy proceedings. Under these circumstances, the LLDIE may hold non-debt assets, such as equity or real estate, that may represent a significant portion of the LLDIE's assets during the wind down period. The comments requested that "debt instruments or interests therein" include equity or other non-debt assets acquired upon a foreclosure or restructuring of the debt. The Treasury Department and the IRS agree that an entity should not lose its status as an LLDIE because it holds certain non-debt assets as a result of foreclosures or restructurings. Therefore, these final regulations revise the 2014 temporary regulations to provide

that debt instruments or interests therein include assets acquired pursuant to a restructuring, workout, or similar event with respect to a debt instrument.

vi. Certified deemed-compliant FFIs—  
Investment advisors and investment managers

The 2014 temporary regulations added a category of certified deemed-compliant FFI for certain investment entities described in § 1.1471-5(e)(4)(i)(A) that do not maintain financial accounts under the heading “Investment advisors and investment managers.” A comment noted that an investment entity may meet the substantive requirements of this category even if it is not an investment advisor or investment manager. The Treasury Department and the IRS agree with the comment that the rule in the 2014 temporary regulations is not limited to investment entities that are investment advisors or investment managers. For clarity and in response to this comment, these final regulations change the heading of § 1.1471-5(f)(2)(v) to “Certain investment entities that do not maintain financial accounts.”

F. *Comments and changes to § 1.1472-1—Withholding on NFFEs*

1. In General

Under § 1.1471-2(a)(3), participating FFIs that comply with the withholding requirements of § 1.1471-4(b), exempt beneficial owners, section 501(c) entities described in § 1.1471-5(e)(5)(v), and nonprofit organizations described in § 1.1471-5(e)(5)(vi) are deemed to satisfy their withholding obligations under section 1471(a) and § 1.1471-2. However, under § 1.1472-1(a), only participating FFIs are deemed to satisfy their withholding obligations under section 1472(a). These final regulations revise § 1.1472-1(a) to add exempt beneficial owners, section 501(c) entities described in § 1.1471-5(e)(5)(v), and nonprofit organizations to coordinate with § 1.1471-2(a)(3). In addition, these final regulations cross-reference § 1.1471-5(f) for when deemed-compliant FFIs are deemed to satisfy their withholding obligations under section 1472(a) with

respect to withholdable payments to account holders that are NFFEs.

2. Exceptions—Beneficial Owner that is an Excepted NFFE

A comment requested an exception from withholding on withholdable payments that are property and casualty insurance premiums made to “hedge fund reinsurance companies.” According to the comment, such companies generally would not have any substantial U.S. owners because they do not allow a U.S. person to hold 10 percent or more of the voting stock in order prevent the company from being a controlled foreign corporation. The comment assumes that the entity is a NFFE but does not analyze the issue of whether the entity is properly characterized as an FFI or NFFE. Under § 1.1471-5(e)(4)(i)(C), an entity that functions or holds itself out as a hedge fund is an FFI. As an FFI, a hedge fund that has agreed to the terms of the FFI agreement would be required to report U.S. accounts, which are not limited to U.S. persons that hold 10 percent or more of the fund and would generally include any specified U.S. person that owns, directly or indirectly, more than zero percent of the investment entity. In the case of an insurance company that is a passive NFFE, it may elect to be a direct reporting NFFE and report any substantial U.S. owners (which are defined as specified U.S. persons that hold 10 percent of the stock by vote or value) to the IRS if the NFFE does not wish to disclose its substantial U.S. owners to a withholding agent. In addition, if a passive NFFE has no substantial U.S. owners, it may certify that to a withholding agent to avoid withholding on withholdable payments. The Treasury Department and the IRS believe that the chapter 4 regulations already mitigate any burden imposed by FATCA on passive NFFEs by providing an exception for direct reporting NFFEs. Therefore, these final regulations do not adopt this comment.

3. Exceptions—Beneficial Owner that is an Excepted NFFE—Active NFFE

Under the 2014 temporary regulations, a NFFE satisfies the asset test to be an

active NFFE if less than 50 percent of the weighted average percentage of assets (tested quarterly) held by the NFFE are assets that produce or are held for the production of passive income, as determined after the application of § 1.1472-1(c)(1)(iv)(B). To remove ambiguity, these final regulations clarify that a NFFE satisfies the asset test if the weighted average of the percentage of assets held by it that produce or are held for the production of passive income (weighted by total assets and measured quarterly) is less than 50 percent, as determined after the application of § 1.1472-1(c)(1)(iv)(B). These final regulations also clarify that the asset test is applied to the prior calendar or fiscal year. Finally, these final regulations permit a NFFE to calculate its passive assets using any accounting period permitted under § 1.1472-1(c)(1)(iv)(C), provided the NFFE applies a uniform method of measuring assets for the year.

4. Exceptions—Definition of Direct Reporting NFFE

Under the 2014 temporary regulations, a direct reporting NFFE must make a periodic certification to the IRS regarding its compliance with the requirements of a direct reporting NFFE within each six month period following the end of each certification period. The 2014 temporary regulations provide that the first certification period begins on the date a GIIN is issued to the NFFE. To account for GIINs issued before the implementation of FATCA, and for consistency with certifications by other entities, these final regulations amend the date that the first certification period begins for a direct reporting NFFE to the later of the date a GIIN is issued to the NFFE, or June 30, 2014. These final regulations also require that the NFFE make the periodic certification on the form and in the manner prescribed by the IRS (consistent with other certifications of compliance included in these final regulations). Finally, these final regulations provide that the certification will be due on or before July 1 of the calendar year following the end of each certification period to conform to the due dates for the certifications of compliance by participating FFIs and registered

deemed-compliant FFIs included in these final regulations.

#### 5. Exceptions—Election to be Treated as a Direct Reporting NFFE—Revocation of Election

Under the 2014 temporary regulations, a NFFE can elect to be treated as a direct reporting NFFE by registering with the IRS on Form 8957, “Foreign Account Tax Compliance Act (FATCA) Registration,” or the FATCA registration website. The 2014 temporary regulations provide that this election can only be revoked if the NFFE obtains consent from the Commissioner and, upon revocation, the NFFE must notify its sponsoring entity (for a NFFE that is a sponsored direct reporting NFFE) and all relevant withholding agents of the revocation. The 2014 temporary regulations also provide that the IRS may revoke the direct reporting status of a NFFE upon an event of default.

The Treasury Department and the IRS have determined that the requirement for a direct reporting NFFE to obtain consent to revoke its direct reporting NFFE status is unnecessary. Therefore, these final regulations remove this requirement and provide that a direct reporting NFFE may revoke its election by canceling its registration account on the FATCA registration website and by notifying the IRS in such manner as the IRS may prescribe in the Instructions for Form 8966. Further, these final regulations amend the notification requirements in the 2014 temporary regulations to require a NFFE to send notification within 30 days of the revocation to each financial institution (in addition to each withholding agent) from which it receives payments or with which it holds an account for which the NFFE provided a withholding certificate or written statement representing its status as a direct reporting NFFE. This amendment reflects that a NFFE may have provided documentation of its status to a financial institution that is not a withholding agent, and that in certain cases a NFFE is permitted to provide a written statement (rather than a withholding certificate).

#### G. Comments and changes to § 1.1473-1—Section 1473 definitions

##### 1. Definition of Withholdable Payment—In General

Under the 2013 final regulations, the term *withholdable payment* means any payment of U.S. source fixed or determinable annual or periodical (FDAP) income, and for sales or other dispositions occurring after December 31, 2016, any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S. source FDAP income. After the publication of the 2013 final regulations, a comment stated that additional time is needed to implement withholding on gross proceeds. As announced in Notice 2015-66, these final regulations modify the definition of withholdable payment to include, for sales or other dispositions occurring after December 31, 2018, any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

##### 2. Definition of Withholdable Payment—Payments Not Treated as Withholdable Payments—Offshore Payments of U.S. Source FDAP Income Prior to 2017 (Transitional)

The 2013 final regulations under section 1473 provide an exclusion from the definition of withholdable payments for certain non-intermediated offshore payments of U.S. source FDAP income made prior to January 1, 2017. Under the 2014 temporary regulations, this transitional rule was expanded to apply to a non-U.S. insurance broker that pays insurance and reinsurance premiums to a foreign insurance or reinsurance company. Comments requested that the transitional rule for offshore payments made by non-U.S. insurance brokers be extended for another year to allow non-U.S. brokers additional time to develop withholding and information reporting systems. A comment requesting further guidance about the sourcing of premiums was also submitted.

Withholding under chapter 4 is intended to incentivize foreign entities to report certain information about U.S. persons that make use of offshore accounts or

passive NFFEs. The preamble to the 2013 final chapter 4 regulations stated that “[t]his information reporting strengthens the integrity of the U.S. voluntary tax compliance system by placing U.S. taxpayers that have access to international investment opportunities on an equal footing with U.S. taxpayers that do not have such access or otherwise choose to invest within the United States.” 78 FR 5874. Withholding under chapter 4 is broad and may apply whenever a withholding agent, whether U.S. or foreign, makes a withholdable payment to ensure that the information reporting objectives of chapter 4 are met. As a result, chapter 4 withholding under sections 1471 and 1472 may apply to a withholdable payment made by a non-U.S. payor to a foreign payee. Consistent with these information reporting objectives of chapter 4, a passive NFFE may avoid being subject to withholding under chapter 4 by furnishing the documentation described in § 1.1471-3(d)(12) to its withholding agent or by electing to be treated as a direct reporting NFFE and providing information directly to the IRS.

The Treasury Department and the IRS have not accepted the comment to extend further the offshore payment transition rule to exclude from the definition of withholdable payments insurance and reinsurance premiums that are U.S. source FDAP income and paid by a non-U.S. broker to a foreign insurance or reinsurance company. A privately-held foreign insurance or reinsurance company is treated as a passive NFFE that is required to report information about its substantial U.S. owners, or to certify that it does not have any such owners, in order to avoid chapter 4 withholding on withholdable payments. The Treasury Department and the IRS have not excluded privately-held insurance or reinsurance companies from treatment as passive NFFEs because of concerns that these entities may be used to avoid U.S. taxation. Treating U.S. source premiums paid with respect to an insurance or reinsurance contract as withholdable payments will help to ensure that the IRS receives information about the substantial U.S. owners, if any, of these insurance or reinsurance companies, which will strengthen IRS enforcement efforts with respect to the use of foreign

insurance and reinsurance companies for tax avoidance. These requirements were promulgated in the 2013 final regulations published on January 28, 2013, which provided a generous transition period to allow for the development of systems necessary to implement the regulations. Furthermore, because the transitional offshore payment rule does not apply to U.S. brokers that pay insurance and reinsurance premiums to a foreign company, the expiration of the transition rule will ensure equivalent treatment of withholdable payments made by either a U.S. or non-U.S. broker to a foreign insurance or reinsurance company and consistent documentation and information reporting requirements under chapter 4 for all withholding agents. In addition, the Treasury Department and the IRS believe that guidance on sourcing rules for premiums is beyond the scope of chapter 4. The question of how insurance and reinsurance premiums are sourced is not unique to FATCA and the determination may need to be made for other purposes under the Code (for example, for purposes of determining the limitation on foreign tax credits under section 904).

From a policy perspective, the question of whether a foreign insurance or reinsurance company is a passive foreign investment company within the meaning of section 1297 is similar to the question of whether the foreign insurance or reinsurance company is a passive NFFE. On April 24, 2015, the Treasury Department and the IRS published proposed regulations (REG-108214-15) in the **Federal Register** (80 FR 22954) regarding when a foreign insurance company's income is excluded under section 1297(b)(2)(B) from the definition of passive income for purposes of the passive foreign investment company rules. The Treasury Department and the IRS continue to study these issues. If the Treasury Department and the IRS issue final regulations addressing the issues raised by those proposed regulations, it is possible that the scope of foreign insurance or reinsurance companies treated as passive NFFEs may be modified or potentially conformed to the scope of foreign insurance companies

treated as passive foreign investment companies under such final regulations.

#### H. *Comments and changes to § 1.1474-1—Liability for withheld tax and withholding agent reporting*

##### 1. Payments and Returns of Tax Withheld—Use of Agents—Authorized Agent

Under the 2013 final regulations, a withholding agent must file Form 8655, "Reporting Agent Authorization," with the IRS if it appoints an agent to act as its reporting agent for filing Form 1042 or making tax deposits and payments with respect to Form 1042. A comment suggested that Form 8655 should only be required to be filed when an agent files a Form 1042 in its own name (and under its own EIN) on behalf of another withholding agent. In response to the comment, these final regulations amend the 2013 final regulations to provide that a withholding agent must file Form 8655 only when its agent files a Form 1042 as the filer on behalf of the withholding agent. This revision is also included in final regulations under chapter 3 that are published elsewhere in this issue of the **Bulletin**.

##### 2. Information Returns for Payment Reporting—Filing Requirement—In General

The 2014 temporary regulations require withholding agents to file Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," to report a chapter 4 reportable amount and to furnish a copy of the form to the recipient and any intermediary or flow-through entity. The chapter 3 regulations include a similar filing requirement for amounts subject to reporting under chapter 3. The Treasury Department and the IRS have determined that withholding agents should be permitted to send Forms 1042-S to recipients electronically for purposes of both chapters 3 and 4 if certain requirements are met. These final regulations allow electronic recipient copies of Form 1042-S for chapter 4 purposes by cross-referencing § 1.1461-1(c)(1)(i)(A) (added in regulations published elsewhere in this issue of the **Bulletin**).

##### 3. Additional Reporting Requirements with Respect to U.S. Owned Foreign Entities and Owner-Documented FFIs—Reporting by Certain Withholding Agents with Respect to Owner-Documented FFIs

The 2014 temporary regulations require reporting by a withholding agent that makes a withholdable payment to an FFI that it treats as an owner-documented FFI, regardless of whether the owner-documented FFI is reported by another FFI or withholding agent under § 1.1471-4(d) or § 1.1474-1(i)(1). These final regulations relieve a withholding agent of this reporting when: (1) the withholding agent obtains from a participating FFI or reporting Model 1 FFI receiving a withholdable payment allocable to the owner-documented FFI a certification that the FFI is reporting for the year of the payment to the IRS all of the information described in § 1.1471-4(d) or § 1.1474-1T(i)(1) (as appropriate); and (2) the withholding agent does not know or have reason to know that the certification is incorrect or unreliable. These final regulations also amend the requirements for an FFI withholding statement to permit an FFI to include the certification described in the preceding sentence on the FFI's withholding statement.

Finally, the 2014 temporary regulations do not allow a withholding agent reporting under § 1.1474-1T(i)(1) on an owner-documented FFI to request an extension of time to file Form 8966. However, an FFI that otherwise qualifies to be an owner-documented FFI but instead reports its accounts as a participating FFI on Form 8966 would be eligible for the extensions of time to file Form 8966 provided in § 1.1471-4(d)(3)(vii). In order to allow a withholding agent the same period of time to report the accounts of an owner-documented FFI as the FFI could have if it performed its own reporting, these final regulations provide that such withholding agent may request an automatic 90-day extension of time to file Form 8966 and, under certain hardship conditions, an additional 90-day extension.

#### 4. Additional Reporting Requirements with Respect to U.S. Owned Foreign Entities and Owner-Documented FFIs—Reporting by Certain Withholding Agents with Respect to U.S. Owned Foreign Entities that are NFFEs

The 2014 temporary regulations require reporting on Form 8966 by a withholding agent of information about any substantial U.S. owners of a passive NFFE to which the withholding agent makes a withholdable payment, and require this reporting regardless of whether the passive NFFE is reported by a participating FFI as a U.S. account or by a reporting Model 1 FFI as a U.S. reportable account under an applicable IGA. To eliminate duplicative reporting of U.S. owners, these final regulations relieve a withholding agent of reporting with respect to a passive NFFE with one or more substantial U.S. owners if: (1) the NFFE is an account holder of a participating FFI or a registered deemed-compliant FFI; (2) the withholding agent obtains the certification described in § 1.1471-3(c)(3)(iii)(B)(2)(iv) (added by these final regulations) that the FFI receiving the payment is reporting for the year of the payment a passive NFFE with one or more substantial U.S. owners (or, with respect to a reporting Model 1 FFI or reporting Model 2 FFI, one or more controlling persons that are specified U.S. persons, as defined in the applicable IGA) as a U.S. account (other than a non-consenting U.S. account or an account held by a recalcitrant account holder) or U.S. reportable account (as applicable); and (3) the withholding agent does not know or have reason to know that the certificate is unreliable or incorrect. These final regulations also modify the requirements for an FFI withholding statement to provide that the statement may include the FFI's certification described in the preceding sentence. These modifications were previewed in the preamble to the FFI agreement in Revenue Procedure 2014-38.

The 2014 temporary regulations do not provide an exception for intermediaries and flow-through entities receiving a payment for a passive NFFE with one or more substantial U.S. owners that are not required to report under § 1.1471-4(d) or an

applicable IGA, even though reporting by those entities duplicates the reporting required of the withholding agent under § 1.1474-1(i)(2). To eliminate this duplicative reporting, these final regulations provide that an entity not subject to any other coordination rule in § 1.1474-1(i)(2) (including as described in the preceding paragraph) that is a flow-through entity or an entity acting as an intermediary for a withholdable payment allocable to a passive NFFE is not required report on the substantial U.S. owners of the passive NFFE under § 1.1474-1(i)(2) if: (1) the entity provides to the withholding agent from which it receives the payment documentation with respect to the passive NFFE's substantial U.S. owners sufficient for the withholding agent to report this information under § 1.1474-1(i)(2); and (2) the intermediary or flow-through entity does not know or have reason to know that the withholding agent does not report this information.

#### I. *Comments and changes to § 301.1474-1—Required use of magnetic media for financial institutions filing Form 1042-S or Form 8966—Failure to file*

The 2013 final regulations provide that a failure by a financial institution to file Form 1042-S or Form 8966 electronically is a failure to comply with the information reporting requirements under section 6723. However, section 6723 applies only to a “specified information reporting requirement,” which does not include Form 1042-S or Form 8966. See section 6724(d)(3). The correct citation is section 6721, which provides penalties applicable to an “information return,” which is defined in section 6724(d)(1) to include any form, statement, or schedule required to be filed under chapter 4. Therefore, these final regulations correct the 2013 final regulations to cross-reference section 6721 rather than section 6723.

#### J. *Nonsubstantive clarifications and corrections*

These final regulations include various nonsubstantive clarifications and corrections to the 2013 final regulations and the 2014 temporary regulations.

Erroneous cross-references are corrected in §§ 1.1471-2(a)(4)(iii), 1.1471-3(c)(6)(ii)(C)(2)(x), 1.1471-4(c)(2)(v), 1.1471-4(d)(9) *Examples 1 and 2*, 1.1471-4(e)(4), 1.1471-5(f)(1)(i)(D)(8), 1.1471-5(f)(2), 1.1471-5(f)(2)(iii)(E), and 1.1474-1(d)(3)(vii). In the first sentence of § 1.1471-3(c)(8)(iii), “consolidated accounts” is changed to “consolidated obligations” to use the correct defined term, and in the last sentence of § 1.1471-2(a)(2)(ii), “QI withholding agreement” is changed to “QI agreement” to use the defined term. These final regulations also revise the description of the U.S. payee pool in § 1.1471-3(c)(3)(iii)(B)(2)(ii) to align with the limitations on the use of this pool in regulations under chapter 61 (see § 1.6049-4(c)(4)(ii)). Additionally, the heading of § 1.1471-3(d)(11)(x) is revised to clarify that the documentation rules in that section do not apply to sponsored direct reporting NFFEs.

These final regulations revise § 1.1471-4(a)(4), which provides rules concerning expanded affiliated groups, to conform to the revisions to § 1.1471-4T(e)(1) in the 2014 temporary regulations, which allow exempt beneficial owners and certified deemed-compliant FFIs to be members of an expanded affiliated group that includes a participating FFI. These final regulations also modify references to territory financial institutions acting as intermediaries in § 1.1471-4(d)(2)(ii)(B) to refer to both territory financial institutions acting as intermediaries and territory financial institutions that are flow-through entities, because the rules described in these sections apply to both types of territory financial institutions. In § 1.1471-4(d)(3)(vii) and (d)(6)(vi), references to Form 8809 are revised because the IRS created a new form (Form 8809-I, “Application for Extension of Time to File FATCA Form 8966”) for applications for extensions of time to file Form 8966.

The 2013 final regulations are inconsistent when describing the specified U.S. persons that a participating FFI is required to report with respect to an owner-documented FFI. Under § 1.1471-4(d)(2)(ii)(D), a participating FFI is required to report the information described in § 1.1471-4(d)(3)(iv) or (d)(5)(iii) with respect to each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I).

However, § 1.1471-4(d)(3)(iv)(B) and (d)(5)(iii)(B) provide that the participating FFI reports the name, address, and TIN of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2). These final regulations clarify the inconsistency by adding a cross-reference to § 1.1471-3(d)(6)(iv)(A)(2) in § 1.1471-4(d)(2)(ii) for the specified U.S. persons that the participating FFI must report. Finally, these final regulations revise the definition of chapter 4 reportable amount to coordinate with § 1.1474-1(d)(1)(ii)(A)(1)(xi), which provides that a recipient for purposes of reporting on Form 1042-S includes a person or U.S. branch receiving income that is effectively connected with a U.S. trade or business. Under these final regulations, a chapter 4 reportable amount includes an amount that would be a withholdable payment but for the fact that the payment is income effectively connected with a U.S. trade or business (as described in § 1.1473-1(a)(4)(ii)).

## II. Temporary Regulations

### A. In general

In response to comments and after further consideration, this document includes temporary regulations that revise or clarify certain sections of the 2013 final regulations. The following portions of this preamble provide a discussion of the additions and modifications made by these temporary regulations to the 2013 final regulations.

### B. Comments and changes to § 1.1471-1—Scope of chapter 4 and definitions—Permanent residence address

The 2013 final regulations provide that an address that is provided subject to an instruction to hold all mail to that address is not a permanent residence address. The temporary coordination regulations apply this rule to chapter 3. A comment noted that some withholding agents interpret this provision to mean that a payee that provides an address subject to a hold mail instruction cannot generally establish non-U.S. status (because, for example, a Form W-8BEN requires a permanent residence address).

The Treasury Department and the IRS agree with this interpretation but did not intend for an account to be treated as undocumented if there is a permanent residence address with a hold mail instruction. In regulations published elsewhere in this issue of the **Bulletin**, the temporary coordination regulations are modified to provide that an address that is subject to a hold mail instruction can be relied upon as a permanent residence address if the account holder provides documentary evidence establishing residence in the country where the account holder is claiming to be a resident. These temporary regulations incorporate this rule by revising the definition of permanent residence address to provide that an address that is subject to a hold mail instruction can be used to the extent accompanied by documentary evidence described in § 1.1441-1(c)(38)(ii) supporting the claim of foreign status.

### C. Comments and changes to § 1.1471-3—Identification of payee

#### 1. Rules for Reliably Associating a Payment with a Withholding Certificate or Other Appropriate Documentation

##### i. In general

The 2013 final regulations provide that a withholding agent may reliably associate a withholdable payment with valid documentation supporting a payee's chapter 4 status if the documentation is obtained "either directly or through an agent." See § 1.1471-3(c)(1). The 2013 final regulations further provide that such documentation must be "provided by a payee." *Id.* For chapter 3 purposes, a withholding agent can reliably associate a payment with a Form W-8BEN that is "furnished by" the beneficial owner. See § 1.1441-1(e)(1)(ii)(A)(1). A comment noted that it is unclear whether the chapter 3 regulations and chapter 4 regulations permit a withholding agent to rely on a withholding certificate provided by a payee or beneficial owner to a repository that houses these forms for access by withholding agents (a third party repository).

In consideration of this comment, the temporary coordination regulations are re-

vised in regulations published elsewhere in this issue of the **Bulletin** to permit a withholding agent to rely on withholding certificates housed by a third party repository when certain requirements are met. Consistently, these temporary regulations clarify that, in general, a withholding agent must obtain documentation "either directly from the payee or through its agent." These temporary regulations also provide that a withholding certificate will be considered provided by a payee if a withholding agent obtains the certificate from a third party repository (rather than directly from the payee or through its agent) and the requirements in § 1.1441-1(e)(4)(iv)(E) are satisfied. A withholding certificate obtained from a third party repository must be reviewed by the withholding agent in the same manner as any other documentation to determine whether it may be relied upon for chapter 4 purposes.

The 2014 temporary regulations and the temporary coordination regulations do not permit a withholding agent to accept Forms W-8 with an electronic signature, other than Forms W-8 electronically transmitted through the withholding agent's electronic system. The Treasury Department and the IRS have determined that Forms W-8 received by facsimile, e-mail, or from a third party repository may include an electronic signature, and that this rule should be consistent in chapters 3 and 4. Therefore, the temporary coordination regulations are revised in regulations published elsewhere in this issue of the **Bulletin** to permit a withholding agent to accept Forms W-8 with electronic signatures provided that the requirements in the temporary coordination regulations are met. These temporary regulations incorporate this rule into chapter 4 by cross-referencing the amended chapter 3 rule.

##### ii. Requirements for validity of certificates—Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)—Withholding statement

Temporary regulations under chapter 3 that are published elsewhere in this issue of the **Bulletin** include an allowance for a withholding agent to accept an alternative

withholding statement from a nonqualified intermediary that meets the requirements in § 1.1441-1(e)(3)(iv)(C)(3). To coordinate with chapter 3, these temporary regulations provide that a withholding agent making a withholdable payment to a nonqualified intermediary for which a withholding statement is required for purposes of both chapters 3 and 4 may accept a withholding statement that meets the requirements described in § 1.1441-1(e)(3)(iv)(C)(3).

iii. Applicable rules for withholding certificates, written statements, and documentary evidence—Change in circumstances

On July 29, 2016, the Treasury Department and the IRS released Announcement 2016-27, 2016-33 I.R.B. 238, which provides that on January 1, 2017, the Treasury Department will begin updating the list of jurisdictions treated as if they have an IGA in effect to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect. The list of jurisdictions treated as if they have an IGA in effect (the “IGA List”) is located at <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>. Announcement 2016-27 also provides that, in order to provide notice to FFIs, a jurisdiction will not cease to be treated as having an IGA in effect until at least 60 days after the jurisdiction’s status on the IGA List is updated. Under the 2014 temporary regulations, a change in circumstances includes any change that affects a person’s chapter 4 status. These temporary regulations provide that a withholding agent will have reason to know of a change in circumstances with respect to an FFI’s chapter 4 status on the date that the jurisdiction where the FFI is resident, organized, or located ceases to be treated as having an IGA in effect. The rule under § 1.1471-3(c)(6)(ii)(E)(3) will still apply to allow the withholding agent 90 days to cure the change in circumstances.

iv. Curing documentation errors—Documentation received after the time of payment

The 2013 final regulations provide rules for when a withholding agent may

rely on documentation received after the time of payment to establish that no withholding was required under chapter 4 on the payment. The temporary coordination regulations provide similar rules for establishing that no withholding was required under chapter 3. In regulations published elsewhere in this issue of the **Bulletin**, the temporary coordination regulations are revised to include additional requirements for documentation obtained after the time of payment to establish that the payment is income effectively connected with the conduct of a trade or business in the United States. These temporary regulations cross-reference the chapter 3 rules for additional requirements for reliance on documentation received after the time of payment to establish that a payment was income effectively connected with the conduct of a U.S. trade or business (and therefore is not a withholdable payment).

#### 2. Documentation Requirements to Establish Payee’s Chapter 4 Status—Identification of Owner-Documented FFIs

Under the 2013 final regulations, an FFI cannot qualify as an owner-documented FFI if it is a member of an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company. That is, under the 2013 final regulations, all FFIs in the expanded affiliated group must be investment entities. The 2013 final regulations further provide that a withholding agent cannot act as a designated withholding agent for an owner-documented FFI if the withholding agent knows or has reason to know that the owner-documented FFI is a member of an expanded affiliated group with any FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent. These temporary regulations modify the reason to know rule for designated withholding agents to conform to the requirements of an owner-documented FFI that is a member of an expanded affiliated group. Under these temporary regulations, a withholding agent cannot act as a designated withholding agent for an owner-documented FFI if the with-

holding agent knows or has reason to know that the owner-documented FFI is a member of an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company.

#### D. Comments and changes to § 1.1471-4—FFI agreement

##### 1. Due Diligence for the Identification and Documentation of Account Holders and Payees—Standards of Knowledge—Limits on Reason to Know with Respect to Certain Accounts Acquired in a Merger or Bulk Acquisition

The 2013 final regulations provide limitations on the standards of knowledge that apply in a merger or bulk acquisition if a participating FFI (transferee FFI) acquires the accounts of a participating FFI or deemed-compliant FFI (including a U.S. branch of either such FFI) that applies the due diligence requirements of § 1.1471-4(c) as a condition of its status, or of a U.S. financial institution (transferor FI), provided certain requirements are met. One such requirement is that a transferor FI that is a branch of a participating FFI or of a registered deemed-compliant FFI (other than a U.S. branch that is treated as a U.S. person) or that is a deemed-compliant FFI that applies the due diligence rules of § 1.1471-4(c) as a condition of its status provide a written representation to the transferee FFI regarding the transferor FI’s application of required due diligence procedures. Because this written representation is to be provided by all transferor FIs that are FFIs, these temporary regulations provide that a transferee FFI must obtain the written representation described in § 1.1471-4(c)(2)(ii)(B)(2)(iii) from a transferor FI that is a participating FFI or registered deemed-compliant FFI (or a U.S. branch of either such entity, excluding a U.S. branch that is treated as a U.S. person), or a deemed-compliant FFI that applies the due diligence rules of § 1.1471-4(c) as a condition of its status.

## 2. Account Reporting—Reporting Requirements in General

### i. Financial institution required to report an account—Combined reporting on Form 8966 following a merger or bulk acquisition of accounts

The 2014 temporary regulations require a participating FFI to report information with respect to U.S. accounts and accounts held by owner-documented FFIs maintained at any time during the calendar year. A participating FFI is also required to report foreign reportable amounts paid to accounts held by nonparticipating FFIs. Comments requested guidance on reporting accounts acquired in a merger or bulk acquisition on Form 8966. In response to the comment, these temporary regulations provide that if a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under § 1.1471-4(d) with respect to the calendar year of the merger or acquisition (acquisition year) provided certain requirements are met. First, the successor must acquire substantially all of the accounts maintained by the predecessor, or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts. Second, the successor must agree to report the acquired accounts for the acquisition year on Forms 8966 to the extent required in § 1.1471-4(d)(3) or (d)(5). Third, the successor may not elect to report under section 1471(c)(2) and § 1.1471-4(d)(5) with respect any acquired account that is a U.S. account for the acquisition year. Fourth, the successor must notify the IRS on the form and in the manner prescribed by the IRS that Form 8966 is being filed on a combined basis. If the requirements described in this paragraph are not satisfied, the predecessor is required to report the acquired accounts for the portion of the acquisition that it maintains the accounts (marking the accounts as closed), and the successor is required to report the acquired accounts for the portion of the acquisition year that it maintains the accounts. For the rules for reporting on Forms 1042-S for chapter 4 purposes following a merger or bulk ac-

quisition, see section II.E of this Summary of Comments and Explanation of Revisions and Provisions.

### ii. Descriptions applicable to reporting requirements of § 1.1471-4(d)(3)—Payments made with respect to an account—Other accounts

Under the 2013 final regulations, a participating FFI reporting an account that is a debt or equity interest in the FFI must report the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account. A comment requested clarification of the requirements for such reporting by a participating FFI that is a partnership for U.S. tax purposes. The comment noted disparities between the amount required to be reported by the partnership on Form 8966 and the amount of income allocated to the partner by the partnership, including that the reporting would overstate the partner's share of the partnership's income and would include redemption payments already included in a partner's income. The comment also noted that tax return information may not be available by the due date for filing Form 8966 for a partnership that invests in other partnerships and files an extension of time for filing Schedules K-1 (which is longer than the extension of time for filing Form 8966).

In response to the comment, these temporary regulations modify the account reporting requirements for participating FFIs that are partnerships. Under these temporary regulations, a participating FFI that is a partnership reporting an account under § 1.1471-4(d)(3) must report the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The amount required to be reported with respect to a partner may be determined based on the partnership's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the partnership's financial statements or any other reasonable method used by the partnership for calculating the partner's share of partnership income by such date. These temporary regulations provide that the mod-

ifications to account reporting by partnerships described in this paragraph apply beginning with reporting with respect to calendar year 2017. However, taxpayers may apply these temporary regulations retroactively to January 28, 2013.

### iii. Descriptions applicable to reporting requirements of § 1.1471-4(d)(3)—Payments made with respect to an account—Transfers and closings of deposit, custodial, insurance, and annuity financial accounts

Under the 2013 final regulations, a participating FFI is required to report payments made with respect to an account that the FFI is required to treat as a U.S. account or account held by an owner-documented FFI. The 2013 final regulations provide that in the case of an account closed or transferred in its entirety by an account holder, the payments made with respect to the account are the payments made to the account until the date of transfer or closure and the amount withdrawn or transferred. The Treasury Department and the IRS intended for FFIs to report a closed or transferred account regardless of who initiates the closure or transfer. Therefore, these temporary regulations modify the 2013 final regulations to require reporting on a closed or transferred account when the account is closed or transferred by any person (not just the account holder). This modification is necessary to prevent FFIs from abusing the rules by claiming that no reporting is required if the FFI initiates the closure or transfer rather than the account holder. This modification is also consistent with the reporting required on closed accounts under the Model 1 IGA, which is not limited to accounts closed by the account holder.

### E. Changes to § 1.1474-1—Liability for withheld tax and withholding agent reporting—Information returns for payment reporting—Method of reporting—Payments by U.S. withholding agent to recipients

Revenue Procedure 99-50, 1999-2 C.B. 757, provides procedures for combined reporting on Forms 1042-S following a merger or acquisition for purposes of chapter 3. To provide a consistent rule for reporting on Forms 1042-S under chapters 3 and 4 in these cases, these tempo-

rary regulations provide that a withholding agent required to report on Forms 1042-S under chapter 4 may rely on the procedures used for combined reporting on Form 1042-S that apply for chapter 3 purposes (even if the withholding agent is not required to report under chapter 3) following a merger or acquisition provided that all of the requirements for such reporting provided in the Instructions for Form 1042-S are satisfied.

### 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.

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

### Drafting Information

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

\* \* \* \* \*

### Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.1471-0 is amended by:

1. Revising the entries for § 1.1471-1(b)(7) through (142).

2. Adding entries for § 1.1471-1(b)(143) through (151).

3. Revising the entries for § 1.1471-2(a)(2)(i), (a)(4)(ii), and (a)(5).

4. Revising the entries for § 1.1471-3(a)(3)(v) and (vi), (c)(3)(iii)(H), (c)(5)(ii)(B), and (c)(8)(iv).

5. Adding an entry for § 1.1471-3(c)(8)(v).

6. Revising the entry for § 1.1471-3(d)(4).

7. Adding entries for § 1.1471-3(d)(4)(vi) through (vi)(C) and (d)(5)(iii) through (iii)(B).

8. Revising the entries for § 1.1471-3(d)(6)(iii) and (vii).

9. Adding entries for § 1.1471-3(d)(11)(x) through (xii)(C).

10. Revising the entry for § 1.1471-3(e)(3).

11. Adding entries for § 1.1471-3(e)(3)(iii) through (iv)(B).

12. Revising the entries for § 1.1471-3(e)(4)(i), (e)(4)(ii) introductory text, (e)(4)(ii)(B).

13. Removing the entries for § 1.1471-3(e)(4)(ii)(B)(1) through (D).

14. Revising the entries for § 1.1471-3(e)(4)(iii), (e)(4)(iv) introductory text, (e)(4)(iv)(B).

15. Removing the entries for § 1.1471-3(e)(4)(iv)(B)(1) through (E).

16. Revising the entries for § 1.1471-3(e)(4)(vii)(B), (e)(4)(vii)(D), and (f)(2).

17. Removing the entries for § 1.1471-3(f)(2)(i) and (ii) and (f)(3)(i) through (iii).

18. Revising the entry for § 1.1471-3(f)(5).

19. Adding entries for § 1.1471-4(b)(3)(i) through (iii).

20. Revising the entries for § 1.1471-4(b)(7), (c)(2)(v), (c)(5)(iv)(E), (d)(2)(ii)(D) and (E).

21. Adding entries for § 1.1471-4(d)(2)(ii)(F) and (d)(2)(iii)(C).

22. Revising the entries for § 1.1471-4(d)(3)(v) through (vii).

23. Removing the entry for § 1.1471-4(d)(3)(viii).

24. Revising the entries for § 1.1471-4(d)(4)(iv)(D), and (d)(6)(vi).

25. Adding an entry for § 1.1471-4(d)(6)(vii).

26. Revising the entries for § 1.1471-4(d)(7), (d)(7)(ii)(A), and (d)(7)(iv)(B).

27. Adding entries for § 1.1471-4(e)(2)(vi), and (e)(3)(v) and (vi).

28. Revising the entry for § 1.1471-4(i)(2).

29. Revising the entries for § 1.1471-5(a)(3)(ii) through (v).

30. Removing the entry for § 1.1471-5(a)(3)(vi).

31. Revising the entries for § 1.1471-5(b)(1)(iii)(A), (b)(3)(v), (b)(3)(vi) and (vii), (b)(4)(iv), (e)(4)(iii)(B), and (f)(1)(i)(E).

32. Adding an entry for § 1.1471-5(f)(2)(v).

33. Revising the entry for § 1.1471-5(f)(4).

34. Removing the entries for § 1.1471-5(i)(2)(i) and (ii).

35. Revising the entries for § 1.1471-5(i)(3) through (5).

36. Adding entries for § 1.1471-5(i)(6) through (10).

37. Revising the entry for § 1.1471-5(j).

38. Adding entries for § 1.1471-5(k) and (l).

39. Revising the entries for § 1.1471-6(d)(4) and (f)(3).

40. Revising the entries for § 1.1472-1(c)(1) and (2), (d)(2), and (f).

41. Adding entries for § 1.1472-1(c)(1)(vi) and (vii), (c)(3) through (c)(5)(iv), (g), and (h).

42. Revising the entry for § 1.1473-1(a)(3)(i)(C).

43. Adding entries for § 1.1473-1(a)(4)(vii) and (viii).

44. Revising the entries for § 1.1474-1(d)(4)(i)(C), (d)(4)(iii) introductory text, and (d)(4)(iii)(B) and (C).

45. Adding an entry for § 1.1474-1(i)(4).

46. Removing the entry for § 1.1474-1(d)(4)(iii)(D).

47. Revising the entries for § 1.1474-6(c)(2) and (f).

48. Adding an entry for § 1.1474-6(g).

The revisions and additions read as follows:

*§ 1.1471-0 Outline of regulation provisions for sections 1471 through 1474.*

This section lists the table of contents for §§ 1.1471-1 through 1.1474-7 and § 301.1474-1 of this chapter.

§ 1.1471–1 Scope of chapter 4 and definitions.

\* \* \* \* \*

(b) Definitions.

\* \* \* \* \*

- (7) Backup withholding.
- (8) Beneficial owner.
- (9) Blocked account.
- (10) Branch.
- (11) Broker.
- (12) Cash value.
- (13) Cash value insurance contract.
- (14) Certified deemed-compliant FFI.
- (15) Change in circumstances.
- (16) Chapter 3.
- (17) Chapter 4.
- (18) Chapter 4 reportable amount.
- (19) Chapter 4 status.
- (20) Chapter 4 withholding rate pool.
- (21) Clearing organization.
- (22) Complex trust.
- (23) Consolidated obligations.
- (24) Custodial account.
- (25) Custodial institution.
- (26) Customer master file.
- (27) Deemed-compliant FFI.
- (28) Deferred annuity contract.
- (29) Depository account.
- (30) Depository institution.
- (31) Direct reporting NFFE.
- (32) Documentary evidence.
- (33) Documentation.
- (34) Dormant account.
- (35) Effective date of the FFI agreement.
- (36) EIN.
- (37) Election to be withheld upon.
- (38) Electronically searchable information.
- (39) Entity.
- (40) Entity account.
- (41) Excepted NFFE.
- (42) Exempt beneficial owner.
- (43) Exempt recipient.
- (44) Expanded affiliated group.
- (45) FATF.
- (46) FATF-compliant jurisdiction.
- (47) FFI.
- (48) FFI agreement.
- (49) Financial account.
- (50) Financial institution.
- (51) Flow-through entity.
- (52) Flow-through withholding certificate.
- (53) Foreign entity.
- (54) Foreign passthrough payment.
- (55) Foreign payee.
- (56) Foreign person.
- (57) GIIN.

- (58) Grandfathered obligation.
- (59) Grantor trust.
- (60) Gross proceeds.
- (61) Group annuity contract.
- (62) Group insurance contract.
- (63) Immediate annuity.
- (64) Individual account.
- (65) Insurance company.
- (66) Insurance contract.
- (67) Intergovernmental agreement (IGA).
- (68) Intermediary.
- (69) Intermediary withholding certificate.
- (70) Investment entity.
- (71) Investment-linked annuity contract.
- (72) Investment-linked insurance contract.
- (73) IRS FFI list.
- (74) Life annuity contract.
- (75) Life insurance contract.
- (76) Limited branch.
- (77) Limited FFI.
- (78) Model 1 IGA.
- (79) Model 2 IGA.
- (80) NFFE.
- (81) Non-exempt recipient.
- (82) Nonparticipating FFI.
- (83) Nonreporting IGA FFI.
- (84) Non-U.S. account.
- (85) NQI.
- (86) NWP.
- (87) NWT.
- (88) Offshore obligation.
- (89) Owner.
- (90) Owner-documented FFI.
- (91) Participating FFI.
- (92) Participating FFI group.
- (93) Partnership.
- (94) Passive NFFE.
- (95) Passthrough payment.
- (96) Payee.
- (97) Payment with respect to an offshore obligation.
- (98) Payor.
- (99) Permanent residence address.
- (100) Person.
- (101) Preexisting account.
- (102) Preexisting entity account.
- (103) Preexisting individual account.
- (104) Preexisting obligation.
- (105) Pre-FATCA Form W–8.
- (106) Prima facie FFI.
- (107) QI.
- (108) QI agreement.
- (109) QI branch of a U.S. financial institution.
- (110) Recalcitrant account holder.
- (111) Registered deemed-compliant FFI.
- (112) Relationship manager.

- (113) Reportable payment.
- (114) Reporting Model 1 FFI.
- (115) Reporting Model 2 FFI.
- (116) Responsible officer.
- (117) Restricted distributor.
- (118) Simple trust.
- (119) Specified insurance company.
- (120) Specified U.S. person.
- (121) Sponsored FFI.
- (122) Sponsored FFI group.
- (123) Sponsored direct reporting NFFE.
- (124) Sponsoring entity.
- (125) Standardized industry coding system.
- (126) Standing instructions to pay amounts.
- (127) Subject to withholding.
- (128) Substantial U.S. owner.
- (129) Territory entity.
- (130) Territory financial institution.
- (131) Territory financial institution treated as a U.S. person.
- (132) Territory NFFE.
- (133) TIN.
- (134) U.S. account.
- (135) U.S. branch treated as a U.S. person.
- (136) U.S. financial institution.
- (137) U.S. indicia.
- (138) U.S. owned foreign entity.
- (139) U.S. payee.
- (140) U.S. payor.
- (141) U.S. person.
- (142) U.S. source FDAP income.
- (143) U.S. territory.
- (144) U.S. withholding agent.
- (145) Withholdable payment.
- (146) Withholding.
- (147) Withholding agent.
- (148) Withholding certificate.
- (149) WP.
- (150) Written statement.
- (151) WT.

\* \* \* \* \*

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

(a) \* \* \*

(2) \* \* \*

- (i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs, and U.S. branches acting as intermediaries.
- \* \* \* \* \*

(4) \* \* \*  
(ii) Exception to withholding for certain payments made prior to July 1, 2016 (transitional).  
\* \* \* \* \*

(5) Withholding requirements if source or character of payment is unknown.  
\* \* \* \* \*

§ 1.1471-3 Identification of payee.

(a) \* \* \*  
(3) \* \* \*  
(v) Disregarded entity or limited branch.  
(vi) U.S. branch of treated as a U.S. person.  
\* \* \* \* \*

(c) \* \* \*  
(3) \* \* \*  
(iii) \* \* \*  
(H) Rules applicable to a withholding certificate of a U.S. branch.  
\* \* \* \* \*

(5) \* \* \*  
(ii) \* \* \*  
(B) Preexisting obligation documentary evidence.  
\* \* \* \* \*

(8) \* \* \*  
(iv) Document sharing for gross proceeds.

(v) Preexisting account.  
\* \* \* \* \*

(d) \* \* \*  
(4) Identification of participating FFIs and registered deemed-compliant FFIs.  
\* \* \* \* \*

(vi) Sponsored investment entities and sponsored controlled foreign corporations.

(A) In general.  
(B) Payments made prior to January 1, 2017 (transitional).

(C) Payments made after December 31, 2016, to payees documented prior to January 1, 2017.

(5) \* \* \*  
(iii) Certain investment entities that do not maintain financial accounts.

(A) In general.  
(B) Offshore obligations.  
(6) \* \* \*

(iii) Documentation for owners and debt holders of payee.  
\* \* \* \* \*

(vii) Exception for certain offshore obligations of \$1,000,000 or less.  
\* \* \* \* \*

(11) \* \* \*  
(x) Identifying a direct reporting NFFE (other than a sponsored direct reporting NFFE).

(A) In general.  
(B) Exception for offshore obligations.  
(C) Special rule for preexisting offshore obligations.

(xi) Identifying a sponsored direct reporting NFFE.  
(A) In general.

(1) Payments made prior to January 1, 2017 (transitional).  
(2) Payments made after December 31, 2016, to payees documented prior to January 1, 2017.

(B) Exception for offshore obligations.  
(xii) Identification of excepted inter-affiliate FFI.

(A) In general.  
(B) Offshore obligations.  
(C) Reason to know.  
\* \* \* \* \*

(e) \* \* \*  
(3) GIIN verification.  
\* \* \* \* \*

(iii) Special rules for direct reporting NFFEs.

(iv) Special rules for sponsored direct reporting NFFEs and sponsoring entities.

(A) Sponsored direct reporting NFFEs.  
(B) Sponsoring entities (transitional).

(4) \* \* \*  
(i) Reason to know regarding an entity's chapter 4 status.

(ii) Reason to know applicable to withholding certificates.  
\* \* \* \* \*

(B) Withholding certificate provided by an FFI.

(iii) Reason to know applicable to written statements.

(iv) Reason to know applicable to documentary evidence.  
\* \* \* \* \*

(B) Standards of knowledge applicable to certain types of documentary evidence.  
\* \* \* \* \*

(vii) \* \* \*  
(B) Reason to know there are U.S. indicia associated with preexisting obligations.  
\* \* \* \* \*

(D) Limits on reason to know for multiple obligations belonging to a single person.  
\* \* \* \* \*

(f) \* \* \*  
(2) Presumptions of classification as an individual or entity and entity as the beneficial owner.  
\* \* \* \* \*

(5) Presumption of chapter 4 status of payee with respect to a payment to an intermediary or flow-through entity.  
\* \* \* \* \*

§ 1.1471-4 FFI agreement.

\* \* \* \* \*  
(b) \* \* \*  
(3) \* \* \*  
(i) In general.  
(ii) Withholding not required.  
(iii) Election to withhold under section 3406.  
\* \* \* \* \*

(7) Withholding requirements for U.S. branches of FFIs treated as U.S. persons.

(c) \* \* \*  
(2) \* \* \*  
(v) Documentation rules for U.S. branches of FFIs that are treated as U.S. persons.  
\* \* \* \* \*

(5) \* \* \*  
(iv) \* \* \*

(E) Exception for preexisting individual accounts previously documented as held by foreign individuals.  
\* \* \* \* \*

(d) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*

(D) Special reporting of accounts held by owner-documented FFIs.

(E) Requirement to identify the GIIN of a branch that maintains an account.

(F) Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).

(iii) \* \* \*  
(C) Rules for U.S. branches of FFIs not treated as U.S. persons.

(3) \* \* \*  
(v) Form for reporting accounts under section 1471(c)(1).

- (vi) Time and manner of filing.
- (vii) Extensions in filing.
- (4) \* \* \*
- (iv) \* \* \*

(D) Transfers and closings of deposit, custodial, insurance, and annuity financial accounts.

\* \* \* \* \*

(6) \* \* \*

(vi) Extensions in filing.

(vii) Record retention requirements.

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

\* \* \* \* \*

(ii) \* \* \*

(A) Reporting with respect to the 2014 calendar year.

\* \* \* \* \*

(iv) \* \* \*

(B) Special determination date and timing for reporting with respect to the 2014 calendar year.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(vi) Exception from restriction on opening U.S. accounts and nonparticipating FFI accounts.

(3) \* \* \*

(v) Exception from registration requirement.

(A) Conditions for exception.

(B) Confirmation requirements of lead FI.

(vi) Exception from restriction on opening U.S. accounts and nonparticipating FFI accounts.

\* \* \* \* \*

(i) \* \* \*

(2) Requesting waiver or closure of a U.S. account.

\* \* \* \* \*

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

(a) \* \* \*

(3) \* \* \*

(ii) Financial accounts held by agents that are not financial institutions.

(iii) Jointly held accounts.

(iv) Account holder for insurance and annuity contracts.

(v) Examples.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) Equity or debt interests in an investment entity.

\* \* \* \* \*

(3) \* \* \*

(v) Value of interest determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments.

\* \* \* \* \*

(vi) Return earned on the interest (including upon a sale, exchange, or redemption) determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs.

\* \* \* \* \*

(vii) Cash value insurance contract.

\* \* \* \* \*

(4) \* \* \*

(iv) Currency translation of balance or value.

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(iii) \* \* \*

(B) Special rule for start-up entities.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(E) Qualified credit card issuers and servicers.

\* \* \* \* \*

(2) \* \* \*

(v) Certain investment entities that do not maintain financial accounts.

\* \* \* \* \*

(4) Definition of a restricted distributor.

\* \* \* \* \*

(i) \* \* \*

(1) Scope of paragraph.

(2) Expanded affiliated group defined.

(3) Member of expanded affiliated group.

(4) Ownership test.

(i) Corporations.

(A) Stock not to include certain preferred stock.

(B) Valuation.

(ii) Partnerships.

(iii) Trusts.

(5) Treatment of warrants, options, and obligations convertible into equity for determining ownership.

(6) Exception for FFIs holding certain capital investments.

(7) Seed capital.

(8) Anti-abuse rule.

(9) Exception for limited life debt investment entities.

(10) Partnerships, trusts, and other non-corporate entities.

(j) Sponsoring entity verification.

(k) Sponsoring entity event of default.

(l) Effective/applicability date.

*§ 1.1471-6 Payments beneficially owned by exempt beneficial owners.*

\* \* \* \* \*

(d) \* \* \*

(4) Income on certain transactions.

\* \* \* \* \*

(f) \* \* \*

(3) Narrow participation retirement funds.

\* \* \* \* \*

*§ 1.1472-1 Withholding on NFFEs.*

\* \* \* \* \*

(c) \* \* \*

(1) Payments to an excepted NFFE.

\* \* \* \* \*

(vi) Direct reporting NFFEs.

(vii) Sponsored direct reporting NFFEs.

(2) Payments made to an exempt beneficial owner.

(3) Definition of direct reporting NFFE.

(4) Election to be treated as a direct reporting NFFE.

(i) Manner of making election.

(ii) Effective date of election.

(iii) Revocation of election by NFFE.

(iv) Revocation of election by Commissioner.

(v) Event of default.

(vi) Notice of event of default.

(vii) Remediation of event of default.

(5) Election by a direct reporting NFFE to be treated as a sponsored direct reporting NFFE.

(i) Definition of sponsored direct reporting NFFE.

(ii) Requirements for sponsoring entity of a sponsored direct reporting NFFE.

(iii) Revocation of status as sponsoring entity.

(iv) Liability of sponsoring entity.

(d) \* \* \*

(2) Payments made to a NFFE that is a QI, WP, or WT.

\* \* \* \* \*

- (f) Sponsoring entity verification.
- (g) Sponsoring entity event of default.
- (h) Effective/applicability date.

§ 1.1473–1 Section 1473 definitions.

- (a) \* \* \*
- (3) \* \* \*
- (i) \* \* \*

(C) Special rule for gross proceeds from sales settled by a clearing organization.

\* \* \* \* \*

- (4) \* \* \*

(vii) Collateral arrangements prior to 2017 (transitional).

(viii) Certain dividend equivalents.

\* \* \* \* \*

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

\* \* \* \* \*

- (d) \* \* \*
- (4) \* \* \*
- (i) \* \* \*

(C) Amounts paid to a U.S. branch.

\* \* \* \* \*

(iii) Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs) and U.S. branches not treated as U.S. persons.

- (A) \* \* \*

(B) Special reporting requirements of participating FFIs, deemed-compliant FFIs, FFIs that make an election under section 1471(b)(3), and U.S. branches not treated as U.S. persons.

(C) Reporting by a U.S. branch treated as a U.S. person.

\* \* \* \* \*

- (i) \* \* \*

(4) Extensions of time to file.

\* \* \* \* \*

§ 1.1474–6 Coordination of chapter 4 with other withholding provisions.

\* \* \* \* \*

- (c) \* \* \*

(2) Determining the amount of the distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding.

\* \* \* \* \*

- (f) Coordination with section 3406.
- (g) Effective/applicability date.

Par. 3. Section 1.1471–1 is amended by revising paragraphs (b)(6) and (7), (b)(10), (b)(20), (b)(23), (b)(31), (b)(35), (b)(41), (b)(43), (b)(48), (b)(50), (b)(67), (b)(76) and (77), (b)(81), (b)(83), (b)(88), (b)(91), (b)(98) through (100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105), (b)(113), (b)(115), (b)(123) through (125), (b)(128), (b)(135), (b)(141), (b)(146), and (c) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

\* \* \* \* \*

- (b) \* \* \*

(6) *Assumes primary withholding responsibility.* The term *assumes primary withholding responsibility* refers to when a QI, territory financial institution, or U.S. branch assumes responsibility for withholding on a payment for purposes of chapters 3 and 4 as if it were a U.S. person. A QI may only assume primary withholding responsibility if it does not make an election to be withheld upon with respect to the payment.

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

\* \* \* \* \*

(10) *Branch.* With respect to a financial institution, the term *branch* means a unit, business, or office of a financial institution that is treated as a branch under the regulatory regime of a country or that is otherwise regulated under the laws of a country as separate from other offices, units, or branches of the financial institution and also includes an entity that is disregarded as an entity separate from the financial institution (including branches maintained by such disregarded entity). A branch includes a unit, business, or office of a financial institution located in a country in which it is resident, and a unit, business, or office of a financial institution located in the country in which the financial institution is created or organized. All units, businesses, and offices of a participating FFI located in a single country, and all entities disregarded as entities separate from a participating FFI and located in a single country, shall be treated as a single branch and may use the same GIIN. An account will be treated as maintained by a branch or disregarded entity if the rights

and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch or disregarded entity.

\* \* \* \* \*

(20) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in § 1.1471–3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. The term *chapter 4 withholding rate pool* also means a pool provided on an FFI withholding statement (as described in § 1.1471–3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated to—

(i) A pool of payees consisting of each class of recalcitrant account holders described in § 1.1471–4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders without the need to subdivide into each class of recalcitrant account holders described in § 1.1471–4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or

(ii) A pool of payees that are U.S. persons as described in § 1.1471–3(c)(3)(iii)(B)(2).

\* \* \* \* \*

(23) *Consolidated obligations.* The term *consolidated obligations* means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(104)(ii) of this section or in order to share documentation between the obligations pursuant to § 1.1471–3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§ 1.1471–3(e) and 1.1471–4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§ 1.1471–3(c)(6)(ii), 1.1471–3(d), 1.1471–4(c), 1.1471–5(a)

(4), and 1.1471-5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

(48) *FFI agreement*. The term *FFI agreement* means an agreement that is described in § 1.1471-4(a). An FFI agreement includes a QI agreement, a WP agreement, and a WT agreement that is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014. The term *FFI agreement* also includes a QI agreement

that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014.

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

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

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

\*\*\*\*\*

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

\*\*\*\*\*

(83) *Nonreporting IGA FFI*. The term *nonreporting IGA FFI* means an FFI that is a resident of, or located or established in, a Model 1 or Model 2 IGA jurisdiction,

as the context requires, and that meets the requirements of one of the following—

(i) A nonreporting financial institution described in Annex II of the Model 1 IGA;

(ii) A nonreporting financial institution described in Annex II of the Model 2 IGA;

(iii) A registered deemed-compliant FFI described in § 1.1471-5(f)(1)(i)(A) through (F);

(iv) A certified deemed-compliant FFI described in § 1.1471-5(f)(2)(i) through (v); or

(v) An exempt beneficial owner described in § 1.1471-6.

\*\*\*\*\*

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

\*\*\*\*\*

(91) *Participating FFI*. The term *participating FFI* means an FFI that has agreed to comply with the requirements of an FFI agreement with respect to all branches of the FFI, other than a branch that is a reporting Model 1 FFI or a U.S. branch. The term *participating FFI* also includes an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement with respect to a branch (a *reporting Model 2 FFI*), and a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

\*\*\*\*\*

(98) *Payor*. The term *payor* has the meaning set forth in §§ 31.3406(a)-2 and 1.6049-4(a)(2) and generally includes a withholding agent.

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

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

\*\*\*\*\*

(104) \* \* \*

(i) The term *preexisting obligation* means any account, instrument, contract, debt, or equity interest maintained, exe-

cuted, or issued by the withholding agent that is outstanding on June 30, 2014. With respect to a participating FFI, the term *preexisting obligation* means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to § 1.1471-5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under § 1.1471-5(f). Notwithstanding the previous provisions of this paragraph (b)(104)(i), a preexisting obligation includes an obligation held by an entity that is issued, opened, or executed on or after July 1, 2014, and before January 1, 2015, by or with a withholding agent or FFI that treats the obligation as a preexisting obligation. See §§ 1.1471-2(a)(4)(ii), 1.1472-1(b)(2), and 1.1471-4(c)(3) for the due diligence requirements applicable to preexisting obligations for withholding agents and participating FFIs.

(ii) \* \* \* \*

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(104)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(104)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(104)(i) of this section.

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

(124) *Sponsoring entity*. The term *sponsoring entity* means (i) an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472-1(c)(5).

(125) *Standardized industry coding system*. The term *standardized industry coding system* means a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

\* \* \* \* \*

(128) *Substantial U.S. owner*. The term *substantial U.S. owner* or *substantial*

*United States owner* has the meaning set forth in § 1.1473-1(b). In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE the term *substantial U.S. owner* means a controlling person as defined in the applicable Model 2 IGA.

\* \* \* \* \*

(135) *U.S. branch treated as a U.S. person*. The term *U.S. branch treated as a U.S. person* means a U.S. branch that agrees to be treated as a U.S. person as described in § 1.1441-1(b)(2)(iv)(A). For the due diligence, withholding, and reporting requirements of a U.S. branch of an FFI treated as a U.S. person for purposes of chapter 4, see § 1.1471-4(b)(7), (c)(2)(v), (d)(2)(iii)(B), § 1.1472-1(a), and § 1.1474-1(i)(1) and (2).

\* \* \* \* \*

(141) *U.S. person*—(i) Except as otherwise provided in paragraph (b)(141)(ii) of this section, the term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). The term *U.S. person* or *United States person* also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State.

(ii) The term *U.S. person* or *United States person* does not include a foreign insurance company that has made an election under section 953(d) if it is a specified insurance company and is not licensed to do business in any State. An individual will not be treated as a U.S. person 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) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)-7 of this chapter for purposes of computing the individual's U.S. tax liability. A U.S. person does not include an alien individual who has made an election under section 6013(g) or

(h) to be treated as a resident of the United States.

\* \* \* \* \*

(146) *Withholding*. The term *withholding* means the deduction and withholding of tax at the applicable rate from a payment.

\* \* \* \* \*

(c) *Effective/applicability date*. This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

Par. 4. Section 1.1471-1T is revised to read as follows:

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

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

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

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

(99) *Permanent residence address*. The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. An address that is provided subject to instructions to hold all mail to that address must be accompanied by certain documentary evidence described in § 1.1441-1(c)(38)(ii). If the person is an individual who does not have a tax residence in any country, the permanent address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office.

(100) through (151) [Reserved]. For further guidance, see § 1.1471-1(b)(100) through (151).

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

(d) *Expiration date*. The applicability of this section expires on December 30, 2019

Par. 5. Section 1.1471-2 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii)(A) introductory text, (a)(2)(v), (a)(4)(ii)(A) and (B) introductory text, (a)(4)(iii), (b)(2)(i)(A), (b)(2)(ii)(A)(4), (b)(2)(ii)(B)(2), (b)(2)(iv), (b)(4)(ii), and (c) to read as follows:

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

(a) \* \* \*

(1) *General rule of withholding*. Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under § 1.1471-3(a) with respect to that payment and the chapter 4 status of such payee. See § 1.1471-3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements that apply when a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a withholdable

payment to a NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472-1. Except as otherwise provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under § 1.1473-1(a).

(2) \* \* \*

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWP, or NWT, and U.S. branches acting as intermediaries*. A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471-3(d)(4) and a withholding statement that meets the requirements of § 1.1471-3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135)) or is a U.S. branch of an FFI that is not treated as a U.S. person but that applies the rules described in § 1.1471-4(d)(2)(iii)(C). See also § 1.1471-3(c)(3)(iii)(H) for the rules for valid documentation of a U.S. branch.

(ii) *Residual withholding responsibility of intermediaries and flow-through entities*. An intermediary or flow-through entity that receives a withholdable payment after June 30, 2014, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another withholding agent has withheld the full amount required. Fur-

ther, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471-3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI agreement, WP agreement, or WT agreement.

(iii) \* \* \*

(A) *Election to be withheld upon for U.S. source FDAP income.* A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after June 30, 2014, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in § 1.1471-3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of § 1.1471-3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

\* \* \* \* \*

(v) *Withholding obligation of a foreign branch of a U.S. financial institution.* A foreign branch of a U.S. financial institu-

tion is a U.S. withholding agent and a payee that is a U.S. person, and is generally not an FFI. However, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI. Additionally, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Therefore, a foreign branch of a U.S. financial institution is not subject to withholding under chapter 4 but has an obligation to withhold under this section and § 1.1472-1 and may be liable for the tax if it fails to do so. See § 1.1471-2(a) (requirement to withhold on payments to FFIs) and § 1.1471-3(a)(3)(iii) (U.S. intermediary or agent of a foreign person). A foreign branch that is a reporting Model 1 FFI or a reporting Model 2 FFI may apply the procedures under Annex I of an applicable IGA to document the chapter 4 status of a payee of a withholdable payment that is a holder of an account maintained by the branch in the Model 1 or Model 2 IGA jurisdiction. A QI branch of a U.S. financial institution must withhold in accordance with this chapter as provided in the QI agreement in addition to meeting its obligations under either § 1.1471-4(b) and its FFI agreement or § 1.1471-5(f).

\* \* \* \* \*

(4) \* \* \*

(ii) *Exception to withholding for certain payments made prior to July 1, 2016 (transitional)—(A) In general.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on January 1, 2015, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A prima facie FFI means any payee if—

\* \* \* \* \*

(iii) *Payments to a participating FFI.* Except to the extent provided in paragraph (a)(2)(i) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a participating FFI in accordance with § 1.1471-3(d)(4). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) \* \* \*

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

(2) Any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents;

(3) Any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations may be determined by allocating (pro rata by value) the collateral (or each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral) or, if the collateral cannot be allocated pro rata to all obligations, by allocating all collateral to obligations that are not grandfathered and withholding to the extent required under chapter 4; and

(4) Any obligation that gives rise to substitute interest (as defined in § 1.861-2(a)(7)) that arises from the payee posting a grandfathered obligation described in paragraph (b)(2)(i)(A)(I) of this section as collateral.

\* \* \* \* \*

(ii) \* \* \*

(A) \* \* \*

(4) A life insurance contract under which the entire contract value is payable

no later than upon the death of the individual(s) insured under the contract but, in the case of a life insurance contract that contains a provision that permits the substitution of a new individual as the insured under the contract, only until a substitution occurs; and

\* \* \* \* \*

(B) \* \* \*

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

\* \* \* \* \*

(iv) *Material modification.* In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001-3(e). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

\* \* \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

(c) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this

section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

### § 1.1471-2T [Removed]

Par. 6. Section 1.1471-2T is removed.

Par. 7. Section 1.1471-3 is amended by:

1. Revising paragraphs (a)(3)(iii), (a)(3)(v) and (vi), (b)(3), (c)(1), (c)(3)(ii)(C) and (D), (c)(3)(iii) introductory text, (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(5), and (c)(3)(iii)(B)(I) through (4),

2. Adding paragraph (c)(3)(iii)(B)(5).

3. Revising paragraphs (c)(3)(iii)(H), (c)(5)(i)(D), (c)(5)(ii)(B), (c)(6)(ii)(A), (c)(6)(ii)(B)(2) and (3), (c)(6)(ii)(B)(5) through (7), (c)(6)(ii)(C)(2)(iii), (c)(6)(ii)(C)(2)(x), (c)(6)(ii)(C)(3) through (5), and (c)(6)(ii)(E)(2) and (3),

4. Adding paragraph (c)(6)(ii)(E)(4).

5. Revising paragraphs (c)(6)(iv), (c)(6)(v)(A) and (B), (c)(6)(vii), (c)(7)(i) and (ii), (c)(8)(iii), (c)(8)(v), (c)(9)(ii)(B), (c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory text, (d)(4)(iii)(A)(I), (d)(4)(iv)(A), (d)(4)(iv)(C) and (D), (d)(4)(v),

6. Adding paragraph (d)(4)(vi).

7. Revising paragraphs (d)(5)(i) through (iii), (d)(6)(i)(F), (d)(6)(vii)(A)(I), (d)(7)(i), (d)(11)(viii)(A), (d)(11)(viii)(C), (d)(11)(x) through (xii), (d)(12)(iii)(A) and (B), (e)(2) and (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v), (e)(4)(v)(B)(I) and (2), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii), (f)(1) through (9), and (g).

The revisions and additions read as follows:

#### § 1.1471-3 Identification of payee.

(a) \* \* \*

(3) \* \* \*

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a

withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent such withholdable payment is a payment of premiums) that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution or U.S. insurance broker as the payee if the withholding agent does not have reason to know that the U.S. financial institution or U.S. insurance broker will not comply with its obligations to withhold under sections 1471 and 1472.

\* \* \* \* \*

(v) *Disregarded entity or limited branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under § 301.7701-2(c)(2)(i) of this chapter as an entity separate from its single owner must treat the single owner as the payee. The rules under § 1.1471-3(d)(4) and (e)(3) apply to determine the circumstances under which a withholding agent may treat a payment made to a disregarded entity owned by an FFI as made to a payee that is a participating FFI or registered deemed-compliant FFI, and not as a payment made to a payee that is a non-participating FFI. A withholding agent that makes a payment to a limited branch (including an entity disregarded as a separate entity from its owner if such owner is an FFI and the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains) will be required to treat the payment as being made to a nonparticipating FFI.

(vi) *U.S. branch treated as a U.S. person.* A withholdable payment to a U.S. branch is a payment to a U.S. person if the U.S. branch is treated as a U.S. person (as defined in § 1.1471-1(b)(135)). In such case, the U.S. branch is treated as the payee. A U.S. branch treated as a U.S. person, however, is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4. Accordingly, a U.S. branch treated as a U.S. person must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9, "Request for Taxpayer Identification Number and

Certification”). See also paragraph (f)(6) of this section for the rules under which a withholding agent can presume a payment to a U.S. branch constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch treated as a U.S. person may not make an election to be withheld upon, as described in section 1471(b)(3) and § 1.1471-2(a)(2)(iii), for purposes of chapter 4. See § 1.1471-4(c)(2)(v) for the rule requiring a U.S. branch treated as a U.S. person to apply the due diligence rules applicable to a U.S. withholding agent. See also § 1.1474-1(i)(1) and (2) for the requirement of a U.S. branch to report information regarding certain U.S. owners of owner documented FFIs and passive NFFEs. See § 1.1471-4(d) for rules for when a U.S. branch reports as a U.S. person.

\* \* \* \* \*

(b) \* \* \*

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a valid Form W-8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, provides the person’s QI-EIN, WP-EIN, or WT-EIN, and the person’s GIIN, if applicable.

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

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

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

\* \* \* \* \*

(iii) *Withholding certificate of an intermediary, qualified intermediary, flow-through entity, or U.S. branch (Form W-8IMY)*—(A) *In general.* A withholding certificate of an intermediary, qualified intermediary, flow-through entity, or U.S. branch of such entity (whether or not such branch is treated as a U.S. person) is valid for purposes of chapter 4 only if it is furnished on a Form W-8IMY, an acceptable substitute form, or such other form as

the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

\* \* \* \* \*

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a QI, WP, or WT that is a participating FFI or registered deemed-compliant FFI), and an EIN in the case of a QI, WP, or WT. Additionally, if a branch (other than a U.S. branch) of a participating FFI or registered deemed-compliant FFI outside of its country of residence acts as an intermediary, a GIIN of such branch must be provided on the withholding certificate. In the case of a U.S. branch, see the rules in paragraph (c)(3)(iii)(H) of this section.

\* \* \* \* \*

(B) \* \* \*

(1) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. A withholding statement may be provided electronically only if it meets the requirements of § 1.1441-1(e)(3)(iv)(B). The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under § 1.1474-1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a withholdable payment for which a withholding statement is also required for purposes of chapter 3 may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the informa-

tion required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(2) *Special requirements for an FFI withholding statement*—(i) An FFI withholding statement may include either payee-specific information or pooled information that indicates the portion of the payment allocable to a chapter 4 withholding rate pool of U.S. payees, each class of recalcitrant account holders described in § 1.1471-1(b)(20)(i), or a class of nonparticipating FFIs. In addition, an FFI withholding statement may include an allocation of a portion of the payment to a pool of account holders (other than non-qualified intermediaries and flow-through entities) for whom no reporting is required on any of Forms 1042-S, 1099, and 8966, provided that the FFI provides to the withholding agent for each account holder payee-specific information (including the payee’s chapter 4 status (using the applicable status code used for filing Form 1042-S)) and any other information required for purposes of chapter 3 or 61 on the withholding statement, and the FFI provides documentation for each account holder in the pool (an *exempt payee pool*). For example, a participating FFI may provide on its withholding statement an exempt payee pool for a payment of U.S. source interest on a bank deposit not subject to withholding or reporting under chapter 4 that is allocable to a pool of foreign account holders (that is, a withholdable payment that is not reported on any of Forms 1042-S, 1099, and 8966) and provide to the withholding agent documentation for each account holder included in the pool. If payee-specific information is provided for purposes of chapter 4 it must indicate both the portion of the payment allocated to each payee and each payee’s chapter 4 status (using the applicable status code used for filing Form 1042-S). A participating FFI that applies the escrow procedures described in § 1.1471-4(b)(6) for dormant accounts must also indicate the portion of the payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts for which the participating FFI (and not the withholding agent) will withhold in escrow. The with-

holding statement provided by a participating FFI that applies the election to backup withhold under § 1.1471-4(b)(3)(iii) must also indicate the portion of the reportable payment that is a withholdable payment allocated to each recalcitrant account holder subject to backup withholding under section 3406. See section 3406 for when backup withholding is required, including the exception to backup withholding under § 31.3406(g)-1(e). Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a WP, WT, or QI with respect to the account must also identify each intermediary or flow-through entity that receives the payment and such entity's chapter 4 status (using the applicable status code used for filing Form 1042-S) and GIIN (when required under paragraph (d) of this section), when applicable. An FFI withholding statement must also include any other information that the withholding agent or payor reasonably requests in order to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

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

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

(iv) An FFI withholding statement provided by a participating FFI or a registered deemed-compliant FFI may include a certification that the FFI is reporting, for the year in which the payment is made, an account held by a passive NFFE with one or more substantial U.S. owners (or, with respect to a reporting Model 1 FFI or reporting Model 2 FFI, one or more controlling persons that are specified U.S. persons, as defined in an applicable IGA) as a U.S. account (excluding a non-consenting U.S. account or an account held by a recalcitrant account holder) or, with respect to a reporting Model 1 FFI, a U.S. reportable account, in accordance with the terms of the FFI agreement or an applicable IGA.

(v) An FFI withholding statement provided by a participating FFI or a reporting Model 1 FFI may include a certification

that the FFI is reporting to the IRS for the year of the payment all of the information described in § 1.1471-4(d) or § 1.1474-1(i)(1) (as applicable) with respect to all specified U.S. persons described in § 1.1471-3(d)(6)(iv)(A)(I) and (2) with respect to an account holder or payee that the FFI has agreed to treat as an owner-documented FFI.

(3) *Special requirements for a chapter 4 withholding statement.* A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status (using the applicable status code used for filing Form 1042-S) of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through entity that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs (in lieu of providing the withholding agent with documentation for each payee). A chapter 4 withholding statement may include an allocation of a portion of the payment to a pool of payees (rather than to each payee) for whom no reporting is required on any of Forms 1042-S, 1099, and 8966, provided each payee is identified on the withholding statement and documentation is provided to the withholding agent for each payee included in the pool. If the withholdable payment is a reportable amount under chapter 3, see the provisions of § 1.1441-1(e)(3)(iv)(C) for any additional information that may be required on the withholding statement (including pooled information under the alternative procedures described in § 1.1441-1(e)(3)(iv)(D), if applicable).

(4) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status (using the applicable status code used for filing Form 1042-S) of each ex-

empt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment. With respect to the amount of the payment allocable to each exempt beneficial owner and subject to withholding under chapter 3, see § 1.1441-1(e)(3)(iv).

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

(H) *Rules applicable to a withholding certificate of a U.S. branch.* A withholding agent may reliably associate a payment with a withholding certificate of a U.S. branch of an FFI that is treated as a U.S. person for purposes of § 1.1441-1(b)(2)(iv) if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section, the certificate contains the EIN of the U.S. branch and a certification that the U.S. branch is described in paragraph § 1.1441-1(b)(2)(iv) and, accordingly, is required to accept primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4. A withholding agent may reliably associate a payment with a withholding certificate of a U.S. branch of an FFI that is not treated as a U.S. person and that applies the rules described in § 1.1471-4(d)(2)(iii)(C) if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section, the certificate contains the EIN of the U.S. branch and a certification that the U.S. branch applies the rules described in § 1.1471-4(d)(2)(iii)(C). However, the requirement to obtain the certification that a U.S. branch applies the rules described in § 1.1471-4(d)(2)(iii)(C) shall not apply to payments made on or before June 30, 2017.

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

(D) *Entity government documentation.* With respect to an entity, any documentation that substantiates that the entity is actually organized or created under the laws of a foreign country; and

\* \* \* \* \*

(ii) \* \* \*

(B) *Preexisting obligation documentary evidence.* With respect to a preexisting obligation of an entity, any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) or a standardized industry coding system and that was recorded by the withholding agent consistent with its normal business practices for AML or another regulatory purpose (other than for tax purposes), to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and  
\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(A) *General rule.* Except as provided otherwise in paragraphs (c)(6)(ii)(B) and (C) of this section, a withholding certificate or written statement will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed. Documentary evidence is generally valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Notwithstanding the validity periods permitted by paragraphs (c)(6)(ii)(A) through (D) of this section, a withholding certificate, written statement, and documentary evidence will cease to be valid if the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect. Therefore, a withholding agent is required to institute procedures to ensure that any change to the customer master files that constitutes a

change in circumstances described in paragraph (c)(6)(ii)(E) of this section is identified by the withholding agent. In addition, a withholding agent is required to notify any person providing documentation of the person's obligation to notify the withholding agent of a change in circumstances.

(B) \* \* \*

(2) A beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status when both are provided together (as defined in § 1.1441-1(e)(4)(ii)(B)(1)) by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section (other than an entity described in paragraph (c)(6)(ii)(C)(2)(iii) of this section) and documentary evidence establishing the entity's foreign status when both are received by the withholding agent before the validity period of either would otherwise expire under paragraph (c)(6)(ii)(A) of this section;  
\* \* \* \* \*

(5) A withholding certificate, written statement, or documentary evidence furnished by a foreign government, government of a U.S. territory, foreign central bank (including the Bank for International Settlements), international organization, or entity that is wholly owned by any such entities;

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

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

(C) \* \* \*

(2) \* \* \*

(iii) A section 501(c) entity described in § 1.1471-5(e)(5)(v);

\* \* \* \* \*

(x) A sponsored FFI described in § 1.1471-5(f)(1)(i)(F);

\* \* \* \* \*

(3) A withholding certificate or written statement of an owner-documented FFI, but not including the withholding statements, documentary evidence, and withholding certificates of its owners (unless such documentation is permitted indefinite validity under another provision);

(4) An owner reporting statement associated with a withholding certificate of an owner-documented FFI, provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(5) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the withholding agent does not know or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

\* \* \* \* \*

(E) \* \* \*

(2) *Obligation to notify withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. Notwithstanding the previous sentence, if an FFI's chapter 4 status changes solely because the jurisdiction in which the FFI is resident, organized, or located is later treated as having an IGA in effect (including a jurisdiction that had a Model 2 IGA in effect and is later treated as having a

Model 1 IGA in effect) or ceases to be treated as having an IGA in effect, in lieu of providing a new withholding certificate, the FFI may, within 30 days of such change in circumstances, provide to the withholding agent oral or written confirmation (including by e-mail) of the change in the FFI's chapter 4 status. If an intermediary or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change in circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances.

(3) *Withholding agent's obligation with respect to a change in circumstances.* A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. A withholding agent will not have reason to know of a change in circumstances with respect to an FFI's chapter 4 status that results solely because a jurisdiction is later treated as having an IGA in effect (including a jurisdiction that had a Model 2 IGA in effect and is later treated as having a Model 1 IGA in effect) until the withholding agent obtains the confirmation of a change in the FFI's chapter 4 status described in paragraph (c)(6)(ii)(E)(2) of this section (which will become part of the FFI's withholding certificate or other documentation retained by the withholding agent). See paragraph (c)(6)(ii)(E)(4) of this section for when a withholding agent has reason to know of a change in circumstances that results solely because a jurisdiction ceases to be treated as having an IGA in effect. A withholding agent may choose to treat a person as having the same chapter 4 status that it

had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became invalid due to the change in circumstances or the date that a new certificate or new documentation is obtained. See, however, § 1.1441-1(e)(4)(ii)(D) for requirements, including the requirement to withhold under chapter 3 or section 3406, applicable when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

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

\* \* \* \* \*

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.* A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in § 1.1441-1(e)(4)(iv).

(v) \* \* \*

(A) *In general.* A withholding agent may substitute its own form for an official Form W-8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. A withholding agent may

choose to provide a substitute form that does not include all of the chapter 4 statuses provided on the official version but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. A withholding agent that uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate (including the official Form W-8) from a person if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the person with an acceptable substitute form within five business days of receipt of an unacceptable form from the person. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the person and that the person must submit the acceptable form provided by the withholding agent in order for the person to be treated as having furnished the required withholding certificate.

(B) *Non-IRS form for individuals.* A withholding agent may also substitute its own form for an official Form W-8BEN (for individuals), regardless of whether the substitute form is titled a Form W-8. However, in addition to the name and address of the individual that is the payee or beneficial owner, the substitute form must provide all countries in which the individual is resident for tax purposes, country of birth, a tax identification number (if any) for each country of residence, the individual's date of birth, and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. Notwithstanding the previous

sentence, the signed certification provided on a form need not be signed under penalties of perjury if the form is accompanied by documentary evidence that supports the individual's claim of foreign status. Such documentary evidence may be the same documentary evidence that is used to support foreign status in the case of a payee whose account has U.S. indicia as described in paragraph (e) of this section or § 1.1471-4(c)(4)(i)(A). The form may also request other information required for purposes of tax or AML due diligence in the United States or in other countries.

\* \* \* \* \*

(vii) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate in accordance with the requirements of § 1.1441-1(e)(4)(viii)(C) and without regard to whether a withholdable payment associated with the certificate is subject to withholding under § 1.1441-2(a).

(7) \* \* \*

(i) *Curing inconsequential errors on a withholding certificate.* A withholding agent may treat a withholding certificate as valid, notwithstanding that the withholding certificate contains an inconsequential error, if the withholding agent has sufficient documentation on file to supplement the information missing from the withholding certificate due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive. For example, a withholding certificate in which the individual submitting the form abbreviated the country of residence in an ambiguous way may be treated as valid, notwithstanding the abbreviation, if the withholding agent has government issued identification for the person from a country that reasonably matches the abbreviation. On the other hand, an ambiguous abbreviation for the country of residence that does not reasonably match the country of residence shown on the person's passport is not an inconsequential error. A failure to select an entity type on a withholding certificate is not an inconsequential error, even if the withholding agent has an organization document for the entity that provides suf-

ficient information to determine the person's entity type, if the person was eligible to make an election under § 301.7701-3(c)(1)(i) of this chapter (that is, a check-the-box election). A failure to check a box to make a required certification on the withholding certificate or to provide a country of residence or a country under which treaty benefits are sought is not an inconsequential error. In addition, information on a withholding certificate that contradicts other information contained on the withholding certificate or in the customer master file is not an inconsequential error.

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

(8) \* \* \*

(iii) *Shared account systems.* A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as a consolidated obligation and the withholding agent and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, that is described in this paragraph (c)(8)(iii). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation. The information system must also allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the shared account system without obtaining and re-

viewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

\* \* \* \* \*

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

(9) \* \* \*

(ii) \* \* \*

(B) The third-party data provider must be in the business of providing credit reports or business reports to customers unrelated to it and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity. For purposes of this paragraph (c)(9)(ii)(B), a customer is related to a third-party data provider if they have a relationship with each other that is described in section 267(b).

\* \* \* \* \*

(v) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk ac-

quisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, a participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on payments made after the transition period, if any, to the account holder equal to the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (c)(9)(v), a related party transaction is a merger or sale of accounts in which either the acquirer is in the same expanded affiliated group as the predecessor or transferor prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtains a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471-4(c)(2)(ii)(B) for an additional allowance for a participating FFI to rely upon the determination made

by another participating FFI as to the chapter 4 status of an account obtained as part of a merger or bulk acquisition for value.

(d) \* \* \*

(1) *Reliance on pre-FATCA Form W-8.* To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate. This reliance is only available in the case of a payee that is an international organization if such payee is described under section 7701(a)(18). To establish the chapter 4 status of a payee that is not a foreign individual, a foreign government, or an international organization, a withholding agent may, for payments made prior to January 1, 2017, rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate if the withholding agent has one or more forms of documentary evidence described in paragraphs (c)(5)(ii), as necessary, to establish the chapter 4 status of the payee and the withholding agent has obtained any additional documentation or information required for the particular chapter 4 status (such as withholding statements, certifications as to owners, or required documentation for underlying owners), as set forth under the specific payee rules in paragraphs (d)(2) through (12) of this section. See paragraph (d)(4)(ii) and (iv) of this section for specific requirements applicable when relying upon a pre-FATCA Form W-8 for a participating FFI or registered deemed-compliant FFI. This paragraph (d)(1) does not apply to nonregistering local banks, FFIs with only low-value accounts, sponsored FFIs, owner-documented FFIs, territory financial institutions that are not the beneficial owners of the payment, foreign central banks (other than a foreign central bank specifically identified as an exempt beneficial owner under a Model 1 IGA or Model 2 IGA), or international organizations not described under section 7701(a)(18).

(2) \* \* \*

(i) *In general.* A withholding agent must treat a payee as a U.S. person, in-

cluding a payee that is a foreign branch of a U.S. person (other than a branch that is treated as a QI) or is an FFI that has elected to be treated as a U.S. person for tax purposes under section 953(d), if it has a valid Form W-9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 contains a certification that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W-9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W-9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W-9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person.

\* \* \* \* \*

(iii) *Preexisting obligations.* As an alternative to applying the rules in paragraphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W-9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee of a payment with respect to a preexisting obligation as a U.S. person if it has previously classified the payee as a U.S. person for purposes of chapter 3 or 61 and established (through the documentation or the application of the rules in § 1.6049-4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

\* \* \* \* \*

(4) \* \* \*

(i) *In general.* Except as otherwise provided in paragraphs (d)(4)(ii) through (iv) or paragraphs (e)(3)(i) and (ii) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), and the withholding certificate contains a GIIN described in paragraph (e)(3) of this section that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For when a withholding agent may treat a payee as a registered deemed-compliant FFI that is a sponsored investment entity or sponsored controlled foreign corporation, see paragraph (d)(4)(vi) of this section. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a participating FFI or registered deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment.

(ii) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee has provided the withholding agent with a pre-FATCA Form W-8 and (either orally or in writing) its GIIN and has indicated whether it is a participating FFI or a registered deemed-compliant FFI (or whether such branch or disregarded entity is treated as a participating FFI or a registered deemed-compliant FFI), and the withholding agent has verified the GIIN of the FFI, branch, or disregarded entity, as the context requires, in the manner described in paragraph (e)(3) of this section.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a

participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee provides the withholding agent with its GIIN and states whether the payee is a participating FFI or a registered deemed-compliant FFI, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section. A withholding agent that makes a payment of U.S. source FDAP income with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI) if—

(A) \* \* \*

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

\* \* \* \* \*

(iv) \* \* \*

(A) For payments made prior to January 1, 2015, a withholding agent may treat a payee that is an FFI or branch of an FFI (including an entity that is disregarded as an entity separate from the FFI) as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

\* \* \* \* \*

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(D) For payments made on or after January 1, 2015, that do not constitute U.S. source FDAP income, the withholding agent may continue to treat a payee as a reporting Model 1 FFI if the payee provides the withholding agent with its GIIN, either orally or in writing, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(v) *Reason to know.* See paragraph (e) of this section for when a withholding agent will have reason to know that a withholding certificate or written statement provided by a payee claiming status as a participating FFI or registered deemed-compliant FFI is incorrect or invalid.

(vi) *Sponsored investment entities and sponsored controlled foreign corporations—(A) In general.* A withholding agent may treat a payee as a sponsored investment entity or sponsored controlled foreign corporation if the withholding agent has a withholding certificate identifying the payee as a sponsored investment entity or sponsored controlled foreign corporation (as applicable) and the withholding certificate includes the GIIN of the sponsored investment entity or sponsored controlled foreign corporation entity (as applicable), which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(i) of this section.

(B) *Payments made prior to January 1, 2017 (transitional).* For payments made prior to January 1, 2017, a sponsored investment entity or sponsored controlled foreign corporation may provide the GIIN of its sponsoring entity on the withholding certificate, which the withholding agent must verify against the published IRS FFI list in the manner described in paragraph (e)(3)(i) of this section.

(C) *Payments made after December 31, 2016, to payees documented prior to January 1, 2017.* For a payment made after December 31, 2016, to a payee that the withholding agent has documented prior to January 1, 2017, as a sponsored investment entity or sponsored controlled foreign corporation with a valid withholding certificate that includes the GIIN of the sponsoring entity, the withholding agent must obtain and verify the GIIN of the sponsored investment entity or spon-

sored controlled foreign corporation against the published IRS FFI list in the manner described in paragraph (e)(3)(i) of this section by March 31, 2017. Notwithstanding the preceding sentence, a GIIN is not required for a payee that provides a valid withholding certificate prior to January 1, 2017, that identifies the payee as a sponsored FFI and includes the GIIN of the sponsoring entity if the withholding agent determines, based on information provided on the withholding certificate, that the sponsored entity is resident, organized, or located in a jurisdiction that is treated as having a Model 1 IGA in effect. A withholding agent required to obtain a GIIN of the sponsored investment entity or sponsored controlled foreign corporation under this paragraph (d)(4)(vi)(C) may obtain such GIIN by oral or written confirmation (including by e-mail) rather than obtaining a new withholding certificate, provided that the withholding agent retains a record of the confirmation, which will become part of the withholding certificate.

(5) \* \* \*

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

(ii) *Sponsored, closely held investment vehicles—(A) In general.* A withholding agent may treat a payee as a sponsored, closely held investment vehicle described in § 1.1471–5(f)(2)(iii) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a sponsored, closely held investment vehicle and includes the spon-

soring entity's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle described in § 1.1471–5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a sponsored, closely held investment vehicle that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of such vehicle.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a sponsored, closely held investment vehicle if it obtains a written statement that indicates that the payee is a sponsored, closely held investment vehicle, and provides the sponsoring entity's GIIN, which the withholding agent has verified in the manner described in paragraph (e)(3) of this section. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Certain investment entities that do not maintain financial accounts—(A) In general.* A withholding agent may treat a payee as an investment entity that does not maintain financial accounts described in § 1.1471–5(f)(2)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as an investment entity that does not maintain financial accounts. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not an investment entity that does not maintain financial accounts described in § 1.1471–5(f)(2)(v) if its AML due diligence

documentation indicates that the payee has financial accounts.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an investment advisor and investment manager described in § 1.1471-5(f)(2)(v) if it obtains a written statement that indicates that the payee is an investment advisor and investment manager. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(6) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(vii) \* \* \*

(A) \* \* \*

(I) The payment is made with respect to an offshore obligation that has a balance or value not exceeding \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4);

\* \* \* \* \*

(7) *Nonreporting IGA FFIs*—(i) *In general.* A withholding agent may treat a payee as a nonreporting IGA FFI described in § 1.1471-1(b)(83)(ii) (unless such FFI is treated as a registered deemed-compliant FFI under Annex II of the Model 2 IGA) or as a nonreporting IGA FFI described in § 1.1471-1(b)(83)(i), (iv), or (v) if the withholding agent has a withholding certificate identifying the payee, or the relevant branch of the payee, as a nonreporting IGA FFI. A withholding agent may treat a payee as a nonreporting IGA FFI described in § 1.1471-1(b)(83)(ii) that is treated as a registered deemed-compliant FFI under Annex II of the Model 2 IGA or as a nonreporting IGA FFI described in § 1.1471-1(b)(83)(iii) if the withholding agent has a withholding certificate identifying the payee, or the relevant branch of the payee, as a nonreporting IGA FFI, and the with-

holding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section.

\* \* \* \* \*

(11) \* \* \*

(viii) \* \* \*

(A) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014, and December 31, 2015, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in § 1.1472-1(c)(1)(iii) if the withholding agent—

\* \* \* \* \*

(C) *Exception for preexisting offshore obligations of \$1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014 (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence (as provided in paragraph (d)(11)(viii)(B) of this section), or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

\* \* \* \* \*

(x) *Identifying a direct reporting NFFE (other than a sponsored direct reporting NFFE)*—(A) *In general.* A withholding agent may treat a payment as having been made to a direct reporting NFFE (other than a sponsored direct reporting NFFE) if it has a withholding certificate that identifies the payee as a direct reporting NFFE and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iii) of this section (indicating when a withholding agent may rely upon a GIIN).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a direct reporting NFFE if the withholding agent has—

(I)(i) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

(ii) A written statement that the payee is a foreign entity that is not a financial institution and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

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

(C) *Special rule for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a direct reporting NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and it has received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(xi) *Identifying a sponsored direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a sponsored direct reporting NFFE if it has a withholding certificate that identifies the payee as a sponsored direct reporting NFFE and the withholding certificate includes the sponsored direct reporting NFFE’s GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section (indicating when a withholding agent may rely upon a GIIN).

(1) *Payments made prior to January 1, 2017 (transitional).* For payments prior to January 1, 2017, a sponsored direct reporting NFFE may provide the GIIN of its sponsoring entity on the withholding certificate, which the withholding agent must verify against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section.

(2) *Payments made after December 31, 2016, to payees documented prior to January 1, 2017.* For a payment made after December 31, 2016, to a payee that the withholding agent has documented prior to January 1, 2017, as a sponsored direct reporting NFFE with a valid withholding certificate that includes the GIIN of the sponsoring entity, the withholding agent must obtain and verify the GIIN of the sponsored direct reporting NFFE against the published IRS FFI list in the manner described in paragraph (e)(3)(i) of this section by March 31, 2017. A withholding agent required to obtain a GIIN of the sponsored direct reporting NFFE in the preceding sentence may obtain such GIIN by oral or written confirmation (including by e-mail) rather than obtaining a new withholding certificate, provided that the withholding agent retains a record of the confirmation, which will become part of the withholding certificate. (B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a sponsored direct reporting NFFE if the withholding agent has—

(I) A written statement that the payee is a foreign entity that is a sponsored direct reporting NFFE and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee’s

claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

(2) Received (either orally or in writing) the GIIN of the sponsored direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iv) of this section. For payments prior to January 1, 2017, such requirement may be fulfilled by receiving (either orally or in writing) the GIIN of the sponsoring entity to the extent that the sponsored direct reporting NFFE has not obtained a GIIN.

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

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv) if the withholding agent obtains a written statement in which the payee certifies that it is a foreign entity operating as an excepted inter-affiliate FFI and that it is a member of an expanded affiliated group of participating FFIs or registered deemed-compliant FFIs. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee’s claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Reason to know.* A withholding agent that is not a member of the payee’s expanded affiliated group has reason to know that an entity is not an excepted inter-affiliate FFI if it makes any payments (other than a payment of bank deposit interest) to such entity.

(12) \* \* \*

(iii) \* \* \*

(A) *In general.* A passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S.

owner of the NFFE, to avoid being withheld upon under § 1.1472–1(b).

(B) *Exception for preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014, and December 31, 2015, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent’s AML due diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent’s AML due diligence rules).

(e) \* \* \*

(2) *Notification by the IRS.* A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472 is incorrect knows that such a claim is incorrect beginning on the date that is 30 days after the date the notice is received.

(3) *GIIN verification*—(i) *In general.* A withholding agent that has received a pay-

ee's claim of status as a participating FFI or registered deemed-compliant FFI, and that is required under paragraph (d)(4) of this section to confirm that the FFI or branch thereof (including an entity that is disregarded as an entity separate from the FFI) claiming status as a participating FFI or registered deemed-compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. For purposes of this paragraph (e)(3)(i), the GIIN that the withholding agent must confirm is, with respect to a payee that is a participating FFI or registered deemed-compliant FFI, the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence) or, with respect to a payment that is made to a branch (including a disregarded entity) of a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN of the branch (or disregarded entity) receiving the payment. The withholding agent will have reason to know that a withholdable payment is made to a branch (including a disregarded entity) of a participating or registered deemed-compliant FFI that is not itself a participating FFI or registered deemed-compliant FFI when the withholding agent is directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch (including a disregarded entity) of such FFI) that is identified as the FFI (or branch (including a disregarded entity) of such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed as described in the preceding sentence. The preceding sentence does not apply to an FFI that is an investment entity. If an FFI (other than an investment entity) directs the withholding agent to make the payment to an account held by the FFI and maintained by another financial institution, the FFI must provide to the withholding agent a statement in writing that the

FFI is not directing the payment to any branch of such FFI that is not a participating FFI or a registered deemed-compliant FFI. An FFI whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to obtain a GIIN and to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's GIIN was actually removed from the list.

(ii) *Special rules for reporting Model 1 FFIs.* Prior to January 1, 2015, a withholding agent that receives an FFI's claim of status as a reporting Model 1 FFI will not be required to confirm that the FFI has a GIIN that appears on the published IRS FFI list. A withholding agent has reason to know that the FFI is not a reporting Model 1 FFI if the withholding agent does not have a permanent residence address for the FFI, or an address of the relevant branch of the FFI, located in the country in which the FFI claims to be a reporting Model 1 FFI, or the withholding agent is making a payment to a branch of the FFI at an address in a country that does not have in effect a Model 1 IGA.

(iii) *Special rules for direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a direct reporting NFFE and that is required under paragraph (d)(11)(x) of this section to confirm that the entity claiming status as a direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the

most recently published IRS FFI list within 90 days of the date that the claim is made. A payee whose registration with the IRS as a direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a direct reporting NFFE. If a direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a direct reporting NFFE on the earlier of the date that the withholding agent discovers that the NFFE has been removed from the list or the date that is one year from the date the NFFE's GIIN was actually removed from the list.

(iv) *Special rules for sponsored direct reporting NFFEs and sponsoring entities—(A) Sponsored direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE and that is required under paragraph (d)(11)(xi) of this section to confirm that the entity claiming status as a sponsored direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if its name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsored direct reporting NFFE whose registration with the IRS as a sponsored direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a sponsored direct reporting NFFE. If a sponsored direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such

NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsoring entity has been removed from the list or the date that is one year from the date the sponsored entity's GIIN was actually removed from the list.

(B) *Sponsoring entities (transitional)*. For payments made prior to January 1, 2017, a withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE has reason to know that such payee is not such a NFFE if the name of its sponsoring entity (including a name reasonably similar to the name the withholding agent has on file for the sponsoring entity) and the GIIN of its sponsoring entity do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsoring entity whose registration with the IRS is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a sponsored direct reporting NFFE. If the sponsoring entity of the NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsoring entity has been removed from the list or the date that is one year from the date the sponsoring entity's GIIN was actually removed from the list.

(4) *Reason to know*. A withholding agent has reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificate or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claim being made. For an obligation other than a preexisting obligation, a withholding agent has reason to know that a person's claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including docu-

mentation collected for AML due diligence purposes, conflicts with the chapter 4 status being claimed. A withholding agent will not, however, have reason to know that a person's claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created. In addition to the specific standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has obtained documentation to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only to the extent provided in this paragraph (e)(4). See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). The limits on reason to know for multiple obligations held by the same person set forth in § 1.1441-7(b)(11) shall apply by substituting the term *chapter 4 status* for the term *foreign status*. See § 1.1471-3(e)(4)(vii) for the limits on reason to know with respect to a preexisting obligation.

(i) *Reason to know regarding an entity's chapter 4 status*. A withholding agent has reason to know that a withholding certificate, written statement, or documentary evidence provided by or on behalf of an entity is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the entity's claim regarding its chapter 4 status. For example, a withholding agent has reason to know that an entity's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has obtained a financial statement or credit report for AML purposes that indicates that the entity is engaged in business as a financial institution. See also paragraph (e)(4) of this section for the 30-day period before a withholding agent has reason to know a claim is unreliable or incorrect based on

AML information. Further, a withholding agent that has classified an entity as engaged in a particular type of business based on its records, such as through the use of a standardized industry coding system, AML or other regulatory purpose that requires the withholding agent to periodically monitor and periodically update the business classification based on the withholding agent's records, the withholding agent has reason to know that the chapter 4 status claimed by the entity is unreliable or incorrect only if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

(ii) *Reason to know applicable to withholding certificates*—(A) *In general*. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. Except as otherwise provided in this paragraph (e)(4)(ii)(A), a withholding agent that is a financial institution or other entity described in § 1.1441-7(b)(3) and that has obtained a withholding certificate to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(5), associated with the person and for which appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to

know the facts within the knowledge of the agent.

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

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

(iv) *Reason to know applicable to documentary evidence—(A) In general.* A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence does not match the appearance or signature of the person presenting the document. A withholding agent may not treat documentary evidence as valid if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's chapter 4 status, or the documentary evidence lacks information necessary to establish the person's chapter 4 status. Additionally, a withholding agent that is a financial institution under § 1.1471-5(e), or other entity as described in § 1.1441-7(b)(3) that has obtained documentary evidence to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the per-

son's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv).

(B) *Standards of knowledge applicable to certain types of documentary evidence—(1) Financial statement.* A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold has reason to know that the chapter 4 status claimed is unreliable or incorrect only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds, or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in § 1.1472-1(c)(1)(iv) and the footnotes of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has collected the financial statement in the

course of its account opening or other procedures.

(2) *Organizational documents.* A withholding agent that obtains organizational documents for a payee solely for the purpose of supporting the chapter 4 status claimed by the entity will only be required to review the document sufficiently to establish that the entity is a foreign person and that the purposes for which the entity was formed and its basic activities appear to be of a type consistent with the chapter 4 status claimed, unless otherwise specified in paragraph (d) of this section. A withholding agent that obtains organizational documents for the purpose of establishing that an entity has a particular chapter 4 status will only be required to review the document to the extent needed to establish that the entity is a foreign person, that the requirements applicable to the particular chapter 4 status are met, and that the document was executed, but will not be required to review the remainder of the document.

(v) *Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.* A withholding agent may not rely upon a classification described in paragraph (c)(5)(ii)(B) of this section or a standardized industry coding system to treat an entity as having a foreign status if there are U.S. indicia described in paragraph (e)(4)(v)(A) of this section associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

\* \* \* \* \*

(B) \* \* \*

(1) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity, the withholding agent may treat the entity as a foreign person only if the withholding agent obtains a withholding certificate for the entity and one form of documentary evidence, described in paragraph (c)(5) of this section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(2) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obliga-

tion, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

\* \* \* \* \*

(vi) \* \* \*

(B) *Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.* A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered deemed-compliant FFI in the withholding statement, including a chapter 4 status determined under the requirements of (and documentation or information that is publicly available that determines the chapter 4 status of the payee permitted under) an applicable IGA for an account holder, provided that the withholding agent has the information necessary to report on Form 1042-S, unless the withholding agent has information that conflicts with the chapter 4 status provided. See § 1.1441-1(e)(3)(iv)(C)(2)(iv) (requiring that a nonqualified intermediary withholding statement for a reportable amount that is a withholdable payment include the recipient code for chapter 4 purposes used for filing Form 1042-S for an entity payee). If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records conflicts with the chapter 4 status claimed by the payee, the withholding agent has reason to know that the chapter 4

status claimed is unreliable or incorrect. A withholding agent is not, however, required to verify information contained in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapter 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section. Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE has reason to know that the claim is unreliable or incorrect if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in this paragraph (e) or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in this paragraph (e) has been obtained and provides details of such documentation, such as the type of documentation and an identification number of the person contained in the document.

(vii) \* \* \*

(B) *Reason to know there are U.S. indicia associated with preexisting obligations.* With respect to a preexisting obligation, a withholding agent may apply the limits on reason to know described in § 1.1441-7(b)(3)(ii) for a person that the withholding agent has previously documented for purposes of chapter 3 or 61. A withholding agent that applies the limits on reason to know described in § 1.1441-7(b)(3)(ii) must, however, review for U.S.

indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person, if any.

\* \* \* \* \*

(viii) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting a claim of foreign status for an individual has the meaning described in § 1.1441-7(b)(12).

\* \* \* \* \*

(f) \* \* \*

(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) the payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a nonparticipating FFI). Paragraph (f)(2) of this section provides the presumption rules with respect to classification as an individual or entity. Paragraph (f)(3) of this section provides the presumption rules to determine a payee's U.S. or foreign status. Paragraph (f)(4) of this section provides the presumption rules with respect to an entity's chapter 4 status. Paragraph (f)(5) of this section provides the presumption rules with respect to an intermediary or flow-through entity. Paragraph (f)(6) of this section provides the presumption rules with respect to effectively connected income paid to a U.S. branch of a payee. Paragraph (f)(7) of this section provides the presumption rules that apply to a payment made to joint payees. Paragraph (f)(8) of this section provides rules for how a payee may rebut the presumptions described in this paragraph (f). Paragraph (f)(9) of this section provides the consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity and entity as the beneficial owner.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence

(as described in paragraph (c)(5) of this section), but cannot determine a payee's status as an individual or an entity from the documentary evidence, must apply the presumption rules of § 1.1441-1(b)(3)(ii) to determine the payee's classification as an individual, trust, partnership, corporation, intermediary, or flow-through entity. Additionally, a withholding agent that receives valid documentary evidence with respect to an entity must apply the rules under § 1.1441-1(b)(3)(ii) to determine when it may treat such entity as a beneficial owner.

(3) *Presumptions of U.S. or foreign status.* If a withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence from which it is possible to determine the payee's U.S. or foreign status, it must apply the presumption rules of § 1.1441-1(b)(3)(iii) to determine the U.S. or foreign status of the payee (substituting the term *withholdable payment* for the term *payment*). In the case of a payment that a withholding agent can reliably associate with valid documentation that indicates the payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, the payment will be presumed made to a specified U.S. person unless the withholding agent can apply the presumption rules of § 1.6049-4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person, or the person's name reasonably indicates that the person is a bank (for example because it contains the word *Bank* or a foreign equivalent).

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

(5) *Presumption of chapter 4 status of payee with respect to a payment to an intermediary or flow-through entity.* If a withholding agent makes a payment to a foreign flow-through entity or intermediary, including a payment that it is required to treat as made to such an entity under

paragraphs (f)(2) and (3) of this section, and cannot reliably associate such payment with valid documentation under paragraph (c) of this section, the withholding agent must presume that the payment is made to a nonparticipating FFI.

(6) *Presumption of effectively connected income for payments to certain U.S. branches.* A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee of a payment that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN from the U.S. branch (either orally or in writing). A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

(7) *Joint payees—(i) In general.* If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W-9 in accordance with the procedures described in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, the

payment shall be treated as made to that payee.

(ii) *Exception for offshore obligations.* If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual if the payment with respect to the offshore obligation is made outside the United States (as described in § 1.6049-5(e)).

(8) *Rebuttal of presumptions.* A payee may rebut the presumptions described in paragraphs (f)(2) through (7) of this section by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(9) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise—(i) In general.* Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in paragraphs (f)(2) through (7) of this section with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See § 1.1474-1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

(ii) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (f)(9)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the person are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the person based on such knowledge or rea-

son to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent described in § 1.1474-1(a).

(g) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. A taxpayer may apply paragraph (c)(6)(iv) of this section to all of its open tax years. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

Par. 8. Section 1.1471-3T is revised to read as follows:

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

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

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

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

(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it has obtained (either directly from the payee or through its agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion

of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee. A withholding certificate will be considered provided by a payee if a withholding agent obtains the certificate from a third party repository (rather than directly from the payee or through its agent) and the requirements in § 1.1441-1(e)(4)(iv)(E) are satisfied. A withholding certificate obtained from a third party repository must still be reviewed by the withholding agent in the same manner as any other documentation to determine whether it may be relied upon for chapter 4 purposes. A withholding agent may rely on an electronic signature on a withholding certificate if the requirements in § 1.1441-1(e)(4)(i)(B) are satisfied.

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

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

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

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

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

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

(1) through (4) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(B)(1) through (4).

(5) *Alternative withholding statement.* A withholding agent that is making a withholdable payment to a nonqualified intermediary for which a withholding statement is required under chapters 3 and 4 may accept a withholding statement that meets the requirements for an

alternative withholding statement described in § 1.1441-1(e)(3)(iv)(C)(3).

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

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

(4) through (5) [Reserved]. For further guidance, see § 1.1471-3(c)(4) through (5).

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

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

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

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

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

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

(4) *Withholding agent's reason to know of a change in circumstances due to a jurisdiction ceasing to be treated as having an IGA in effect.* A withholding agent will have reason to know of a change in circumstances with respect to an FFI's chapter 4 status that results solely because the jurisdiction in which the FFI is resident, organized, or located ceases to be treated as having an IGA in effect on the date that the jurisdiction ceases to be treated as having an IGA in effect.

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

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

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

(ii) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the

payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment. See, however, § 1.1441-1(b)(7)(ii) for special rules that apply when a withholding certificate is received after the date of the payment to claim that income is effectively connected with the conduct of a U.S. trade or business (as applied for purposes of this paragraph (c)(7)(ii) to a claim to establish that the payment is not a withholdable payment under § 1.1473-1(a)(4)(ii) rather than to claim an exemption described in § 1.1441-4(a)(1)).

(8) through (9) [Reserved]. For further guidance, see § 1.1471-3(c)(8) through (c)(9)(v).

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

(1) through (5) [Reserved]. For further guidance, see § 1.1471-3(d)(1) through (5).

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

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

(A) through (E) [Reserved]. For further guidance, see § 1.1471-3(d)(6)(i)(A) through (E).

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company, or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding \$50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

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

(7) through (12) [Reserved]. For further guidance, see § 1.1471-3(d)(7) through (12)(iii)(B).

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

(h) *Expiration date*. The applicability of this section expires on December 30, 2019

Par. 9. Section 1.1471-4 is amended by:

1. Revising paragraphs (a)(3) and (4), (b)(1) through (4), (b)(6) and (7), (c)(1), (c)(2)(ii)(B)(2)(iii), (c)(2)(v), (c)(3)(ii), (c)(3)(iii)(A), (c)(5)(iv)(B)(2)(vi), (c)(5)(iv)(E), (c)(7), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B) introductory text, (d)(2)(ii)(B)(2), and (d)(2)(ii)(D) through (F).

2. Adding paragraph (d)(2)(ii)(G).

3. Revising paragraphs (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(2)(iii)(C), (d)(3)(ii)(E), (d)(3)(iii) introductory text, (d)(3)(iii)(F), (d)(3)(vii), (d)(4)(i), (d)(4)(iv)(C), (d)(4)(iv)(D) introductory text, (d)(5)(i)(A) and (B), (d)(5)(ii)(B) introductory text, (d)(5)(v) through (vii), (d)(6)(vi), (d)(7), (d)(7)(i), (d)(7)(ii)(A) introductory text, (d)(7)(ii)(A)(I), (d)(7)(iii), (d)(7)(iv)(A) and (B), (d)(8), (d)(9) *Example 1* through *Example 3*, (d)(9) *Example 5*, (d)(9) *Example 7*, (e)(1), (e)(2)(ii), (e)(2)(iv)(D), and (e)(2)(v).

4. Adding paragraph (e)(2)(vi).

5. Revising paragraphs (e)(3)(iii)(A) and (C), (e)(3)(iv).

6. Adding paragraphs (e)(3)(v) and (vi).

7. Revising paragraphs (e)(4), (f)(1), (f)(3)(i), (f)(4)(i) and (ii), (g)(1) introductory text, (g)(1)(ii), (g)(2), and (j).

The revisions and additions read as follows:

§ 1.1471-4 FFI agreement.

(a) \* \* \*

(3) *Reporting*. A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in § 1.1474-1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in § 1.1471-4(d)(2)(ii)(F)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) *Expanded affiliated group*. Except as otherwise provided in Model 1 IGA or Model 2 IGA, in order for any FFI that is a member of an expanded affiliated group to be a participating FFI, each FFI that is a member of the expanded affiliated group must be a participating FFI, deemed-compliant FFI, or exempt beneficial owner as described in paragraph (e) of this section. For a limited period described in paragraph (e)(2) or (e)(3) of this section, however, a branch of an FFI or an FFI that is a member of an expanded affiliated group and is unable under foreign law to satisfy the requirements of this section may instead obtain status as a limited branch of a participating FFI or limited FFI if the branch or FFI meets the requirements set forth in paragraph (e)(2) or (e)(3) of this section (as applicable).

\* \* \* \* \*

(b) \* \* \*

(1) *In general*. Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating

FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after June 30, 2014, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of FFIs. See § 1.1471-2 for the exceptions to and special rules for withholding and the exclusion from the definitions of the terms *withholdable payment* and *foreign passthru payment* that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See § 1.1474-1(d)(4)(iii) for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts. See § 1.1474-6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) *Withholding determination.* Except as otherwise provided under § 1.1471-2 and, with respect to certain preexisting accounts, under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in § 1.1471-3(a)(3), the payee is the account holder. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made

with respect to an obligation that is not an account, except as otherwise provided in § 1.1471-3(a)(3), the payee is the person to whom the payment is made. See § 1.1473-1(a) to determine when a payment is made in the case of a withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under § 1.1471-3(c)(7) or may apply the procedures provided in § 1.1474-2 when overwithholding occurs.

(3) *Satisfaction of withholding requirements—(i) In general.* A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees.

(ii) *Withholding not required.* A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for a payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a withholding certificate described in § 1.1471-3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See § 1.1471-2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also § 1.1471-3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§ 1.1471-2(a) and 1.1472-1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

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

(4) *Foreign passthru payments.* A participating FFI is not required to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI before the later of January 1, 2019, or the date of publication in the **Federal Register** of final regulations defining the term *foreign passthru payment*.

\* \* \* \* \*

(6) *Special rule for dormant accounts.* A participating FFI that makes a withholdable payment not otherwise subject to withholding under chapter 3 or backup withholding under section 3406 to a recalcitrant account holder of a dormant account that it maintains must withhold on the account for purposes of chapter 4. However, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section

or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this paragraph (b)(6) may not delegate the responsibility to escrow withheld tax to the withholding agent from which it is receiving payment. Once a dormant account escheats irrevocably to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is no longer required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) *Withholding requirements for U.S. branches of FFIs treated as U.S. persons.* A U.S. branch of an FFI treated as a U.S. person must satisfy its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61. See §§ 1.1441-1(b)(2)(iv)(C), 1.1471-2(a), and 1.1472-1(a) for additional withholding obligations for a U.S. branch of an FFI treated as a U.S. person. See paragraph (d)(2)(iii)(B) of this section for the reporting requirements applicable to U.S. branches of FFIs that are treated as U.S. persons.

(c) \* \* \*

(1) *Scope of paragraph.* Except to the extent that a participating FFI relies on the due diligence procedures set forth in an applicable Model 2 IGA, a participating FFI must follow this paragraph (c) to identify and document the chapter 4 status of each holder of an account maintained by the participating FFI to determine if the account is a U.S. account, non-U.S. account, or an account held by a recalcitrant account holder or nonparticipating FFI. Paragraph (c)(2) of this section provides the general rules for identification and documentation of account holders and payees, and paragraph (c)(2)(v) provides documentation requirements for certain U.S. branches of FFIs. Paragraph (c)(3) of this section provides the rules for documenting entity accounts and payees. Paragraph (c)(4) of this section provides the general rules for documenting individual

accounts other than preexisting accounts. Paragraph (c)(5) of this section provides the identification and documentation procedure for preexisting individual accounts. Paragraph (c)(6) of this section provides examples illustrating the application of the documentation exceptions for entity accounts and individual accounts. Paragraph (c)(7) of this section outlines the certification requirement relating to the due diligence procedures of this paragraph (c) with respect to preexisting accounts within the specified periods of time.

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(v) *Documentation rules for U.S. branches of FFIs that are treated as U.S. persons.* A U.S. branch of an FFI that is treated as a U.S. person shall apply the due diligence requirements of § 1.1471-3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. See paragraph (b)(7) of this section for withholding rules and paragraph (d)(2)(iii)(B) of this section for reporting rules applicable to such U.S. branches.

(3) \* \* \*

(ii) *Timeframe for applying identification and documentation procedure for entity accounts and payees.* For preexisting entity accounts (including entity accounts that are opened on or after July 1, 2014, and before January 1, 2015, that the FFI treats as preexisting obligations under § 1.1471-1(b)(104)(i)), a participating FFI must perform the requisite identification and documentation procedures within six months of the effective date of the FFI agreement for any account holder that is a prima facie FFI, as defined in § 1.1471-2(a)(4)(ii)(B), and within two years of the effective date of the FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(iii) of this section. For accounts that are not preexisting accounts, the participating FFI must perform the requisite identification and documentation procedures by the earlier of the date a withholdable payment or a

foreign passthru payment is made with respect to the account or within 90 days of the date the participating FFI opens the account. Notwithstanding the foregoing sentences of this paragraph (c)(3)(ii), with respect to a preexisting obligation issued in nonregistered (bearer) form by an investment entity, the investment entity is required to perform the requisite identification and documentation procedures at the time a payment is collected by the beneficial owner of the payment (including a beneficial owner that collects the payment through an intermediary or agent). If the participating FFI cannot obtain all the documentation described in § 1.1471-3(d) or if the participating FFI knows or has reason to know that the documentation provided for an entity account is unreliable or incorrect (by applying the standards of knowledge applicable to entities in § 1.1471-3(e) as modified by paragraph (c)(2)(ii)), the participating FFI shall apply the presumption rules of § 1.1471-3(f) (as applicable to entities) to determine the chapter 4 status of the account holder. In the case of an account held by a passive NFFE that provides the documentation described in § 1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners, see § 1.1471-5(g)(2)(iv) for the requirement to treat the account as held by a recalcitrant account holder.

(iii) \* \* \*

(A) *Accounts to which this exception applies.* Unless the participating FFI elects otherwise pursuant to paragraph (c)(3)(iii)(C) of this section, a participating FFI is not required to perform the identification and documentation procedure contained in this paragraph (c)(3) with respect to a preexisting entity account the aggregate balance or value of which is \$250,000 or less if no holder of such account that has previously been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 is a specified U.S. person. For purposes of applying this exception, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(3)(iii)(B) of this section shall apply. An account that meets this exception will cease to meet this exception as of the end of any subse-

quent calendar year in which the account balance or value exceeds \$1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or as of the date on which there is another change in circumstances with respect to the account or any account aggregated with the account. The exception to the identification and documentation procedure described in this paragraph (c)(3)(iii)(A) does not apply to an entity account opened on or after July 1, 2014, and before January 1, 2015, that the FFI treats as a preexisting account under § 1.1471-1(b)(104)(i).

\* \* \* \* \*

(5) \* \* \*

(iv) \* \* \*

(B) \* \* \*

(2) \* \* \*

(vi) *Standing instructions to pay amounts.* If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and either a form of documentary evidence described in § 1.1471-3(c)(5)(i)(A) through (C) or a written reasonable explanation (as defined in § 1.1441-7(b)(12)) establishing the account holder's status as a foreign person.

\* \* \* \* \*

(E) *Exception for preexisting individual accounts previously documented as held by foreign individuals.* A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for such account. Additionally, a participating FFI with a U.S. payor as its paying agent is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for an account for which its paying agent that is a U.S. payor has previously obtained documentation to estab-

lish the account holder's status as a foreign individual under chapter 61. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(2) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(1) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI (or its paying agent that is a U.S. payor) has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year that was properly reported in that year. In the case of a participating FFI that is a QI, WP, or WT, the participating FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation and reporting requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

\* \* \* \* \*

(7) *Certifications of responsible officer.* In order for a participating FFI to comply with the requirements of an FFI agreement with respect to its identification procedures for preexisting accounts, a responsible officer of the participating FFI must certify to the IRS regarding the participating FFI's compliance with the diligence requirements of this paragraph (c). The responsible officer must certify that the participating FFI has completed the review of all high-value accounts as required under paragraphs (c)(5)(iv)(D) and (E) of this section and treats any account holder of an account for which the participating FFI has not retained a record of any required documentation as a recalcitrant account holder as required under this section and § 1.1471-5(g). The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in

accordance with the requirements of this section and § 1.1471-5(g) or § 1.1471-3(f) (as applicable). The responsible officer must also certify to the best of the responsible officer's knowledge after conducting a reasonable inquiry, that the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date that is two years after the effective date of the FFI's FFI agreement to assist account holders in the avoidance of chapter 4. A reasonable inquiry for purposes of this paragraph (c)(7) is a review of the participating FFI's procedures and a written inquiry, such as email requests to relevant lines of business, that requires responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices during that period. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, suggesting that account holders split up accounts to avoid classification as a high-value account; suggesting that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; suggesting that an account holder remove U.S. indicia from its account information; or facilitating the manipulation of account balances or values to avoid thresholds. If the responsible officer is unable to make any of the certifications described in this paragraph (c)(7), the responsible officer must make a qualified certification to the IRS stating that such certification cannot be made and that corrective actions will be taken by the responsible officer. The certifications described in this paragraph (c)(7) must be submitted to the IRS by the due date of the FFI's first certification of compliance required under paragraph (f)(3) of this section.

(d) \* \* \*

(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is re-

sponsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts. See chapter 61 for reporting requirements that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See § 301.1474-1(a) of this chapter for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) \* \* \*

(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vi) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is responsible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with

respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to foreign reportable amounts and for transitional rules for participating FFIs to report certain foreign reportable amounts paid to accounts held by nonparticipating FFIs, see § 1.1471-4(d)(2)(ii)(F).

(ii) \* \* \*

(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (G) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (d)(3), or (d)(5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under § 1.1474-1(d)(4)(iii).

(B) *Special reporting of account holders of territory financial institutions.* In the case of an account held by a territory financial institution that is a flow-through entity or acting as an intermediary with respect to a withholdable payment—

\* \* \* \* \*

(2) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of an entity that is treated as a passive NFFE with respect to which the territory financial institution acts as an intermediary or is a flow-through entity and provides the participating FFI with the information and documentation required under § 1.1471-3(c)(3)(iii)(G). The participating FFI shall be

treated as having satisfied these reporting requirements if it reports with respect to each such specified U.S. person or substantial U.S. owner of a passive NFFE either—

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

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

\* \* \* \* \*

(D) *Special reporting of accounts held by owner-documented FFIs.* A participating FFI that maintains an account held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471-3(d)(6) shall report the information described in paragraph (d)(3)(iv) or (d)(5)(iii) of this section with respect to each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2). See § 1.1474-1(i) for the reporting obligations of a participating FFI with respect to a payee of an obligation other than an account that it has agreed to treat as an owner-documented FFI.

(E) *Requirement to identify the GIIN of a branch that maintains an account.* A participating FFI may report under paragraph (d)(3) or (d)(5) of this section either with respect to all of its U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). A participating FFI shall include the GIIN assigned to the participating FFI or its branches to identify the jurisdiction of the FFI or branch that maintains the accounts subject to reporting under paragraph (d)(3) or (d)(5) of this section. Additionally, a participating FFI shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(F) *Reporting by participating FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 8966,

“FATCA Report” or in this paragraph (d)(2)(ii)(F), if a participating FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI must report on Form 8966 the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI’s account by the participating FFI during the calendar year. With respect to calendar year 2015, however, a participating FFI is not required to report gross proceeds described in paragraph (d)(4)(iv)(B)(3) of this section paid to an account held by a nonparticipating FFI. In addition, the participating FFI must retain the account statements related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), through (vii) of this section for rules relating to reporting on recalcitrant account holders. Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates.

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

(iii) \* \* \*

(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) shall be treated as

having satisfied the chapter 4 reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts, or accounts held by owner-documented FFIs, if the participating FFI reports with respect to each such account either—

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

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

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135)) shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

\* \* \* \* \*

(C) *Rules for U.S. branches of FFIs not treated as U.S. persons.* A U.S. branch of an FFI that is not treated as a U.S. person shall apply the due diligence rules in paragraph (c)(2) of this section to document its accounts and payees, and shall report its U.S. accounts and accounts held by owner-documented FFIs under paragraph (d)(3), (d)(5), or (d)(6) of this section, as if the U.S. branch were a participating FFI. In addition, the U.S. branch shall apply the withholding requirements in paragraph (b) of this section as if the U.S. branch were a participating FFI.

(3) \* \* \*

(ii) \* \* \*

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iii) *Accounts held by U.S. owned foreign entities.* With respect to each U.S. account described in paragraph (d)(3)(i) of this section that is held by a passive NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

\* \* \* \* \*

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described

in paragraph (d)(3)(v) of this section and its accompanying instructions.

\* \* \* \* \*

(vii) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809-I, “Application for Extension of Time to File FATCA Form 8966,” (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(4) \* \* \*

(i) *Address.* The address to be reported with respect to an account held by a specified U.S. person is the residence address recorded by the participating FFI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or for other purposes by the participating FFI. In the case of an account held by a passive NFFE that is a U.S. owned foreign entity, the address to be reported is the address of each substantial U.S. owner of such entity. In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2).

\* \* \* \* \*

(iv) \* \* \*

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

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

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) *Election under section 1471(c)(2).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect under section 1471(c)(2) and this paragraph (d)(5) to report under sections 6041, 6042, 6045, and 6049, as appropriate, with respect to any account required to be reported under this paragraph (d). Such reporting must be done as if such participating FFI were a U.S. payor and each holder of an account that is a specified U.S. person, passive NFFE that is a U.S. owned

foreign entity, or owner-documented FFI were a payee who is an individual and citizen of the United States. If a participating FFI makes such an election, the FFI is required to report the information required under this paragraph (d)(5) with respect to each such U.S. account or account held by an owner-documented FFI, regardless of whether the account holder of such account qualifies as a recipient exempt from reporting by a payor or middleman under sections 6041, 6042, 6045, or 6049, including the reporting of payments made to such account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report an account under the election described in this paragraph (d)(5) is required to report the information described in paragraph (d)(5)(ii) or (iii) of this section for a calendar year regardless of whether a reportable payment was made to the U.S. account during the calendar year. A participating FFI that reports an account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) of this section with respect to the account. The election under section 1471(c)(2) described in this paragraph (d)(5)(i)(A) does not apply to cash value insurance contracts or annuity contracts that are financial accounts described in § 1.1471-5(b)(1)(iv). See paragraph (d)(5)(i)(B) of this section for an election to report cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons in a manner similar to section 6047(d).

(B) *Election to report in a manner similar to section 6047(d).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect to report with respect to any of its cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons under section 6047(d), modified as follows. The amount to be reported is any amount paid under the contract during such reporting period as if such participating FFI were a U.S. payor. Each holder of a U.S. account that is a specified U.S. person is treated for purposes of reporting under this paragraph (d)(5)(i)(B) as a contract holder or payee who is an individual and citizen of the United States.

(ii) \* \* \*

(B) In the case of an account holder that is a U.S. owned foreign entity that is a passive NFFE—

\* \* \* \* \*

(v) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the end of the calendar year for which the election is made. A participating FFI may make an election under this paragraph (d)(5) either with respect to all of its U.S. accounts and recalcitrant accounts or, separately, with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained).

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

(vii) *Filing of information under election.* In the case of an account holder that is a specified U.S. person, the information required to be reported under the election described in this paragraph (d)(5) shall be filed with the IRS and issued to the account holder in the time and manner prescribed in sections 6041, 6042, 6045, 6047(d), and 6049 and in accordance with the forms referenced therein and their accompanying instructions provided by the IRS for reporting under each of these sections. If the account holder is a passive NFFE that is a U.S. owned foreign entity or owner-documented FFI, however, the information required to be reported under the election described in this paragraph (d)(5) shall be filed on Form 8966 in accordance with its requirements and its accompanying instructions.

(6) \* \* \*

(vi) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form

8809-I, “Application for Extension of Time to File FATCA Form 8966,” (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

\* \* \* \* \*

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

(ii) \* \* \*

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

(I) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is a passive NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2);

\* \* \* \* \*

(iii) *Participating FFIs that report under § 1.1471-4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(I) and (3) of this section for its 2014 calendar year. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) \* \* \*

(A) *In general.* Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vi) of this section. Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) *Special determination date and timing for reporting with respect to the 2014 calendar year.* With respect to the 2014 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on or after the effective date of the participating FFI's FFI agreement. Reporting for the 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135))) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 61 with respect to the 2014 calendar year.

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

(9) \* \* \*

*Example 1. Financial institution required to report U.S. account.* PFFI1, a participating FFI, issues shares of stock that are financial accounts under § 1.1471-5(b). Such shares are held in custody by PFFI2, another participating FFI, on behalf of U, a specified U.S. person that holds an account with PFFI2. The shares of PFFI1 held by PFFI2 will not be subject to reporting by PFFI1 if PFFI1 may treat

PFFI2 as a participating FFI under § 1.1471-3(d)(4). See paragraph (d)(2)(ii)(A) of this section.

*Example 2. Financial institution required to report U.S. account.* U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under § 1.1471-5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under § 1.1471-5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI2, if PFFI2 may treat PFFI1 as a participating FFI under § 1.1471-3(d)(4). See paragraph (d)(2)(ii)(A) of this section.

*Example 3. U.S. owned foreign entity.* FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See § 1.1473-1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(v) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

\* \* \* \* \*

*Example 5. Owner-documented FFI.* DC, an owner-documented FFI under § 1.1471-3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in § 1.1471-3(d)(6)(iv)(A)(I) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

\* \* \* \* \*

*Example 7. Sponsored FFI.* DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under § 1.1471-5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under § 1.1471-5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) \* \* \*

(1) *In general.* Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in paragraph (e)(3)(v)

of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to its limited branches and its affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) \* \* \*

(ii) *Branch defined.* The term *branch* has the meaning set forth in § 1.1471-1(b)(10).

\* \* \* \* \*

(iv) \* \* \*

(D) Except as otherwise provided in paragraph (e)(2)(vi) of this section, agree that each such branch will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any branch of the FFI or from any member of its expanded affiliated group; and

\* \* \* \* \*

(v) *Term of limited branch status (transitional).* An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2016, unless otherwise provided pursuant to Model 1 IGA or Model 2 IGA. A branch will cease to be a limited branch as of the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of a participating FFI as described

in this section. In such case, a participating FFI will retain its status as a participating FFI if it notifies the IRS by the date such branch ceases to be a limited branch that it will comply with the requirements of an FFI agreement with respect to such branch, or if otherwise provided pursuant to a Model 1 IGA or Model 2 IGA.

(vi) *Exception from restriction on opening U.S. accounts and accounts held by nonparticipating FFIs.* Notwithstanding the requirements of paragraph (e)(2)(iv)(D) of this section, a branch may open U.S. accounts for persons resident in the same jurisdiction in which such branch is located or operating and accounts for nonparticipating FFIs that are resident in the same jurisdiction provided that—

(A) The branch does not solicit U.S. accounts or accounts for nonparticipating FFIs from persons not resident in the same jurisdiction in which such branch is located or operating; and

(B) The branch is not used by the FFI or any FFI in its expanded affiliated group to circumvent the obligations of such FFI under section 1471.

(3) \* \* \*

(iii) \* \* \*

(A) Except as otherwise provided in paragraph (e)(3)(v) of this section, register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

\* \* \* \* \*

(C) Except as otherwise provided in paragraph (e)(3)(vi) of this section, agree as part of such registration that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group; and

\* \* \* \* \*

(iv) *Period for limited FFI status (transitional).* A limited FFI will cease to be a limited FFI after December 31, 2016. An FFI will also cease to be a limited FFI when it becomes a participating FFI or deemed-compliant FFI, or as of the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, participating FFIs and deemed-compliant FFIs that are members of the same ex-

panded affiliated group will retain their status if, by the date that an FFI ceases to be a limited FFI, such FFI enters into an FFI agreement or becomes a registered deemed-compliant FFI, unless otherwise provided pursuant to an applicable Model 1 IGA or Model 2 IGA.

(v) *Exception from registration requirement—(A) Conditions for exception.* An FFI that seeks to become a limited FFI is excepted from the registration requirement of paragraph (e)(3)(iii)(A) of this section provided that—

(1) The FFI is prohibited under local law from registering as a limited FFI;

(2) A member of the FFI's expanded affiliated group that is a U.S. financial institution or an FFI seeking status as (or that is) a participating FFI or reporting Model 1 FFI registers as a lead FI (defined in the Instructions for Form 8957, "Foreign Account Tax Compliance Act (FATCA) Registration") with respect to the limited FFI; and

(3) The lead FI identifies the limited FFI on the lead FI's FATCA registration. However, if the limited FFI is prohibited under applicable law from being identified by its legal name on the FATCA registration website, the lead FI may use the term *Limited FFI* in place of the limited FFI's name and indicate the limited FFI's jurisdiction of residence or organization.

(B) *Confirmation requirements of lead FI.* By identifying a limited FFI on the FATCA registration website pursuant to paragraph (e)(3)(v)(A)(2) of this section, the lead FI is confirming that—

(1) The limited FFI has represented to the lead FI that it will meet the conditions for limited FFI status described in paragraph (e)(3)(iii) of this section;

(2) The limited FFI has agreed to notify the lead FI within 30 days of the date that such FFI ceases to meet the requirements of a limited FFI or the date that such FFI can comply with the requirements of a participating FFI or deemed-compliant FFI (and will separately register for that status); and

(3) The lead FI, if it receives a notification described in paragraph (e)(3)(v)(B)(2) of this section or otherwise knows that the limited FFI has not complied with the conditions for limited FFI status or can comply with the requirements of a participating FFI or deemed-compliant FFI,

will, within 90 days of such notification or acquiring such knowledge, remove the FFI from the lead FI's registration on the FATCA registration website and maintain a record of the date on which the FFI ceased to be a limited FFI and (if applicable) the circumstances of the limited FFI's non-compliance, which will be available to the IRS upon request.

(vi) *Exception from restriction on opening U.S. accounts and accounts held by nonparticipating FFIs.* Notwithstanding paragraph (e)(3)(iii)(C) of this section, a limited FFI may open U.S. accounts for persons resident in the same jurisdiction in which such FFI is resident or organized and accounts for nonparticipating FFIs that are resident in the same jurisdiction provided that—

(A) Such FFI does not solicit U.S. accounts or accounts for nonparticipating FFIs from persons not resident in the same jurisdiction in which the FFI is resident or organized; and

(B) The FFI is not used by another FFI in the FFI's expanded affiliated group to circumvent the obligations of such other FFI under section 1471.

(4) *Special rule for QIs.* An FFI that has in effect a QI agreement with the IRS will be allowed to become a limited FFI notwithstanding that none of the FFIs in the expanded affiliated group of which the FFI is a member can comply with the requirements of a participating FFI as described in this section if the FFI that is a QI meets the conditions of a limited FFI under paragraph (e)(3)(iii) of this section.

(f) \* \* \*

(1) *In general.* This paragraph (f) describes the requirement for a participating FFI to establish and implement a compliance program for satisfying its requirements under this section. Paragraph (f)(2) of this section provides the requirement for a participating FFI to establish a compliance program and the option for a group of FFIs to adopt a consolidated compliance program. Paragraph (f)(3) of this section describes the periodic certification that the participating FFI must make to the IRS regarding the participating FFI's compliance with the requirements of an FFI agreement. Paragraph (f)(4) describes IRS information requests related to compliance with an FFI agreement.

\* \* \* \* \*

(3) \* \* \*

(i) *In general.* In addition to the certifications required under paragraph (c)(7) of this section, on or before July 1 of the calendar year following the end of each certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section on the form and in the manner prescribed by the IRS. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three calendar year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has identified an event of default (defined in paragraph (g) of this section) or a material failure (defined in paragraph (f)(3)(iv) of this section) that it has not corrected as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section.

\* \* \* \* \*

(4) \* \* \*

(i) *General inquiries.* The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS (or the absence of such reporting) for each calendar year, may request additional information with respect to the information reported (or required to be reported) on the forms or may request the account statements described in paragraph (d)(4)(v) of this section, or confirmation that the FFI has no accounts that it was required to report. The IRS may also request any additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by

the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the participating FFI may not have substantially complied with the requirements of its FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement. The IRS may make these requests to a sponsoring entity with respect to any sponsored FFI.

(g) \* \* \*

(1) *Defined.* An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following—

\* \* \* \* \*

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;

\* \* \* \* \*

(2) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within a specified time period. The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. A participating FFI may request, within a reasonable period of time, reconsideration of a notice of default or notice of termination by written request to the IRS.

\* \* \* \* \*

(j) *Effective/applicability date—(1) In general.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

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

Par. 10. Section 1.1471-4T is revised to read as follows:

*§ 1.1471-4T FFI agreement (temporary).*

(a) through (b) [Reserved]. For further guidance, see § 1.1471-4(a) through (b)(7).

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

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

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

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

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

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

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

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

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

(iii) In the case of a transferor FI that is a participating FFI or a registered deemed-compliant FFI (or a U.S. branch of either such entity that is not treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

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

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

(3) through (7) [Reserved]. For further guidance, see § 1.1471-4(c)(3) through (7).

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

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

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

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

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

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

(G) *Combined reporting on Form 8966 following merger or bulk acquisition.* If a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under paragraph (d) of this section with respect to the calendar year in which the merger or acquisition occurs

(acquisition year), provided that the requirements in paragraphs (d)(2)(ii)(G)(I) through (4) of this section are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(I) through (4) of this section are not satisfied, both the predecessor and the successor are required to report the acquired accounts for the portion of the acquisition year that it maintains the account.

(I) The successor must acquire substantially all of the accounts maintained by the predecessor, or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value.

(2) The successor must agree to report the acquired accounts for the acquisition year on Form 8966 to the extent required in § 1.1471-4(d)(3) or (d)(5).

(3) The successor may not elect to report under section 1471(c)(2) and § 1.1471-4(d)(5) with respect to any acquired account that is a U.S. account for the acquisition year.

(4) The successor must notify the IRS on the form and in the manner prescribed by the IRS that Form 8966 is being filed on a combined basis.

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

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

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

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

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

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

(C) *Other accounts.* In the case of an account described in § 1.1471-5(b)(1)(iii) (relating to a debt or equity interest other than an interest as a partner in a partnership) or § 1.1471-5(b)(1)(iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account. In the case of an account that is a partner's interest in a partnership, the pay-

ments made during the calendar year with respect to such account are the amount of the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The payments required to be reported under this paragraph (d)(4)(iv)(C) with respect to a partner may be determined based on the partnership's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the partnership's financial statements or any other reasonable method used by the partnership for calculating the partner's share of partnership income by such date.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity financial accounts.* In the case of an account closed or transferred in its entirety during a calendar year that is a depository account, custodial account, or a cash value insurance contract or annuity contract, the payments made with respect to the account shall be—

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

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

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

(5) through (9) [Reserved]. For further guidance, see § 1.1471-4(d)(5) through (d)(9), *Example 7*.

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

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

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

(2) *Special applicability date.* Paragraph (d)(4)(iv)(C) of this section applies beginning with reporting with respect to calendar year 2017.

(k) *Expiration date.* The applicability of this section expires on December 30, 2019

Par. 11. Section 1.1471-5 is amended by revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(2), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(I) and (2), (b)(3)(vi), (c), (d), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* and *Example 8*, (e)(5)(i)(A)(3), (e)(5)

(i)(B) through (C), (e)(5)(i)(D)(I)(iv) and (v), (e)(5)(iv)(B), (f), (f)(1)(i)(A)(6) and (7), (f)(1)(i)(B)(I), (f)(1)(i)(B)(3), (f)(1)(i)(C)(2), (f)(1)(i)(D)(4) through (6), (f)(1)(i)(D)(7) introductory text, (f)(1)(i)(D)(8), (f)(1)(i)(E), (f)(1)(i)(F)(I)(i) and (ii), (f)(1)(i)(F)(3)(i), (f)(1)(i)(F)(3)(iii), (f)(1)(i)(F)(3)(v) through (viii), (f)(1)(i)(F)(5), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (v), (f)(4)(i), (g)(1), (g)(3)(i)(D), and (i) through (l) to read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

- (a) \* \* \*
- (3) \* \* \*

(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the account holder is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraph (a)(3)(ii) of this section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i) of this chapter, the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471–6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

- \* \* \* \* \*
- (4) \* \* \*

(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this

paragraph (a)(4)(i), the term *U.S. account* shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed \$50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iii) and (b)(4) of this section.

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (B) \* \* \*

(2) The return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity’s expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

- \* \* \* \* \*
- (3) \* \* \*

(iv) *Regularly traded on an established securities market.* To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472–1(c)(1)(i)(A)(2)(i) and (ii) shall apply with respect to the interests, and the principles of § 1.1472–1(c)(1)(i)(B)(I) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472–1(c)(1)(i)(C) for the definition of an established securities market. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder’s interest is registered prior to July 1, 2014, on the books of the investment entity.

- (v) \* \* \*

(A) *Equity interest.* The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to with- holdable payments if the return earned on

such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

- (B) \* \* \*

(I) Debt is convertible into equity interests in a U.S. person; or

(2) The return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(vi) *Return earned on the interest (including upon a sale, exchange, or redemption) determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs—*(A) *Equity interest.* The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity’s expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity’s expanded affiliated group.

(B) *Debt interest.* The return earned on a debt interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity’s expanded affiliated group if—

(I) Debt is convertible into equity interests in one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity’s expanded affiliated group; or

(2) The return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity’s expanded affiliated group.

- \* \* \* \* \*

(c) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* means any for-

eign entity that has one or more substantial U.S. owners (as defined in § 1.1473-1(b)). See § 1.1473-1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and indirect ownership in an entity, see § 1.1473-1(b)(2).

(d) *Definition of FFI.* The term *FFI* means, with respect to any entity that is not resident in, or organized under the laws of, as applicable, a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. The term *FFI* also means, with respect to any entity that is resident in, or organized under the laws of, as applicable, a country that has in effect a Model 1 IGA or Model 2 IGA, any entity that is treated as a FATCA Partner Financial Institution pursuant to such Model 1 IGA or Model 2 IGA. See, however, § 1.1471-2(a)(2)(v) for when certain branches of U.S. financial institutions may be treated as FFIs. A territory financial institution is not an FFI under this paragraph (d).

- (e) \* \* \*
- (1) \* \* \*
- (v) \* \* \*

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, specified insurance company, or investment entity described in paragraphs (e)(4)(i)(B) or (C) of this section; or

\* \* \* \* \*

- (3) \* \* \*

(ii) *Income attributable to holding financial assets and related financial services.* For purposes of this paragraph (e)(3), the term *income attributable to holding financial assets and related financial services* means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

\* \* \* \* \*

- (4) \* \* \*

- (v) \* \* \*

*Example 7. Individual introducing broker.* IB, an individual introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an individual, notwithstanding that IB primarily conducts certain investment-related activities, IB is not an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is not an investment entity under paragraph (e)(4)(i)(B) of this section because Entity is managed by IB, an individual.

*Example 8. Entity introducing broker.* IB, a foreign entity introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides its services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an entity that primarily conducts certain investment-related activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by IB, an investment entity that performs certain of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of Entity.

- (5) \* \* \*

- (i) \* \* \*

- (A) \* \* \*

(3) The entity does not hold itself out as, and was not formed in connection with or availed of by, an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes. For purposes of determining whether an entity was formed in connection with or availed of by such an arrangement or investment vehicle, any entity that existed at least six months prior to its acquisition by such arrangement or investment vehicle and that, prior to the acquisition, regularly conducted activities described in paragraph (e)(5)(i)(C), (D), or (E) of this section will not be considered to have been formed in connection with or availed of by the arrangement or investment vehicle, in the absence of other facts suggesting

the existence of an investment strategy described in the prior sentence.

(B) *Nonfinancial group.* An expanded affiliated group defined in paragraph (i)(2) of this section is a nonfinancial group if, taking into account the application of this section—

(I) For the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending on December 31 (or the end of the fiscal year of one or more members of the group) of the year preceding the year in which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section, income derived from transactions between members of the expanded affiliated group, and interest income on notes issued by customers to a member of the expanded affiliated group that is a captive finance company to finance the customer's purchase of inventory or goods that are manufactured by a member of the expanded affiliated group) consists of passive income (as defined in § 1.1472-1(c)(1)(iv)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFIs (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section, assets resulting from transactions between related members of the expanded affiliated group, and receivables that are notes issued by customers to a member of the expanded affiliated group that is a captive finance company to finance the customer's purchase of inventory or goods that are manufactured by a member of the expanded affiliated group) are assets that produce or are held for the production of passive income; and

(2) Any member of the expanded affiliated group that is an FFI is a participating FFI, deemed-compliant FFI, or an exempt beneficial owner. However, an acquisition

by a member of the expanded affiliated group of an FFI that is not a participating FFI, deemed-compliant FFI, or an exempt beneficial owner, or a change in the chapter 4 status of a member of the expanded affiliated group, will not cause a nonfinancial group to cease to be a nonfinancial group until 90 days after the acquisition or change in chapter 4 status.

(C) *Holding company.* For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group. A partnership or any other non-corporate entity shall be treated as a holding company if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of more than one common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate expanded affiliated group for purposes of applying the rules of this section unless a non-corporate entity is treated as the common parent entity of the expanded affiliated group in accordance with § 1.1471-5(i)(10).

(D) \* \* \*

(I) \* \* \*

(iv) Managing the working capital of the expanded affiliated group (or any member thereof) such as by pooling the cash balances of affiliates (including both positive and deficit cash balances) or by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(v) Acting as a financing vehicle for the expanded affiliated group (or any member thereof).

\* \* \* \* \*

(iv) \* \* \*

(B) The entity does not hold an account (other than depository accounts in the country in which the entity is operating to pay for expenses in that country) with or receive payments from any withholding

agent other than a member of its expanded affiliated group;

\* \* \* \* \*

(f) *Deemed-compliant FFIs.* The term *deemed-compliant FFI* includes a registered deemed-compliant FFI (as defined in paragraph (f)(1) of this section), a certified deemed-compliant FFI (as defined in paragraph (f)(2) of this section), a nonreporting IGA FFI (as defined in § 1.1471-1(b)(83)), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b). A deemed-compliant FFI that complies with the due diligence and withholding requirements applicable to such entity as provided in this paragraph (f) will also be deemed to have met its withholding obligations under sections 1471(a) and 1472(a). For this purpose, an intermediary or flow-through entity that has a residual withholding obligation under § 1.1471-2(a)(2)(ii) must fulfill such obligation to be considered a deemed-compliant FFI.

(1) \* \* \*

(i) \* \* \*

(A) \* \* \*

(6) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent with those set forth for a participating FFI under § 1.1471-4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under § 1.1471-4(b) and (d) if the FFI were a participating FFI.

(7) With respect to each preexisting account held by a nonresident of the country in which the FFI is organized or held by an entity, the FFI reviews those accounts in accordance with the procedures described in § 1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and certifies to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified or transferred them to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or that it agrees to withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI. Such certification must be submitted by the due date of the FFI's first certification of compliance required under paragraph (f)(1)(ii)(B) of this section.

\* \* \* \* \*

(B) \* \* \*

(I) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

\* \* \* \* \*

(3) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) \* \* \*

(2) Each holder of record of direct debt interests in the FFI in excess of \$50,000, of any direct equity interests in the FFI

(for example the holders of its units or global certificates), and of any other account holder of the FFI is a participating FFI, a registered deemed-compliant FFI, a retirement plan described in § 1.1471-6(f), a non-profit organization described in paragraph (e)(5)(vi) of this section, a U.S. person that is not a specified U.S. person, a nonreporting IGA FFI, or an exempt beneficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471-4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term *U.S. person* for the terms *FFI* and *member*), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

\* \* \* \* \*

(D) \* \* \*

(4) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(5) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement entered into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(3) of this section, terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of the notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(3) of this section within six months of the distributor's change in status.

(6) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in § 1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals. An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in § 1.1471-4(c) applicable to accounts other than preexisting accounts. The FFI is required to certify to the IRS either that it did not identify any U.S. account or account held by a

nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI. Such certification must be submitted to the IRS by the due date of the FFI's first certification of compliance required under paragraph (f)(1)(ii)(B) of this section.

(7) By the later of June 30, 2014, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in § 1.1471-4(c) to ensure that it either—

\* \* \* \* \*

(8) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(1)(i)(F)(1) or (2) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(E) *Qualified credit card issuers and servicers.* An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(1) The FFI is an FFI solely because it is an issuer or servicer of credit cards that accepts deposits, on its own behalf or, in the case of a servicer, on behalf of a credit card issuer, only when a customer makes a payment in excess of a balance due with respect to the credit card account and the overpayment is not immediately returned to the customer.

(2) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of \$50,000 or to ensure that any customer deposit in excess of \$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) \* \* \*

(I) \* \* \*

(i) It is an investment entity that is not a QI, WP (except to the extent permitted in the WP agreement), or WT; and

(ii) An entity, other than a nonparticipating FFI, has agreed with the FFI to act as a sponsoring entity for the FFI.

\* \* \* \* \*

(3) \* \* \*

(i) Is authorized to act on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner) to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI;

\* \* \* \* \*

(iii) Has registered the FFI with the IRS by the later of January 1, 2017, or the date that the FFI identifies itself as qualifying under this paragraph (f)(1)(i)(F);

\* \* \* \* \*

(v) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1;

(vi) Performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3);

(vii) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(viii) Has not had its status as a sponsoring entity revoked.

\* \* \* \* \*

(5) A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(ii) \* \* \*

(B) Have its responsible officer certify, on or before July 1 of the calendar year following the end of each certification period, that all of the requirements for the deemed-compliant status claimed by the FFI have been satisfied during the certification period. The responsible officer may certify collectively for the FFI's expanded affiliated group that all of the requirements for the deemed-compliant status claimed by each member of the expanded affiliated group that is a registered deemed-compliant FFI (other than a member that is a reporting Model 1 FFI or deemed-compliant FFI under an applicable Model 1 IGA) have been satisfied. The certification must be made on the form and in the manner prescribed by the IRS. The first certification period begins on the later of the date the FFI registers as a deemed-compliant FFI and is issued a GIIN, or June 30, 2014, and ends at the close of the third full calendar year following that date. Each subsequent certification period is the three calendar year period following the previous certification period.

\* \* \* \* \*

(2) *Certified deemed-compliant FFIs.* A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (v) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471-3(d)(5) applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI is not required to register with the IRS.

(i) \* \* \*

(B) The FFI's business consists primarily of receiving deposits from and making loans to, with respect to a bank, retail customers that are unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no such member has a greater than 5 percent interest in such credit union or cooperative credit organization. For purposes of this paragraph (f)(2)(i)(B), a customer is related to a bank if the customer and the bank have a relationship described in section 267(b). For purposes of determining whether a member has a greater than 5 percent interest in a credit union or cooperative credit organization, the member must aggregate the ownership or beneficial interests in the

credit union or cooperative credit organization that are owned or held by a related member. A member of a credit union or cooperative credit organization is related to another member if the relationship of such members is described in section 267(b).

\* \* \* \* \*

(iii) *Sponsored, closely held investment vehicles.* Subject to the provisions of paragraph (f)(2)(iii)(E) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (D) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QI, WP, or WT.

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(D) The sponsoring entity complies with the following requirements—

(1) The sponsoring entity has registered with the IRS as a sponsoring entity;

(2) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(3) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1;

(4) The sponsoring entity performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3);

(5) The sponsoring entity performs the verification procedures required under paragraphs (j) and (k) of this section; and

(6) The sponsoring entity has not had its status as a sponsor revoked.

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(2)(iii)(D) of this section with respect to any sponsored FFI. A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(iv) *Limited life debt investment entities (transitional)*. An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements.

(A) The FFI is an investment entity that issued one or more classes of debt or equity interests to investors pursuant to a trust indenture or similar agreement and all of such interests were issued on or before January 17, 2013.

(B) The FFI was in existence as of January 17, 2013, and has entered into a trust indenture or similar agreement that requires the FFI to pay to investors holding substantially all of the interests in the FFI, no later than a set date or period following the maturity of the last asset held by the FFI, all amounts that such investors are entitled to receive from the FFI.

(C) The FFI was formed and operated for the purpose of purchasing or acquiring specific types of debt instruments or interests therein and holding those assets subject to reinvestment only under prescribed circumstances to maturity.

(D) Substantially all of the assets of the FFI consist of debt instruments or interests therein (including assets acquired pursuant to a foreclosure, restructuring, workout, or similar event with respect to a debt instrument).

(E) All payments made to the investors of the FFI (other than holders of a de minimis interest) are either cleared through a clearing organization or custodial institution that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a transfer agent that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(F) The FFI's trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations of a participating FFI under § 1.1471-4 and no other person has the authority to fulfill the obligations of a participating FFI under § 1.1471-4 on behalf of the FFI.

(v) *Certain investment entities that do not maintain financial accounts*. An FFI is described in this paragraph (f)(2)(v) if the FFI meets the following requirements.

(A) The FFI is a financial institution solely because it is described in paragraph (e)(4)(i)(A) of this section.

(B) The FFI does not maintain financial accounts.

\* \* \* \* \*

(4) \* \* \*

(i) The distributor provides investment services to at least 30 customers unrelated to each other and fewer than half of the distributor's customers are related to each other. For purposes of this paragraph (f)(4)(i), customers are related to each other if they have a relationship with each other described in section 267(b).

\* \* \* \* \*

(g) \* \* \*

(1) *Scope*. This paragraph (g) provides rules for determining when an account holder of a participating FFI or registered deemed-compliant FFI is a recalcitrant account holder. Paragraph (g)(2) of this section defines the term recalcitrant account holder. Paragraphs (g)(3) and (4) of this section provide timing rules for when an account holder will begin to be treated as a recalcitrant account holder by a participating FFI and when an account holder will cease to be treated as a recalcitrant account holder by such institution. For rules for determining the holder of an ac-

count, see paragraph (a)(3) of this section. For the withholding requirements of an FFI with respect to its recalcitrant account holders, see paragraph (f) of this section and § 1.1471-4(b). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see § 1.1471-4(d)(6), and, for the reporting required with respect to payments made to such account holders, see § 1.1474-1(d)(4)(iii). A U.S. branch treated as a U.S. person shall apply the presumption rules of § 1.1471-3(f) (for foreign entity account holders) and chapter 3 or 61 (for individual payees) to determine the status of a payee if it cannot reliably associate a payment made to the payee with valid documentation and does not apply this paragraph (g).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(D) *Preexisting accounts that become high-value accounts*. With respect to a calendar year beginning after December 31, 2015, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to § 1.1471-4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following end of the calendar year in which the account is identified as a high-value account or the date that is six months after the calendar year end.

\* \* \* \* \*

(i) *Expanded affiliated group—(1) Scope of paragraph*. This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see § 1.1471-4(e).

(2) *Expanded affiliated group defined*. Except as otherwise provided in this paragraph (i), an expanded affiliated group is defined in accordance with the principles of section 1504(a) to mean one or more chains of members connected through ownership by a common parent entity if the common parent entity directly owns stock or other equity interests meeting the requirements of paragraph (i)(4) of this section in at least one of the other members (for purposes of this paragraph (i),

the constructive ownership rules of section 318 do not apply). Generally, only a corporation shall be treated as the common parent entity of an expanded affiliated group, unless the taxpayer elects to follow the approach described in paragraph (i)(10) of this section.

(3) *Member of an expanded affiliated group.* The term *member of an expanded affiliated group* means a corporation or any entity other than a corporation (such as a partnership or trust) with respect to which the ownership requirements of paragraph (i)(4) of this section are met, regardless of whether such entity is a U.S. person or a foreign person, but excluding corporations described in paragraphs (1), (4), (6), (7), or (8) of section 1504(b).

(4) *Ownership test.* The ownership requirements of this paragraph (i)(4) are met if—

(i) *Corporations.* For purposes of paragraph (i)(2) of this section, a corporation (except the common parent entity) will be considered owned by another member entity or by the common parent entity if more than 50 percent of the total voting power of the stock of such corporation and more than 50 percent of the total value of the stock of such corporation is owned directly by one or more other members of the group (including the common parent entity).

(A) *Stock not to include certain preferred stock.* For purposes of this paragraph (i)(4), the term *stock* does not include any stock which is described in section 1504(a)(4).

(B) *Valuation.* For purposes of section 1471(e) and this section, all shares of stock within a single class are considered to have the same value in determining the ownership percentage. Thus, control premiums and minority blockage discounts within a single class are not taken into account.

(ii) *Partnerships.* For purposes of paragraph (i)(2) of this section, a partnership will be considered owned by another member entity (including the common parent entity) if more than 50 percent (by value) of the capital or profits interest in the partnership is owned directly by one or more other members of the group (including the common parent entity).

(iii) *Trusts.* For purposes of paragraph (i)(2) of this section, a trust will be considered owned by another member entity

or by the common parent entity if more than 50 percent (by value) of the beneficial interest in such trust is owned directly by one or more other members of the group (including the common parent entity). A beneficial interest in a trust includes an interest held by an entity treated as a grantor or other owner of the trust under sections 671 through 679 and a beneficial trust interest.

(5) *Treatment of warrants, options, and obligations convertible into equity for determining ownership.* For purposes of paragraph (i)(4) of this section, ownership of warrants, options, obligations convertible into the equity of a corporation or entity other than a corporation, and other similar interests is not considered for purposes of determining whether an entity is a member of an expanded affiliated group, except as follows:

(i) Ownership of a warrant, option, obligation convertible into stock, or other similar instrument creating an interest in a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that the common parent or member of the expanded affiliated group that holds such instrument also maintains voting rights with respect to such corporation. However, interests described in § 1.1504-4(d)(2) will not be treated as options.

(ii) Ownership of a warrant, option, obligation convertible into an equity interest, or other similar instrument creating an interest in a corporation or entity other than a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that such instrument is reasonably certain to be exercised, based on all of the facts and circumstances and in accordance with the principles set forth in § 1.1504-4(g).

(6) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to investors that do not have

a relationship with each other described in section 267(b);

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(6)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(6)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(7) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

(8) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(4) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(8), a change in voting rights includes a separation of voting rights and value.

(9) *Exception for limited life debt investment entities.* Notwithstanding paragraphs (i)(2) and (4) of this section, an

entity that meets the requirements of paragraph (f)(2)(iv) of this section, including the requirements to have been in existence as of January 17, 2013, and to have issued interests in the entity on or before January 17, 2013, will not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity.

(10) *Partnerships, trusts, and other non-corporate entities.* For purposes of determining the composition of an expanded affiliated group, an entity other than a corporation may elect to be treated as the common parent entity. Taxpayers following this approach may not, in a later year, follow the rule described in paragraph (i)(2) of this section without the approval of the Commissioner. See also paragraph (e)(5)(i)(C) of this section.

(j) *Sponsoring entity verification.* [Reserved]

(k) *Sponsoring entity event of default.* [Reserved]

(l) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

### § 1.1471-5T [Removed]

Par. 12. Section 1.1471-5T is removed.

Par. 13. Section 1.1471-6 is amended by revising paragraphs (d)(1) and (4), (f)(2)(iii)(B) and (C), (f)(3)(ii) and (iii), (f)(5) and (6), (g), (h)(2), and (i) to read as follows:

#### § 1.1471-6 Payments beneficially owned by exempt beneficial owners.

\* \* \* \* \*

(d) \* \* \*

(1) *In general.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *foreign central bank of issue* means an institution that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such an institution is generally the custodian of the

banking reserves of the country under whose law it is organized.

\* \* \* \* \*

(4) *Income on certain transactions.* Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on cash and securities, including cash and securities held as collateral or securities held in connection with a securities lending transaction, held by the foreign central bank of issue in the ordinary course of its operations as a central bank of issue.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), from retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or from other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA), or penalties apply to distributions or withdrawals made before such specified events; or

\* \* \* \* \*

(3) \* \* \*

(ii) The fund is sponsored by one or more employers and each of these employers are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other retirement plans described in paragraph (f)(1) of this section, from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pen-

sion accounts described in an applicable Model 1 or Model 2 IGA) are limited by reference to earned income and compensation of the employee, respectively;

\* \* \* \* \*

(5) *Investment vehicles exclusively for retirement funds.* A fund established exclusively to earn income for the benefit of one or more retirement funds described in paragraphs (f)(1) through (5) of this section or in an applicable Model 1 or Model 2 IGA, accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

(6) *Pension fund of an exempt beneficial owner.* A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section or an exempt beneficial owner (other than a fund that qualifies as an exempt beneficial owner) described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

\* \* \* \* \*

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment entity is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity), an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA.

(h) \* \* \*

(2) *Limitation.* Paragraph (h)(1) of this section will not apply to treat an exempt beneficial owner as engaged in a commercial financial activity if—

(i) The entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471-5(b)(1)(iii); and

(iii) The entity otherwise maintains financial accounts only for exempt beneficial owners, or, in the case of a foreign central bank of issue as described in paragraph (d), the entity only maintains financial accounts that are depository accounts for current or former employees of the entity (and the spouses and children of such employees) or financial accounts for exempt beneficial owners.

(i) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

#### § 1.1471-6T [Removed]

Par. 14. Section 1.1471-6T is removed.

Par. 15. Section 1.1472-1 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) and (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v) through (vii), (c)(2) through (5), (d)(1) and (2), and (f) through (h) to read as follows:

#### § 1.1472-1 Withholding on NFFEs.

(a) *In general.* This section provides rules that a withholding agent must apply to determine its obligations to withhold under section 1472 on withholdable payments made to a payee that is a NFFE. A participating FFI that complies with its withholding obligations under § 1.1471-4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. The rules of this section will apply, however, in the case of a participating FFI acting as a withholding agent with respect to a payment made to a NFFE that is not an account holder (for

example, a payment with respect to a contract that does not constitute a financial account). See § 1.1473-1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471-2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471-2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471-2(a)(5) for withholding requirements if the source or character of a payment is unknown. The following entities are deemed to satisfy their withholding obligations under section 1472: exempt beneficial owners; section 501(c) entities described in § 1.1471-5(e)(5)(v); and nonprofit organizations described in § 1.1471-5(e)(5)(vi). See § 1.1471-5(f) for when a deemed-compliant FFI is deemed to satisfy its withholding obligations with respect to payments made to NFFEs that are account holders under section 1472.

(b) \* \* \*

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraph (c)(1) or (2) of this section (providing exceptions for payments to an excepted NFFE or an exempt beneficial owner), § 1.1471-2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471-2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471-2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is a NFFE unless—

\* \* \* \* \*

(2) *Transitional relief.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when

the NFFE has failed to provide the owner certification as required under § 1.1471-3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under § 1.1474-1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) \* \* \*

(1) *Payments to an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as made to a payee that is an excepted NFFE. For purposes of this paragraph, the term *excepted NFFE* means a payee that the withholding agent may treat as a NFFE that is a QI, WP, or WT. Additionally, the term *excepted NFFE* means, with respect to the payment, a NFFE described in paragraphs (c)(1)(i) through (vii) of this section to the extent the withholding agent may treat the NFFE as the beneficial owner of the payment.

(i) *Publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(i) if it is a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

\* \* \* \* \*

(ii) *Certain affiliated entities related to a publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(ii) if it is a corporation that is a member of the same expanded affiliated group (as defined in § 1.1471-5(i)) as a corporation described in paragraph (c)(1)(i) of this section (without regard to whether such corporation is a NFFE).

(iii) *Certain territory entities.* A NFFE is described in this paragraph (c)(1)(iii) if it is a territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized. The term *bona fide resident of a U.S. territory* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937-1.

(iv) *Active NFFEs.* A NFFE is described in this paragraph (c)(1)(iv) (and thus constitutes an active NFFE) if it is an entity and for the preceding calendar or fiscal year less than 50 percent of its gross income is passive income and the

weighted average of the percentage of assets held by it that produce or are held for the production of passive income (weighted by total assets and measured quarterly) is less than 50 percent, as determined after the application of paragraph (c)(1)(iv)(B) of this section (passive assets). For purposes of the calculations described in the preceding sentence, a NFFE may use any accounting method permitted under paragraph (c)(1)(iv)(C) of this section but must apply a uniform method for measuring assets for the calendar or fiscal year.

\* \* \* \* \*

(C) *Methods of measuring assets.* For purposes of this paragraph (c)(1)(iv), the value of a NFFE's assets is determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet (as determined under either a U.S. or an international financial accounting standard).

(v) *Excepted nonfinancial entities.* A NFFE is described in this paragraph (c)(1)(v) if it is an entity described in § 1.1471-5(e)(5) (referring to holding companies, treasury centers, and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating or emerging from bankruptcy; and non-profit organizations).

(vi) *Direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vi) if it meets the requirements described in § 1.1472-1(c)(3) to be treated as a direct reporting NFFE.

(vii) *Sponsored direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vii) if it meets the requirements described in § 1.1472-1(c)(5) to be treated as a sponsored direct reporting NFFE.

(2) *Payments made to an exempt beneficial owner.* A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may treat the payment as made to an exempt beneficial owner.

(3) *Definition of direct reporting NFFE.* A direct reporting NFFE means a NFFE that elects to report information about its direct or indirect substantial U.S. owners to the IRS and meets the following requirements—

(i) The NFFE must register on Form 8957, "FATCA Registration," (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS;

(ii) The NFFE must report directly to the IRS on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) the following information for each calendar year (or, may be required by the IRS to certify on Form 8966, or in such other manner as the IRS may prescribe, that the NFFE has no substantial U.S. owners):

(A) The name, address, and TIN of each substantial U.S. owner (as defined in § 1.1473-1(b)) of such NFFE;

(B) The total of all payments made to each substantial U.S. owner (including the gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the NFFE during the calendar year, which include payments in redemption or liquidation (in whole or part) of the substantial U.S. owner's equity interest in the NFFE);

(C) The value of each substantial U.S. owner's equity interest in the NFFE determined by applying the rules described in § 1.1471-5(b)(4) (substituting the term *equity* for the terms *account* and *financial account*);

(D) The name, address, and GIIN of the NFFE; and

(E) Any other information as required by Form 8966 (or such other form as the IRS may prescribe) and its accompanying instructions;

(iii) The NFFE must obtain a written certification (contained on a withholding certificate or in a written statement) from each person that would be treated as a substantial U.S. owner of the NFFE if such person were a specified U.S. person. Such written certification must indicate whether the person is a substantial U.S. owner of the NFFE, and if so, the name, address and TIN of the person. If the NFFE has reason to know that such written certification is unreliable or incorrect, it must contact the person and request a revised written certification. If no revised written certification is received, the NFFE must treat the person as a substantial U.S. owner and report on Form 8966 the information required under paragraph (c)(3)(ii) of this section. The NFFE has reason to

know that such a written certification is unreliable or incorrect if the certification is inconsistent with information in the NFFE's possession, including information that the NFFE provides to a financial institution in order for the financial institution to meet its AML or other account identification due diligence procedures with respect to the NFFE's account, information that is publicly available, or U.S. indicia as described in § 1.1441-7(b) for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in § 1.1441-7(b)(8) has not been obtained;

(iv) The NFFE must keep records that it produces in the ordinary course of its business that summarize the activity (including the gross amounts described in paragraph (c)(3)(ii)(B) of this section that are paid or credited to each of its substantial U.S. owners) relating to its transactions with respect to the equity of the NFFE held by each of its substantial U.S. owners for any calendar year in which the owner was required to be reported under paragraph (c)(3)(ii) of this section. The records must be retained for the longer of six years or the retention period under the NFFE's normal business procedures. A NFFE may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period;

(v) The NFFE must respond to requests made by the IRS for additional information with respect to any substantial U.S. owner that is subject to reporting by the NFFE or with respect to the records described in paragraph (c)(3)(iii) or (iv) of this section;

(vi) The NFFE must make a periodic certification to the IRS on or before July 1 of the calendar year following the end of each certification period relating to its compliance with respect to the election described in paragraphs (c)(3) and (4) of this section on the form and in the manner prescribed by the IRS. The first certification period begins on the later of the date a GIIN is issued or June 30, 2014, and ends at the close of the third full calendar year following that date. Each subsequent certification period is the three calendar year period following the close of the previous certification period. The certifica-

tion will require an officer of the NFFE to certify to the following statements—

(A)(1) The NFFE has not had any events of default described in paragraph (c)(4)(v) of this section; or

(2) If there are any events of default, appropriate measures were taken to remediate such failures and to prevent such failures from recurring; and

(B) With respect to any failure to report to the extent required under paragraph (c)(3)(ii), the NFFE has corrected such failure by filing the appropriate information returns; and

(vii) The NFFE has not had its status as a direct reporting NFFE revoked by the IRS.

(4) *Election to be treated as a direct reporting NFFE*—(i) *Manner of making election.* A NFFE may elect to be treated as a direct reporting NFFE by registering on Form 8957 (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS.

(ii) *Effective date of election.* The election is effective upon the issuance of a GIIN to the NFFE.

(iii) *Revocation of election by NFFE.* The election may be revoked by the NFFE by canceling its registration account on the FATCA registration website and notifying the IRS of its revocation in such manner as the IRS may prescribe in the Instructions for Form 8966, “FATCA Report.” The NFFE must also notify within 30 days its sponsoring entity (if applicable) and each withholding agent and financial institution from which it receives payments or with which it holds an account for which a withholding certificate or written statement prescribed in § 1.1471–3(d)(11)(x)(B) (as applicable) was provided on which the NFFE certified its status as a direct reporting NFFE if it revokes its election.

(iv) *Revocation of election by Commissioner.* The election may be revoked by the Commissioner upon an event of default described in paragraph (c)(4)(v) of this section and following the notice and remediation procedures described in paragraphs (vi) and (vii) of this section. If the Commissioner revokes the NFFE’s status as a direct reporting NFFE, the NFFE must provide notification within 30 days of the revocation to each withholding

agent and financial institution from which the NFFE receives payments or with which it holds an account for which a withholding certificate or written statement (as permitted for chapter 4 purposes) was provided by the NFFE to represent its status as a direct reporting NFFE.

(v) *Event of default.* An event of default occurs if a direct reporting NFFE fails to perform any of the obligations described in (c)(3)(i) through (vi) of this section. An event of default also includes any misrepresentation of a material fact to the IRS.

(vi) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the NFFE a notice of default specifying the event of default. The IRS will request that the NFFE remediate the event of default within a specified time period. The NFFE must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the NFFE does not agree that an event of default has occurred. If the NFFE does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice to the NFFE that its election to be treated as a direct reporting NFFE has been revoked. A NFFE may request, within 90 days of receipt, reconsideration of a notice of default or notice of revocation by written request to the IRS.

(vii) *Remediation of event of default.* A NFFE will be permitted to remediate an event of default to the extent it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the NFFE.

(5) *Election by a direct reporting NFFE to be treated as a sponsored direct reporting NFFE*—(i) *Definition of sponsored direct reporting NFFE.* A NFFE is a sponsored direct reporting NFFE if the NFFE is a direct reporting NFFE and if another entity, other than a nonparticipating FFI, has agreed with the NFFE to act as its sponsoring entity, as described in paragraph (c)(5)(ii) of this section.

(ii) *Requirements for sponsoring entity of a sponsored direct reporting NFFE.* A sponsoring entity meets the requirements of this paragraph (c)(5)(ii) if the sponsoring entity—

(A) Is authorized to act on behalf of the NFFE;

(B) Has registered with the IRS as a sponsoring entity;

(C) Has registered the NFFE with the IRS as a sponsored direct reporting NFFE by the later of January 1, 2017, or the date that the NFFE identifies itself to a withholding agent or financial institution as qualifying as a sponsored direct reporting NFFE under paragraph (c)(5) of this section;

(D) Agrees to perform, on behalf of the NFFE, all due diligence, reporting, and other requirements that the NFFE would have been required to perform as a direct reporting NFFE;

(E) Identifies the NFFE in all reporting completed on the NFFE’s behalf;

(F) Complies with the certification and other requirements in paragraphs (f) and (g) of this section;

(G) Has not had its status as a sponsoring entity revoked; and

(H) Agrees to notify all relevant withholding agents and the IRS if its status as a sponsoring entity is revoked, if it otherwise ceases to be the sponsoring entity of any of its sponsored direct reporting NFFEs (for example, if the sponsored direct reporting NFFE changes sponsors), or if the status of any of its sponsored direct reporting NFFEs has been revoked.

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity’s status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (c)(5)(ii) of this section with respect to any sponsored direct reporting NFFE.

(iv) *Liability of sponsoring entity.* A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (c)(5)(ii) of this section. A sponsored direct reporting NFFE will remain liable for all of its chapter 4 obligations without regard to any failure of its sponsoring entity to comply with the obligations contained in paragraph (c)(5)(ii) of this section that the sponsoring entity has agreed to undertake on behalf of the NFFE.

(d) \* \* \*

(1) *In general.* For purposes of this section, except in the case of a payee that

is a QI, WP, or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under § 1.1471-3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE (other than a QI, WP, or WT) if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of § 1.1471-3(d).

(2) *Payments made to a NFFE that is a QI, WP, or WT.* A withholding agent may treat the payee of a withholdable payment as a NFFE that is a QI, WP, or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as such under the rules of § 1.1471-3(b)(3) and (d).

\* \* \* \* \*

(f) *Sponsoring entity verification.* [Reserved]

(g) *Sponsoring entity event of default.* [Reserved]

(h) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

#### § 1.1472-1T [Removed]

Par. 16. Section 1.1472-1T is removed.

Par. 17. Section 1.1473-1 is amended by revising paragraphs (a)(1)(ii), (a)(2)(vi), (a)(3)(iii)(B)(4), (a)(4)(vi) and (vii), (a)(5)(i) through (vi), (b)(2)(v), and (f) to read as follows:

#### § 1.1473-1 Section 1473 definitions.

(a) \* \* \*

(1) \* \* \*

(ii) For any sales or other dispositions occurring after December 31, 2018, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i) of this section) of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

(2) \* \* \*

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates and is not part of a plan described in § 1.1441-3(b)(2)(ii).

\* \* \* \* \*

(3) \* \* \*

(iii) \* \* \*

(B) \* \* \*

(4) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates other than an amount described in paragraph (a)(2)(vi) of this section that is treated as U.S. source FDAP income; and

\* \* \* \* \*

(4) \* \* \*

(vi) *Offshore payments of U.S. source FDAP income prior to 2017 (transitional).* A payment with respect to an offshore obligation (as defined in § 1.1471-1(b)(88)) made prior to January 1, 2017, if such payment is U.S. source FDAP income and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. Additionally, a payment with respect to an account, obligation, contract, or other instrument that is issued or maintained by an entity other than a financial institution and that would be treated as an offshore obligation under § 1.6049-5(c)(1) (applied by substituting the term *entity* for the term *financial institution* (as defined in § 1.1471-5(e)) in each place that it appears), made prior to January 1, 2017, if such payment is U.S. source FDAP and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment is not a withholdable payment under paragraph (a)(1) of this section. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentences shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under § 1.1471-2(a)(2)(ii), or in the case of payments made with respect to debt or equity issued by a U.S. person (excluding inter-

est payments made by a foreign branch of a U.S. financial institution with respect to depository accounts it maintains). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3 and does not include a person acting as an insurance broker with respect to premiums.

(vii) *Collateral arrangements prior to 2017 (transitional).* A payment made prior to January 1, 2017, by a secured party, or to a secured party other than a nonparticipating FFI, with respect to collateral securing one or more transactions under a collateral arrangement, provided that only a commercially reasonable amount of collateral is held by the secured party (or by a third party for the benefit of the secured party) as part of the collateral arrangement. For purposes of this paragraph (a)(4)(vii), the term *transaction* generally includes a debt instrument, a derivative financial instrument (including a notional principal contract, future, forward, and option), and any securities lending transaction, sale-repurchase transaction, margin loan, or substantially similar transaction that is subject to a collateral arrangement. Solely for purposes of this paragraph (a)(4)(vii), a secured party may provide documentation to the withholding agent indicating that it is the beneficial owner of a payment described in this paragraph (a)(4)(vii), and a withholding agent may rely on such certification for purposes of its requirements under § 1.1471-3(d) for determining whether withholding under chapter 4 applies.

\* \* \* \* \*

(5) \* \* \*

(i) *In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat a payment of U.S. source FDAP income that is also a withholdable payment as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(i)(A).

(iii) *Simple trusts.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(ii).

(iv) *Complex trusts and estates.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441-5(b)(2)(iii).

(v) *Grantor trusts.* If an amount of U.S. source FDAP income that is also a withholdable payment is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) *Special rule for an NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income that is also a withholdable payment is treated as being paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) *Interests owned or held by a related person.* For purposes of determining whether a specified U.S. person is a substantial U.S. owner in a foreign entity described in paragraphs (b)(2)(i) through (iv) of this section, if a specified U.S. person owns or holds, directly or indirectly, any interest in the foreign entity, that interest must be aggregated with any such interest in the foreign entity owned or held, directly or indirectly, by a related person. For purposes of the preceding sentence, a related person is a person or spouse of a person described in § 1.267(c)-1(a)(4), determined by reference to such specified U.S. person.

\* \* \* \* \*

(f) *Effective/applicability date.* This section generally applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013.

Paragraph (a)(4)(viii) of this section applies to payments made on or after September 18, 2015. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

### § 1.1473-1T [Removed]

Par. 18. Section 1.1473-1T is removed.

Par. 19. Section 1.1474-1 is amended by:

1. Revising paragraphs (a)(3)(ii)(B), (d)(1)(i), (d)(1)(ii)(A)(I)(iii), (d)(1)(ii)(A)(I)(vi), (d)(1)(ii)(A)(I)(viii), (d)(1)(ii)(A)(I)(ix), (d)(1)(ii)(A)(I)(xi), (d)(1)(ii)(B)(I)(i), (d)(1)(ii)(B)(I)(iii) and (iv), (d)(1)(ii)(B)(I)(vi) and (vii), (d)(1)(ii)(B)(I)(ix), (d)(2)(i), (d)(3)(vii), (d)(4)(i)(B), (d)(4)(i)(C) introductory text, (d)(4)(i)(C)(2) and (3), (d)(4)(i)(E), (d)(4)(ii)(B) and (C), and (d)(4)(iii).

2. Adding paragraph (d)(4)(vii).

3. Revising paragraphs (i)(1), (i)(2), and (i)(2)(iii).

2. Adding paragraphs (d)(4)(vii) and (i)(4).

5. Revising paragraph (j).

The revisions and additions read as follows:

#### § 1.1474-1 Liability for withheld tax and withholding agent reporting.

(a) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) A Form 8655, "Reporting Agent Authorization," is filed with the IRS by a withholding agent if its agent (including any sub-agent) acts as a reporting agent for filing Form 1042 on behalf of the withholding agent and the agent (or sub-agent) identifies itself as the filer on the Form 1042;

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) *In general.* Except as otherwise provided in paragraph (d)(4) of this section or in the instructions to Form 1042-S, every withholding agent must file an information return on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described

in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. Except as otherwise provided in paragraphs (d)(4)(ii)(B) (certain unknown recipients) and (d)(4)(i)(B) and (d)(4)(iii)(A) of this section (describing payees includable in reporting pools of a participating FFI or registered deemed-compliant FFI), a separate Form 1042-S must be filed with the IRS for each recipient of an amount subject to reporting under paragraph (d)(2)(i) of this section and for each separate type of payment made to a single recipient in accordance with paragraph (d)(4)(i) of this section. The Form 1042-S shall be prepared in such manner as the form and its accompanying instructions prescribe. One copy of the Form 1042-S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the form. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042-S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) and to any intermediary or flow-through entity described in paragraph (d)(3)(vii) of this section on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. A person required by this paragraph (d)(1)(i) to furnish a copy of Form 1042-S to the recipient for whom it is prepared may furnish the copy of Form 1042-S in an electronic format in lieu of a paper format provided it meets the requirements of § 1.1461-1(c)(1)(i)(A). The withholding agent must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates (determined as set forth in paragraph (c)(1) of this section). See paragraph (d)(4)(iii) of this section for the additional reporting requirements of participating FFIs and deemed-compliant FFIs.

(ii) \* \* \*

(A) \* \* \*

(I) \* \* \*

(iii) A participating FFI or a registered deemed-compliant FFI that is an NQI,

NWP, NWT, and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) and that provides its withholding agent with sufficient information to determine the portion of the payment allocable to its reporting pools of recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons described in paragraph (d)(4)(i)(B) of this section;

\* \* \* \* \*

(vi) A U.S. branch of an FFI treated as a U.S. person;

\* \* \* \* \*

(viii) An excepted NFFE and passive NFFE that also is not a flow-through entity and that is not acting as an agent or intermediary with respect to the payment;

(ix) A foreign person that is a partner or beneficiary in a flow-through entity that is a NFFE (looking through a partner or beneficiary that is a foreign intermediary or flow-through entity);

\* \* \* \* \*

(xi) Any person (including a flow-through entity or U.S. branch) receiving such income that is (or is deemed to be) effectively connected with the conduct of its trade or business in the United States;

\* \* \* \* \*

(B) \* \* \*

(I) \* \* \*

(i) A certified deemed-compliant FFI that is an NQI, NWP, or NWT and that fails to provide its withholding agent with sufficient information to allocate the payment to its account holders and payees;

\* \* \* \* \*

(iii) A participating FFI or a registered deemed-compliant FFI that is an NQI, NWP, or NWT, and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) to the extent it provides its withholding agent with sufficient information to allocate the payment to its account holders and payees that are exempt from withholding under chapter 4;

(iv) An account holder or payee of a participating FFI or registered deemed-compliant FFI, and an account holder or payee of a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) that is included in the FFI's re-

porting pools described in paragraph (d)(4)(i)(B) of this section;

\* \* \* \* \*

(vi) An account holder or payee of a nonparticipating FFI except to the extent described in paragraph (d)(1)(ii)(A)(I)(x) of this section for an exempt beneficial owner;

(vii) Except as provided in paragraph (d)(1)(ii)(A)(I) of this section, an entity that is disregarded under § 301.7701-2(c)(2) of this chapter as an entity separate from its owner;

\* \* \* \* \*

(ix) A passive NFFE or an excepted NFFE that is a flow-through entity or acts as an intermediary;

\* \* \* \* \*

(2) \* \* \*

(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means each of the following amounts reportable on a Form 1042-S for purposes of chapter 4—

(A) An amount of a withholdable payment that is subject to withholding under chapter 4 paid after June 30, 2014;

(B) An amount of a withholdable payment of U.S. source FDAP income (including an amount that would be a withholdable payment but for the fact that it is an amount effectively connected with a U.S. trade or business, as described in § 1.1471-3(a)(4)(ii)) that is also reportable on Form 1042-S under § 1.1461-1(c)(2)(i); or

(C) A foreign passthru payment subject to withholding under chapter 4.

\* \* \* \* \*

(3) \* \* \*

(vii) The EIN or GIIN (as applicable), status for chapter 3 and chapter 4 purposes (as required on the instructions to the form) of an entity reported under paragraph (d)(3)(vi) of this section;

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) *Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.* Except as otherwise provided in this paragraph (d)(4)(i)(B), a U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT must complete a Form 1042-S treating such FFI as the recipient.

With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives an FFI withholding statement allocating the payment (or portion of the payment) to a chapter 4 withholding rate pool, a U.S. withholding agent must complete a separate Form 1042-S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool identified on an FFI withholding statement, described in § 1.1471-3(c)(3)(ii)(B)(2). If, however, a participating FFI, deemed-compliant FFI, or QI (as applicable) has made an election under § 1.1471-4(b)(3)(iii), for the portion of the payment that the FFI allocates to each recalcitrant account holder that is subject to backup withholding under section 3406, the withholding agent must report on Form 1099 the amount of the payment and tax withheld in accordance with the form's requirements and accompanying instructions. See § 1.1471-2(a)(2)(i) for the requirement of a withholding agent to withhold on payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also § 1.1471-2(a)(2)(iii) in the case of payments made to a QI. See § 1.1461-1(c)(4)(A) for the extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042-S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under § 1.1461-1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042-S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) *Amounts paid to a U.S. branch.* A U.S. withholding agent making a payment of U.S. source FDAP income to a U.S.

branch shall complete Form 1042-S as follows—

\* \* \* \* \*

(2) If the U.S. branch of an FFI is not treated as a U.S. person and applies the rules described in § 1.1471-4(d)(2)(iii)(C) and provides the withholding agent with a withholding certificate that transmits information regarding its reporting pools referenced in paragraph (d)(4)(i)(B) of this section or information regarding each recipient that is an account holder or payee of the U.S. branch, the withholding agent must complete a separate Form 1042-S issued to the U.S. branch for each such pool to the extent required on the form and its accompanying instructions or must complete a separate Form 1042-S issued to each recipient whose documentation is associated with the U.S. branch's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and report the U.S. branch as an entity not treated as a recipient; or

(3) If the U.S. branch of an FFI is not treated as a U.S. person and applies the rules described in § 1.1471-4(d)(2)(iii)(C) to the extent it fails to provide sufficient information regarding its account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient to the extent recipient information is not provided and report the U.S. branch as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

\* \* \* \* \*

(E) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an excepted or passive NFFE shall complete Forms 1042-S treating the NFFE as the recipient, except when the NFFE is a flow-through entity or acting as an intermediary and the partner or beneficiary is treated as the payee. In cases in which the chapter 4 reportable amount is also an amount of U.S. source FDAP income reportable on Form 1042-S (described in § 1.1441-2(a)), see also § 1.1461-1(c)(4)(ii)(A) for the extent to which reporting is required with respect to the partners, beneficiaries, or owners of such entities.

(ii) \* \* \*

(B) *Nonparticipating FFI that is a flow-through entity or intermediary.* If a

withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary with regard to a payment or as a flow-through entity under rules described in § 1.1471-3(c)(3)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(I)(x) of this section (relating to an exempt beneficial owner), the withholding agent must report the recipient of the payment as an unknown recipient and report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042-S treating the single owner as the recipient in accordance with the instructions to the Form 1042-S.

(iii) *Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs) and U.S. branches of FFIs not treated as U.S. persons—(A) In general.* Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWP, NWT, and FFIs electing under section 1471(b)(3)) and § 1.1471-4(d)(2)(ii)(F) (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, or WT), and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI must complete a Form 1042-S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, or WT), and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in § 1.1471-4(d)(6) and within

a particular income code. Except as otherwise provided in § 1.1471-4(d)(2)(ii)(F), with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042-S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, or WT) and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount paid to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) *Special reporting requirements of participating FFIs, deemed-compliant FFIs, FFIs that make an election under section 1471(b)(3), and U.S. branches of FFIs not treated as U.S. persons.* Except as otherwise provided in § 1.1471-4(d)(2)(ii)(F), a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT, and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in § 1.1471-4(d)(2)(iii)(C) or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 1042-S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042-S. Such FFI or branch is required to report a payment, however, when the FFI knows, or has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042-S. In such case, the FFI or branch must report on Form 1042-S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, § 1.1471-4(d)(6) for the requirement to report certain aggregate information regarding ac-

counts held by recalcitrant account holders on Form 8966, "FATCA Report," regardless of whether withholdable payments are made to such accounts.

(C) *Reporting by a U.S. branch treated as a U.S. person.* A U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135)) must report amounts paid to recipients on Forms 1042-S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

\* \* \* \* \*

(vii) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(vii).

\* \* \* \* \*

(i) \* \* \*

(1) *Reporting by certain withholding agents with respect to owner-documented FFIs*—(i) Beginning on July 1, 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) makes a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471-3(d)(6), the withholding agent is required to report for July 1 through December 31, 2014, with respect to each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2) the information described in paragraph (i)(1)(iii) of this section.

(ii) Beginning in calendar year 2015, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) makes during a calendar year a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471-3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2) the information described in paragraph (i)(1)(iii) of this section.

(iii) The information that a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) is required to report under paragraphs (i)(1)(i) and (ii) of this section must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which

the withholdable payment was made. A withholding agent is not required to report under paragraph (i)(1)(i) or (ii) of this section on a withholdable payment made to a participating FFI or reporting Model 1 FFI that is allocated to a payee that is an owner-documented FFI on an FFI withholding statement when the participating FFI or reporting Model 1 FFI includes on the statement the certification described in § 1.1471-3(c)(3)(iii)(B)(2)(v), provided that the withholding agent does not know or have reason to know that the certification is incorrect or unreliable. The report must contain the following information—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2);

(C) For the period from July 1 through December 31, 2014, the total of all withholdable payments made to the owner-documented FFI, and with respect to payments made after the 2014 calendar year, the total of all withholdable payments made to the owner-documented FFI during the calendar year;

(D) The account balance or value of the account held by the owner-documented FFI; and

(E) Any other information required on Form 8966 and its accompanying instructions provided for purposes of such reporting.

(2) *Reporting by certain withholding agents with respect to U.S. owned foreign entities that are passive NFFEs.* Beginning on July 1, 2014, in addition to the reporting on Form 1042-S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under § 1.1471-4(d)) that makes a withholdable payment to, and receives information about any substantial U.S. owners of, a passive NFFE that is not an excepted NFFE as defined in § 1.1472-1(c) shall file a report with the IRS for the period from July 1 through December 31, 2014, and in each subsequent calendar year in which a withholdable payment is made with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year fol-

lowing the year in which the withholdable payment was made. A withholding agent is not required to report under this paragraph (i)(2) on a withholdable payment made to a participating FFI or a registered deemed-compliant FFI that is allocated to a payee that is a passive NFFE with one or more substantial U.S. owners on an FFI withholding statement when the participating FFI or registered deemed-compliant FFI includes on the statement the certification described in § 1.1471-3(c)(3)(iii)(B)(2)(iv), provided that the withholding agent does not know or have reason to know that the certification is incorrect or unreliable. In the case of an entity to which the preceding sentence does not apply that is a flow-through entity or is acting as an intermediary receiving a withholdable payment allocable to a passive NFFE with one or more substantial U.S. owners, the entity is not required to report with respect to the passive NFFE under this paragraph (i)(2) if it provides to the withholding agent from which it receives the payment documentation sufficient for the withholding agent to report information with respect to the passive NFFE under this paragraph (i)(2), provided that the intermediary or flow-through entity does not know or have reason to know that the withholding agent does not report with respect to the passive NFFE under this paragraph (i)(2). The report must contain the following information—

\* \* \* \* \*

(iii) For the period from July 1, 2014 through December 31, 2014, the total of all withholdable payments made to the NFFE and, with respect to payments made after the 2014 calendar year, the total of all withholdable payments made to the NFFE during the calendar year; and

\* \* \* \* \*

(4) *Extensions of time to file.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966 as required under paragraph (i)(1) or (i)(2) of this section. Form 8809-I, "Application of Extension of Time to File FATCA Form 8966," (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for

extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the form or instructions may require.

(j) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

Par. 20. Section 1.1474-1T is revised as follows:

*§ 1.1474-1T Liability for withheld tax and withholding agent reporting (temporary).*

(a) through (c) [Reserved]. For further guidance, see § 1.1474-1(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1474-1(d).

(1) through (3)(ix) [Reserved]. For further guidance, see § 1.1474-1(d)(1) through (3)(ix).

(4) [Reserved]. For further guidance, see § 1.1474-1(d)(4).

(i) through (vi) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(i) through (vi).

(vii) *Combined Form 1042-S reporting.* A withholding agent required to report on Form 1042-S under paragraph (d)(4) of this section (other than a nonparticipating FFI reporting under paragraph (d)(4)(v) of this section) may rely on the procedures used for chapter 3 purposes (provided in published guidance) for reporting on Form 1042-S (even if the withholding agent is not required to report under chapter 3) for combined reporting following a merger or acquisition, provided that all of the requirements for such reporting provided in the Instructions for Form 1042-S are satisfied.

(e) through (j) [Reserved]. For further guidance, see § 1.1474-1(e) through (j).

(k) *Expiration date.* The applicability of this section expires on December 30, 2019

Par. 21. Section 1.1474-6 is amended by revising paragraphs (b)(1), (f), and (g) to read as follows:

*§ 1.1474-6 Coordination of chapter 4 with other withholding provisions.*

\* \* \* \* \*

(b) \* \* \*

(1) *In general.* In the case of a withholdable payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under § 1.1441-2(a), a withholding agent may credit the withholding applied under chapter 4 against its liability for any tax due under sections 1441, 1442, or 1443. See § 1.1474-1(c) and (d) for the income tax return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 that is also an amount subject to withholding under § 1.1441-2(a).

\* \* \* \* \*

(f) *Coordination with section 3406.* A participating FFI that makes a withholdable payment that is also a reportable payment (as defined in the relevant sections of chapter 61) to a recalcitrant account holder that is a U.S. non-exempt recipient is not required to withhold under section 3406 if it withholds on the payment at a 30-percent rate in accordance with its withholding obligations under chapter 4. See, however, § 1.1471-4(b)(3)(iii) for the election to withhold on recalcitrant account holders that are non-exempt U.S. recipients under section 3406 instead of withholding under chapter 4.

(g) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

**§ 1.1474-6T [Removed]**

Par. 22. Section 1.1474-6T is removed.

**PART 301 – PROCEDURE AND ADMINISTRATION**

Par. 23. The authority citation for part 301 continues to read in part as follows:

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

Par. 24. Section 301.1474-1 is amended by revising paragraph (c) to read as follows:

*§ 301.1474-1 Required use of magnetic media for financial institutions filing Form 1042-S or Form 8966.*

\* \* \* \* \*

(c) *Failure to file.* If a financial institution fails to file a Form 1042-S or a Form 8966 on magnetic media when required to do so by this section, the financial institution is deemed to have failed to comply with the information reporting requirements under section 6721 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, § 301.6651-1(c) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

\* \* \* \* \*

John Dalrymple  
*Deputy Commissioner for Services and Enforcement.*

Approved: December 22, 2016

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

(Filed by the Office of the Federal Register on December 30, 2016, 4:15 p.m., and published in the issue of the Federal Register for January 6, 2017, 82 F.R. 2124)

# Part III. Administrative, Procedural, and Miscellaneous

## Guidance Relating to the Availability and Use of an Account Transcript as a Substitute for an Estate Tax Closing Letter

### Notice 2017-12

#### SECTION 1. PURPOSE

This notice provides guidance on the methods available to confirm the closing of an examination of the estate tax return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return). More specifically, this notice announces that an account transcript issued by the Internal Revenue Service (IRS) can substitute for an estate tax closing letter (Letter 627).

#### SECTION 2. BACKGROUND

An estate tax closing letter is a written communication from the IRS that specifies the amount of the net estate tax, the state death tax credit or deduction, and any generation-skipping transfer tax for which the estate is liable; however, it does not indicate how much has been paid in estate tax or generation-skipping transfer tax.

Notably, the estate tax closing letter also confirms that the estate tax return has either been accepted by the IRS as filed, or has been accepted after an adjustment by the IRS to which the estate has agreed. Thus, the receipt of an estate tax closing letter generally indicates that, for purposes of determining the estate tax liability of the decedent's estate, the IRS examination of the estate tax return is closed. An estate tax closing letter, however, is not a formal closing agreement and, as section 5 of Rev. Proc. 2005-32, 2005-1 C.B. 1206, and the estate tax closing letter provide, its issuance does not prevent the IRS from reopening or reexamining the estate tax return to determine estate tax liability if there is (1) evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact, (2) a clearly-defined, substantial error based upon an established IRS position, or (3) another circumstance indicating that a failure to

reopen the case would be a serious administrative omission. In addition, in the case of the estate of a decedent (survived by a spouse) that elects portability of the deceased spousal unused exclusion (DSUE) amount, the issuance of an estate tax closing letter does not prevent the IRS from examining the estate tax return of that decedent for the purpose of determining the transfer tax liability of the surviving spouse of that decedent (specifically, the DSUE amount to be included in the applicable exclusion amount of the surviving spouse). See § 2010(c)(5)(B) of the Internal Revenue Code and §§ 20.2010-2(d) and 20.2010-3(d) of the Estate Tax Regulations.

Prior to June 1, 2015, the IRS issued an estate tax closing letter for every estate tax return filed (except in the case of an estate tax return filed for the purpose of electing portability under § 2010(c)(5)(A) when the estate had no filing requirement under § 6018(a) and the portability election was denied). However, for estate tax returns filed on or after June 1, 2015, the IRS changed its policy and now will issue an estate tax closing letter only at the request of an estate, which request is to be made at least four months after the filing of the estate tax return.

#### SECTION 3. DISCUSSION

The Treasury Department and IRS understand that executors, local probate courts, state tax departments, and others have come to rely on estate tax closing letters for confirmation that the IRS examination of the estate tax return has been completed and the IRS file has been closed. Estate tax closing letters continue to be available upon request. However, an account transcript may substitute for an estate tax closing letter and is available at no charge.

An account transcript is a computer-generated report that provides current account data. The information reported on an account transcript includes, but is not limited to, the return received date, payment history, refund history, penalties assessed, interest assessed, the balance due with accruals, and the date on which the examination was closed. An account tran-

script presents this account data by including transaction codes together with the descriptions of those codes. An account transcript that includes transaction code "421" and the explanation "Closed examination of tax return" indicates that the IRS's examination of the estate tax return has been completed and that the IRS examination is closed. Thus, the issuance of an estate tax closing letter and the entry of code "421" on the estate's account transcript each independently confirms that the IRS's examination of the estate tax return has been completed, and may be reopened to determine the estate tax liability of a decedent only in the circumstances described in both the closing letter and Rev. Proc. 2005-32. Accordingly, an account transcript showing a transaction code of "421" can serve as the functional equivalent of an estate tax closing letter.

#### SECTION 4. GUIDANCE

For confirmation that the IRS examination of an estate tax return has been completed and is closed, estates and their authorized representatives can request an account transcript in lieu of an estate tax closing letter. Receipt of an account transcript with a transaction code of "421," like receipt of an estate tax closing letter, confirms the closing of the IRS examination of the estate tax return. The IRS may reopen the examination of the estate tax return after the issuance of a closing letter or the entry of transaction code "421" on the account transcript for the purpose of determining the estate tax liability of a decedent in a circumstance described in both the closing letter and Rev. Proc. 2005-32. Further, as provided in § 2010(c)(5)(B) and §§ 20.2010-2(d) and 20.2010-3(d), the IRS may examine the estate tax return of a decedent after the issuance of a closing letter or the entry of transaction code "421" on the account transcript for the purpose of determining the transfer tax liability of the surviving spouse of that decedent when portability has been elected.

Estates and their authorized representatives may request an account transcript by filing Form 4506-T, Request for Transcript of Tax Return. Currently, Form

4506–T can be filed with the IRS via mail or facsimile (per the instructions on the form). Although account transcripts for estate tax returns are not currently available through the IRS’s online Transcript Delivery System, the IRS website, *www.irs.gov*, will have current information should an automated method become operational. To allow time for processing the estate tax return, requests should be made no earlier than four months after filing the estate tax return.

For those who wish to continue to receive estate tax closing letters, estates and their authorized representatives may call the IRS at (866) 699-4083 to request an estate tax closing letter no earlier than four months after the filing of the estate tax return.

## DRAFTING INFORMATION

The principal author of this notice is Lane Damazo of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Lane Damazo on (202) 317-6859 (not a toll-free number).

# Rev. Proc. 2017–18

## SECTION 1. PURPOSE

This revenue procedure provides that the last day of the remedial amendment period for § 403(b) plans, for purposes of section 21 of Rev. Proc. 2013–22, 2013-18 I.R.B. 985, is March 31, 2020. The selection of the last day of the remedial amendment period for § 403(b) plans was reserved in section 21 of Rev. Proc. 2013–22 (setting forth the procedures for issuing opinion and advisory letters for § 403(b) pre-approved plans).

## SECTION 2. BACKGROUND

.01 Contributions for an annuity contract purchased for an employee by an eligible employer are generally excluded from the employee’s gross income if the requirements described in § 403(b) of the Internal Revenue Code are met. Amounts paid by an eligible employer to a custodial account that satisfies the requirements of § 401(f)(2) are treated as contributed to an

annuity contract for an employee if the requirements of § 403(b)(7)(A)(i) and (ii) are met. For purposes of this revenue procedure, an eligible employer is a public school, an employer described in § 501(c)(3) that is exempt from tax under § 501(a), an employer of a minister described in § 414(e)(5)(A) with respect to the minister, or a minister described in § 414(e)(5)(A) with respect to a retirement income account under § 403(b)(9) established for the minister.

.02 Final regulations under § 403(b) (§§ 1.403(b)–1 through 1.403(b)–11) were published on July 26, 2007 (T.D. 9340, 72 FR 41128) (the “§ 403(b) regulations”).

.03 Revenue Procedure 2013–22 sets forth the procedures and establishes a program for issuing opinion and advisory letters for § 403(b) pre-approved plans (that is, § 403(b) prototype plans and § 403(b) volume submitter plans). Under the program established by Rev. Proc. 2013–22, the Internal Revenue Service (IRS) began accepting applications for opinion and advisory letters regarding the acceptability under § 403(b) of the form of prototype plans and volume submitter plans, respectively, starting June 28, 2013.

.04 Section 21.02 of Rev. Proc. 2013–22 provides for a remedial amendment period to allow an eligible employer to retroactively correct defects in the form of its written § 403(b) plan in order to satisfy the written plan requirements in the § 403(b) regulations either by timely adopting a § 403(b) pre-approved plan or by otherwise timely amending its written § 403(b) plan. Section 21.02 also provides that the first day of the remedial amendment period is the later of January 1, 2010, or the plan’s effective date. Section 21.03 provides, in general, that the remedial amendment period is available only if an employer adopts a written plan intended to satisfy the § 403(b) requirements on or before the first day of the remedial amendment period.

.05 Section 21.02 of Rev. Proc. 2013–22 defines a defect in the form of a plan as a provision, or the absence of a required provision, that causes the plan to fail to satisfy the requirements of § 403(b). Section 21.03 provides that any defect in the form of a plan must be corrected on or before the last day of the

remedial amendment period. Section 21.05 provides that the IRS “will announce, in subsequent guidance, the date that will be the last day of the remedial amendment period for all eligible employers for purposes of this section 21.”

## SECTION 3. SECTION 403(b) REMEDIAL AMENDMENT PERIOD

The last day of the remedial amendment period described in section 2 of this revenue procedure and in section 21 of Rev. Proc. 2013–22 is March 31, 2020. A plan that does not satisfy the requirements of § 403(b) in form on any day during the remedial amendment period (that is, the period beginning on the later of January 1, 2010, or the plan’s effective date, and ending on March 31, 2020) will be considered to have satisfied those requirements if, on or before March 31, 2020, all provisions of the plan that are necessary to satisfy § 403(b) have been adopted and made effective in form and operation from the beginning of the remedial amendment period.

## SECTION 4. FUTURE GUIDANCE

The Department of the Treasury and the IRS intend to issue guidance in the future with respect to the timing of § 403(b) plan amendments made after March 31, 2020.

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2013–22 is clarified by this revenue procedure.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on January 13, 2017.

## SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Patrick Gutierrez of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure contact Patrick Gutierrez on (202) 317-4148 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of proposed rulemaking.

### Revision of Regulations Under Chapter 3 Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons

#### REG-134247-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Bulletin**, the Department of the Treasury (Treasury Department) and the IRS are issuing temporary regulations (TD 9808) that revise certain provisions of the final regulations regarding withholding of tax on certain U.S. source income paid to foreign persons and requirements for certain claims for refund or credit of income tax made by foreign persons. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 6, 2017.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-134247-16), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-134247-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-134247-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Leni Perkins, (202) 317-6942; concerning submissions of comments and/or

requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR part 1) relating to section 1441 of the Internal Revenue Code (Code). The temporary regulations set forth rules relating to withholding and reporting requirements under chapter 3 of the Code, including rules relating to claims for a reduced rate of withholding under an income tax treaty. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

##### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory assessment is not required.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The domestic small business entities that are subject to the collections of information in this notice of proposed rulemaking are those domestic business entities that are payors of certain U.S. source income to foreign persons. These domestic small business entities are subject to comprehensive rules under chapter 3 to identify the proper treatment of payees for purposes of that chapter's information reporting and tax withholding purposes. The domestic small business entities subject to the collections of information in this notice of proposed rulemaking are also subject to comprehensive information reporting and tax withholding rules under chapters 4 and 61 with respect to payments of certain U.S. source income sub-

ject to information reporting and tax reporting under chapter 3. These payors are also subject to information and reporting rules under section 3406.

Payors of payments that are subject to the information reporting and withholding regimes under chapter 3 play an important role in U.S. tax compliance by providing information about payments made to, and income earned by, U.S. and foreign taxpayers.

Although the Treasury Department and the IRS anticipate that a substantial number of domestic small entities will be affected by the collection of information in this notice of proposed rulemaking, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant. The reporting obligations under these proposed regulations flow from the obligations that domestic small entities may have as withholding agents for payments of amounts subject to withholding under sections 1441 or 1442. As withholding agents, these entities have already been subject to the overall framework of these regulations, and the economic burden of complying with any additional requirements will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

##### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS as prescribed in this preamble under the "ADDRESSES" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules, including comments on the clarity of the proposed rules and how compliance therewith could be made easier. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person

that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

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

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.1441-1 is amended by:

1. Adding paragraphs (b)(7)(ii)(B) and (c)(2)(ii).
2. Revising paragraph (c)(3)(ii).
3. Adding paragraphs (c)(38)(ii), (e)(2)(ii)(B), (e)(3)(iv)(C)(3), (e)(4)(i)(B), (e)(4)(ii)(A)(2), (e)(4)(iv)(D), and (e)(4)(iv)(E).

The revisions and additions read as follows:

*§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.*

\* \* \* \* \*

- (b) \* \* \*
- (7) \* \* \*
- (ii) \* \* \*

(B) [The text of the proposed amendment to § 1.1441-1(b)(7)(ii)(B) is the same as the text of § 1.1441-1T(b)(7)(ii)(B) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*

(ii) [The text of the proposed amendment to § 1.1441-1(c)(2)(ii) is the same as the text of § 1.1441-1T(c)(2)(ii) published elsewhere in this issue of the **Bulletin**.]

(3) \* \* \*

(ii) [The text of the proposed amendment to § 1.1441-1(c)(3)(ii) is the same as the text of § 1.1441-1T(c)(3)(ii) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(38) \* \* \*

(ii) [The text of the proposed amendment to § 1.1441-1(c)(38)(ii) is the same as the text of § 1.1441-1T(c)(38)(ii) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) [The text of the proposed amendment to § 1.1441-1(e)(2)(ii)(B) is the same as the text of § 1.1441-1T(e)(2)(ii)(B) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(3) \* \* \*

(iv) \* \* \*

(C) \* \* \*

(3) [The text of the proposed amendment to § 1.1441-1(e)(3)(iv)(C)(3) is the same as the text of § 1.1441-1T(e)(3)(iv)(C)(3) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) [The text of the proposed amendment to § 1.1441-1(e)(4)(i)(B) is the same as the text of § 1.1441-1T(e)(4)(i)(B) published elsewhere in this issue of the **Bulletin**.]

(ii) \* \* \*

(A) \* \* \*

(2) [The text of the proposed amendment to § 1.1441-1(e)(4)(ii)(A)(2) is the same as the text of § 1.1441-1T(e)(4)(ii)(A) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(iv) \* \* \*

(D) [The text of the proposed amendment to § 1.1441-1(e)(4)(iv)(D) is the same as the text of § 1.1441-1T(e)(4)(iv)(D) published elsewhere in this issue of the **Bulletin**.]

(E) [The text of the proposed amendment to § 1.1441-1(e)(4)(iv)(E) is the same as the text of § 1.1441-1(e)(4)(iv)(E) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

Par. 3. Section 1.1441-2 is amended by adding paragraph (a)(8) to read as follows:

*§ 1.1441-2 Amounts subject to withholding.*

(a) \* \* \*

(8) [The text of the proposed amendment to § 1.1441-2(a)(8) is the same as the text of § 1.1441-2T(a)(8) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

Par. 4. Section 1.1441-6 is amended by:

1. Adding paragraphs (b)(1)(i) and (b)(1)(ii).
2. Revising paragraphs (c)(1) and (c)(5)(i).

The additions and revision read as follows:

*§ 1.1441-6 Claim of reduced withholding under an income tax treaty.*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) [The text of the proposed amendment to § 1.1441-6(b)(1)(i) is the same as the text of § 1.1441-6T(b)(1)(i) published elsewhere in this issue of the **Bulletin**.]

(ii) [The text of the proposed amendment to § 1.1441-6(b)(1)(ii) is the same as the text of § 1.1441-6T(b)(1)(ii) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(c) \* \* \*

(1) [The text of the proposed amendment to § 1.1441-6(c)(1) is the same as the text of § 1.1441-6T(c)(1) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

(5) \* \* \*

(i) [The text of the proposed amendment to § 1.1441-6(c)(5)(i) is the same as the text of § 1.1441-6T(c)(5)(i) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

Par. 5. Section 1.1441-7 is amended by adding paragraph (b)(10)(iv) to read as follows:

§ 1.1441-7 General provisions relating to withholding agents.

\* \* \* \* \*

(b) \* \* \*

(10) \* \* \*

(iv) [The text of the proposed amendment to § 1.1441-7(b)(10)(iv) is the same as the text of § 1.1441-7T(b)(10)(iv) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

John Dalrymple,  
Deputy Commissioner for Services and  
Enforcement.

(Filed by the Office of the Federal Register on December 30, 2016, 4:15 p.m., and published in the issue of the Federal Register for January 6, 2017, 82 F.R. 1645)

## Notice of proposed rulemaking.

### Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

#### REG-103477-14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document contains proposed regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) describing the verification requirements (including certifications of compliance) and events of default for entities that agree to perform the chapter 4 due diligence, withholding, and reporting requirements on behalf of certain foreign financial institutions (FFIs) or the chapter 4 due diligence and reporting obligations on behalf of certain non-financial foreign entities. These proposed regulations also describe the certification requirements and procedures for IRS's review of certain trust-

ees of trustee-documented trusts and the procedures for IRS's review of periodic certifications provided by registered deemed-compliant FFIs. In addition, these proposed regulations describe the procedures for future modifications to the requirements for certifications of compliance for participating FFIs. These proposed regulations also describe the requirements for certifications of compliance for participating FFIs that are members of consolidated compliance groups. In addition, in the Rules and Regulations section of this issue of the **Bulletin**, the Department of the Treasury (Treasury Department) and IRS are issuing temporary regulations that provide additional guidance under chapter 4 (temporary chapter 4 regulations). The text of the temporary chapter 4 regulations also serves as the text of the regulations contained in this document that are proposed by cross-reference to the temporary chapter 4 regulations. The preamble to the temporary chapter 4 regulations explains the temporary chapter 4 regulations and these proposed regulations that cross-reference to the temporary chapter 4 regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 6, 2017.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-103477-14), Internal Revenue Service, Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-103477-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-103477-14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kamela Nelan, (202) 317-6942; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll free numbers).

## SUPPLEMENTARY INFORMATION:

### Background

#### I. In General

##### A. Chapter 4

Sections 1471 through 1474 under chapter 4 of Subtitle A (chapter 4) were added to the Code on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act of 2010, Public Law 111-147. Chapter 4 (commonly known as the Foreign Account Tax Compliance Act, or FATCA) generally requires withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the IRS regarding their U.S. accounts under section 1471(b)(1). Chapter 4 also generally requires withholding agents to withhold tax on certain payments to certain non-financial foreign entities (NFFE) that do not provide to the withholding agent information on their substantial United States owners (substantial U.S. owners) or a certification that they have no such owners. On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874), and on September 10, 2013, corrections to the final regulations were published in the **Federal Register** (78 FR 55202). TD 9610 and the September 2013 corrections are referred to collectively in this preamble as the 2013 final regulations. On March 6, 2014, temporary regulations (TD 9657) under chapter 4 were published in the **Federal Register** (79 FR 12812) and corrections to the temporary regulations were published in the **Federal Register** on July 1, 2014, and November 18, 2014 (79 FR 37175 and 78 FR 68619, respectively). In this preamble, TD 9657 and the corrections thereto are referred to collectively as the 2014 temporary regulations, and together with the 2013 final regulations, as the chapter 4 regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12868).

To address situations where foreign law would prevent an FFI from reporting directly to the IRS the information required by chapter 4, the Treasury Depart-

ment, in collaboration with certain foreign governments, developed two alternative model intergovernmental agreements, known as the Model 1 IGA and the Model 2 IGA. Under the Model 1 IGA, an FFI that is treated as a reporting Model 1 FFI is treated as complying with and not subject to withholding under section 1471 provided that the FFI complies with the requirements specified in the Model 1 IGA and reports information about its U.S. accounts to the Model 1 IGA jurisdiction, which is followed by the automatic exchange of that information on a government-to-government basis with the United States. Under the Model 2 IGA, an FFI that is treated as a reporting Model 2 FFI follows the terms of the FFI agreement and reports information about U.S. accounts directly to the IRS. See Revenue Procedure 2014–38, 2014–29 I.R.B. 131, as may be amended, for the FFI agreement. An FFI identified as a nonreporting financial institution pursuant to a Model 1 or Model 2 IGA is not required to report information on U.S. accounts unless specifically required as a condition of its applicable chapter 4 status.

## II. Background on Sponsored Entities

### A. In general

The chapter 4 regulations permit certain FFIs and NFFEs to be sponsored by other entities for purposes of satisfying their chapter 4 requirements. Under the 2013 final regulations, an FFI treated as complying with the requirements of section 1471(b)(1) (a deemed-compliant FFI) includes a sponsored FFI. In addition, the 2014 temporary regulations provide that a NFFE excepted from providing information regarding its substantial U.S. owners to a withholding agent (an excepted NFFE) includes a NFFE that is a direct reporting NFFE or a sponsored direct reporting NFFE. In the preamble to the 2014 temporary regulations, the Treasury Department and IRS announced that regulations describing the verification requirements of a sponsoring entity of a sponsored FFI or sponsored direct reporting NFFE (sponsored entities) would be proposed and issued separately from the 2014 temporary regulations.

### B. Background on sponsored FFIs and trustee-documented trusts

The chapter 4 regulations provide two general categories of deemed-compliant FFIs: registered deemed-compliant FFIs and certified deemed-compliant FFIs. A registered deemed-compliant FFI includes an FFI that satisfies the requirements of § 1.1471–5(f)(1)(i)(F)(I) or (2) to qualify as either a sponsored investment entity or a sponsored controlled foreign corporation. A certified deemed-compliant FFI includes an FFI that satisfies the requirements of § 1.1471–5(f)(2)(iii) to qualify as a sponsored, closely-held investment vehicle. The chapter 4 regulations provide that a sponsored FFI under any of the foregoing sections must have an agreement with a sponsoring entity under which the sponsoring entity performs, on behalf of the sponsored FFI, all of the due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI. A sponsoring entity of a sponsored FFI must register with the IRS as a sponsoring entity on Form 8957, FATCA Registration, via the FATCA registration website available at <http://www.irs.gov/fatca>, and must also register any sponsored investment entity or sponsored controlled foreign corporation within the time specified in § 1.1471–5(f)(1)(i)(F)(3)(iii). The 2014 temporary regulations reserve on the rules for verification of compliance and the events of default for a sponsoring entity of a sponsored FFI.

The Model 1 and Model 2 IGAs treat certain financial institutions as nonreporting financial institutions. Under Annex II of the Model 1 IGA, a nonreporting financial institution that is a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle is treated as a deemed-compliant FFI for purposes of section 1471. A sponsoring entity of a sponsored entity subject to a Model 1 IGA agrees to perform, on behalf of the sponsored entity, all of the due diligence, withholding, reporting, and other requirements that the sponsored entity would have been required to perform if it were a reporting Model 1 financial institution. As a result, a sponsoring entity of a sponsored entity

subject to a Model 1 IGA reports to the applicable Model 1 IGA jurisdiction with respect to the financial accounts maintained by the sponsored entity.

Under the Model 1 and Model 2 IGAs, a nonreporting financial institution includes a financial institution that “otherwise qualifies as a deemed-compliant FFI . . . under relevant U.S. Treasury Regulations.” Thus, a financial institution covered by a Model 1 or Model 2 IGA may choose to qualify as a sponsored investment entity, controlled foreign corporation, or closely held investment vehicle pursuant to § 1.1471–5(f) instead of Annex II of the Model 1 or Model 2 IGA. In such a case, the financial institution must satisfy all of the requirements applicable to such an entity in the regulations, including the requirement for the sponsoring entity to report information directly to the IRS, even in the case of a financial institution covered by a Model 1 IGA.

Under Annex II of the Model 2 IGA, a financial institution that is a sponsored investment entity or sponsored controlled foreign corporation is treated as a registered deemed-compliant FFI, and a financial institution that is a sponsored, closely held investment vehicle is treated as a certified deemed-compliant FFI. A sponsoring entity of a sponsored entity subject to a Model 2 IGA agrees to perform, on behalf of the sponsored entity, all of the due diligence, withholding, reporting, and other requirements that the sponsored entity would have been required to perform if it were a reporting Model 2 FFI. As a result, the sponsoring entity of a sponsored entity subject to a Model 2 IGA registers with the IRS and reports to the IRS with respect to financial accounts of the sponsored entity. Annex II of the Model 2 IGA also provides that a registered deemed-compliant FFI must register with the IRS on the FATCA registration website and have its responsible officer certify every three years to the IRS that all of the requirements for the deemed-compliant category claimed by the financial institution have been satisfied since July 1, 2014.

The Model 1 and Model 2 IGAs treat certain FFIs that are trusts as nonreporting financial institutions. Under Annex II of the Model 1 IGA, a financial institution that is a trustee-documented trust is

treated as a deemed-compliant FFI. Under Annex II of the Model 2 IGA, a financial institution that is a trustee-documented trust is treated as a certified deemed-compliant FFI. Under both the Model 1 IGA and the Model 2 IGA, a trust qualifies as a trustee-documented trust provided that the trustee of the trust is a U.S. financial institution, reporting Model 1 FFI, or participating FFI that reports all of the information required to be reported pursuant to the IGA with respect to U.S. accounts or U.S. reportable accounts (as applicable) of the trust. A trustee of a trustee-documented trust subject to a Model 1 or Model 2 IGA should register with the IRS. A trustee of a trustee-documented trust subject to a Model 2 IGA reports to the IRS with respect to the trust, whereas a trustee of a trustee-documented trust subject to a Model 1 IGA reports to the applicable Model 1 IGA jurisdiction.

### *C. Background on sponsored direct reporting NFFEs*

Section 1472(c)(1)(G) permits the Treasury Department and IRS to issue regulations exempting withholding agents from withholding or reporting under section 1472(a) with respect to payments beneficially owned by certain persons identified by the Treasury Department and IRS, which are referred to in the chapter 4 regulations as excepted NFFEs. As noted in Part II.A of this Background, the 2014 temporary regulations include direct reporting NFFEs as a class of excepted NFFEs.

A direct reporting NFFE is a NFFE that elects to report information about its substantial U.S. owners directly to the IRS (rather than to the withholding agent) and that meets the requirements of § 1.1472-1(c)(3). A direct reporting NFFE may elect to be treated as a sponsored direct reporting NFFE if another entity, other than a nonparticipating FFI, agrees to act as its sponsoring entity for performing all of the due diligence, reporting, and other requirements that the NFFE would have been required to perform as a direct reporting NFFE. The sponsoring entity of a sponsored direct reporting NFFE must register with the IRS as a sponsoring entity and must also register the NFFE with

the IRS as a sponsored direct reporting NFFE as required in the chapter 4 regulations. The sponsoring entity must also comply with the verification procedures and other compliance-related requirements provided in the regulations. The 2014 temporary regulations reserve on the verification procedures and the events of default for a sponsoring entity of a sponsored direct reporting NFFE.

Under section VI(b) of Annex I of the Model 1 and Model 2 IGAs, an active NFFE includes a NFFE that is treated as an excepted NFFE under the chapter 4 regulations. An active NFFE (including a direct reporting NFFE) does not need to be reported as a U.S. account by a reporting Model 1 FFI or reporting Model 2 FFI with which the NFFE holds an account.

### *III. Background on Verification Requirements for Participating FFIs and Compliance FIs*

Under the chapter 4 regulations, a participating FFI is required to establish and implement a compliance program for satisfying its requirements under § 1.1471-4. The responsible officer of the FFI must periodically certify to the IRS that the FFI maintains effective internal controls or, if the responsible officer cannot make this certification, he or she must make a qualified certification. If there is an event of default, the IRS will notify the FFI and request remediation. The FFI must respond to the notice of default and provide information to the IRS. If the FFI does not provide a response, the IRS may deliver a notice of termination that terminates the FFI's participating FFI status.

The chapter 4 regulations permit a participating FFI that is a member of an expanded affiliated group to elect to be part of a consolidated compliance program under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution that is a member of the same expanded affiliated group (compliance FI). The compliance FI must establish and maintain the consolidated compliance program and perform a consolidated periodic review on behalf of each member FFI that elects to be part of the consolidated compliance program (electing FFI).

### *IV. Background on Certification Requirements for Registered Deemed-Compliant FFIs*

An FFI may be a registered deemed-compliant FFI if it meets the requirements of a class of FFIs specified in § 1.1471-5(f)(1). Certain classes of registered deemed-compliant FFIs have compliance obligations as a condition of their status under this section. For example, a registered deemed-compliant FFI that is a non-reporting member of a participating FFI group under § 1.1471-5(f)(1)(i)(B) must monitor its accounts to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI and meets its requirement to transfer or close such accounts (or become a participating FFI). In order for the IRS to verify that a registered deemed-compliant FFI meets the requirements of its applicable deemed-compliant status and is satisfying any such compliance obligations, the chapter 4 regulations require a registered deemed-compliant FFI to have its responsible officer certify every three years to the IRS that the FFI meets the requirements for its applicable deemed-compliant status.

### **Explanation of Provisions**

#### *I. Sponsoring Entities of Sponsored FFIs*

These proposed regulations provide verification requirements for a sponsoring entity of a sponsored FFI that are generally similar to the verification requirements for a compliance FI. See Part IV of this Explanation of Provisions for the verification requirements for consolidated compliance programs. Under these proposed regulations, a sponsoring entity must maintain a compliance program to oversee its compliance with respect to each sponsored FFI for purposes of satisfying the deemed-compliant status requirements of § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or an applicable Model 2 IGA. The deemed-compliant status requirements include: (i) the assumption by the sponsoring entity of due diligence, withholding, and reporting obligations on behalf of each sponsored FFI, and (ii) compliance with the additional requirements

for status as a sponsoring entity, such as registering with the IRS.

These proposed regulations consolidate all of the verification requirements for a sponsoring entity. The 2014 temporary regulations, in § 1.1471-5T(f)(1)(i)(F)(3)(vi), (f)(1)(i)(F)(3)(vii), (f)(2)(iii)(D)(4), and (f)(2)(iii)(D)(5), require a sponsoring entity to perform the verification procedures described in § 1.1471-4(f) on behalf of a sponsored FFI and also perform the verification procedures described in § 1.1471-5(j) and (k) on behalf of itself. The 2014 temporary regulations, in § 1.1471-5T(j) and (k), reserved such verification procedures. These proposed regulations include all of the sponsoring entity's verification requirements in proposed § 1.1471-5(j).

These proposed regulations also require that a sponsoring entity appoint a responsible officer (as defined in § 1.1471-1(b)(116) of these proposed regulations) to oversee the compliance of the sponsoring entity with respect to each sponsored FFI for purposes of satisfying the requirements of § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or of an applicable Model 2 IGA. The responsible officer must certify to the IRS by July 1 of the calendar year following the end of each certification period that the sponsoring entity is compliant with the requirements to be a sponsoring entity and maintains effective internal controls with respect to all sponsored FFIs for which it acts (or provides a qualified certification) on the form and in the manner prescribed by the IRS. A sponsored FFI is not required to appoint its own responsible officer. Although the preamble to the 2014 temporary regulations states that under proposed regulations a sponsoring entity would be required to make two separate compliance certifications (one on behalf of its sponsored FFI(s) and another on the sponsoring entity's own behalf), the Treasury Department and IRS have determined that a single certification is sufficient for this purpose.

Under these proposed regulations, in general, a sponsoring entity must make a certification regarding its compliance with respect to all sponsored FFIs for which it acts during the certification period. However, with respect to a certification period, a sponsoring entity is generally not re-

quired to certify for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored FFI for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. However, the preceding sentence does not apply with respect to a sponsored FFI that, immediately before the FFI agrees to be sponsored by the sponsoring entity, was a participating FFI, registered deemed-compliant FFI, or sponsored, closely held investment vehicle. The sponsoring entity may certify for a sponsored FFI described in the preceding sentence for the portion of the certification period prior to the date that the FFI first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the FFI (or the FFI's sponsoring entity, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. The first certification period begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014.

The requirements for the certification of compliance may be modified to include additional certifications or information (such as quantitative or factual information related to the sponsoring entity's compliance), provided that such additional information or certifications are published at least 90 days before being made effective in order to allow for public comment. The Treasury Department and IRS intend to coordinate any such modification to the requirements for the certification of compliance for sponsoring entities with any modification to the requirements for the certification of com-

pliance for participating FFIs. See Part IV of this Explanation of Provisions for certifications required by participating FFIs.

These proposed regulations provide that the responsible officer of a sponsoring entity must make the certification described in § 1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the certification period. However, with respect to a certification period, the preexisting account certification is not required for a sponsored FFI if, immediately before it first agrees to be sponsored by the sponsoring entity, the FFI was a participating FFI, a sponsored FFI, or a registered deemed-compliant FFI that is a local FFI or a restricted fund, and the FFI (or the FFI's former sponsoring entity, if applicable) provides a written certification to the sponsoring entity that the FFI has made the preexisting account certification required of it, provided that the sponsoring entity does not know that such certification is unreliable or incorrect. Furthermore, since a participating FFI could have up to two years to complete the required due diligence on its preexisting accounts under § 1.1471-4(c)(3)(ii) and (c)(5)(i), the preexisting account certification is not required for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the two year period prior to the end of such certification period, provided that the sponsoring entity makes the preexisting account certification for such FFI for the subsequent certification period. The preexisting account certification for the certification period must be submitted by the due date of the sponsoring entity's certification of compliance for the certification period and on the form and in the manner prescribed by the IRS. With respect to a sponsored FFI for which the sponsoring entity is required to make a preexisting account certification, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the sponsored FFI that is outstanding on the earlier of the date the FFI is issued a GIIN as a sponsored FFI of the sponsoring entity or the date the FFI or the sponsoring entity first represents to a withholding agent or financial institution

that the FFI is a sponsored FFI of the sponsoring entity.

These proposed regulations permit the IRS to make general inquiries to a sponsoring entity regarding its compliance with its applicable requirements, similar to the general inquiries the IRS may make to a participating FFI with respect to its compliance (as provided in final regulations under chapter 4 published together with the temporary chapter 4 regulations). These proposed regulations provide that the IRS may request any additional information from the sponsoring entity (including a copy of the sponsorship agreement that the sponsoring entity has entered into with each sponsored FFI) necessary to determine its compliance with the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA with respect to each sponsored FFI and to assist the IRS with its review of account holder compliance with tax reporting requirements. These proposed regulations also provide that if the IRS determines that the sponsoring entity may not have substantially complied with the requirements of a sponsoring entity with respect to any sponsored FFI for which it acts, the IRS may make inquiries to the sponsoring entity regarding its compliance with the requirements of a sponsoring entity and may request the performance of specified review procedures. Inquiries regarding the compliance of a sponsoring entity with respect to a sponsored FFI subject to the requirements of an applicable Model 2 IGA will be made using the procedures described in these proposed regulations, except as otherwise provided in an applicable Model 2 IGA.

These proposed regulations describe the events of default for a sponsoring entity and the termination procedures following an event of default. The Treasury Department and IRS recognize that some events of default may relate only to a particular sponsored FFI (or several such FFIs) for which the sponsoring entity acts and thus should not affect the statuses of other sponsored FFIs for which the sponsoring entity acts or the status of the sponsoring entity. In other cases, an event of default may relate to a sponsoring entity's failure to comply with its own requirements, such as when it fails to establish and maintain a compliance program or

perform a periodic review. Accordingly, these proposed regulations provide IRS the discretion to determine whether, based on facts and circumstances, an event of default should result in the termination of the sponsoring entity's status as a sponsoring entity, the deemed-compliant statuses of one or more sponsored FFIs, or both the status of the sponsoring entity and the statuses of one or more sponsored FFIs. If a sponsoring entity's status is terminated, the sponsoring entity may not reregister as a sponsoring entity for any sponsored FFI or any sponsored entity subject to a Model 1 IGA without prior written approval from the IRS. A sponsored FFI whose sponsoring entity's status is terminated may register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI or may be registered on the FATCA registration website as a sponsored FFI of a new sponsoring entity (other than an entity that has a relationship to the terminated sponsoring entity described in section 267(b)), as applicable. However, if the sponsored FFI's status is terminated (independent of a termination of the sponsoring entity), the sponsored FFI must obtain prior written approval from the IRS in order to register as a participating FFI or registered deemed-compliant FFI or be registered as a sponsored FFI of a new sponsoring entity.

The definition of sponsored FFI in the 2013 final regulations is limited to an entity that is a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle under § 1.1471-5(f)(1)(i)(F) or § 1.1471-5(f)(2)(iii). These proposed regulations expand the definition of sponsored FFI to also include a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle treated as a deemed-compliant FFI under an applicable Model 2 IGA. These proposed regulations do not impose verification requirements or specify events of default for a sponsoring entity of a sponsored entity subject to an applicable Model 1 IGA. The obligations of such a sponsoring entity are governed by the laws and requirements of the applicable Model 1 IGA jurisdiction. However, the IRS may treat a sponsored

entity covered by a Model 1 IGA as a nonparticipating FFI pursuant to Article 5(2)(b) of an applicable Model 1 IGA if the IRS determines that there is significant non-compliance with the obligations of the IGA by the sponsored entity that has not been resolved within 18 months. In addition, pursuant to the termination procedures described in the previous paragraph, the IRS may revoke the status of a sponsoring entity based on an event of default relating to one or more sponsored FFIs. Consistent with Annex II of the Model 1 IGA, such revocation would prevent the sponsoring entity from sponsoring an FFI subject to a Model 1 IGA. The IRS may also notify such Model 1 IGA jurisdiction of the revocation. A sponsored entity subject to a Model 1 IGA whose sponsor's status is terminated would need to become a reporting Model 1 FFI, obtain a new sponsor, or meet the requirements of another deemed-compliant status.

As described in Part II.B of the Background of this preamble, the Model 2 IGA allows certain sponsored FFIs to be treated as deemed-compliant FFIs and provides that the IRS may revoke a sponsoring entity's status if there is a material failure by the sponsoring entity to comply with the obligations described in Annex II of the IGA. Accordingly, the verification requirements and events of default in these proposed regulations apply to a sponsoring entity of a sponsored FFI subject to an applicable Model 2 IGA. In addition, the procedures for IRS inquiries specified in these proposed regulations apply to a sponsoring entity of a sponsored FFI subject to an applicable Model 2 IGA except to the extent otherwise provided in the applicable Model 2 IGA. Although Annex II of the Model 2 IGA permits the IRS to revoke a sponsoring entity's status upon a material failure (as described above), because the Treasury Department and IRS believe that a consistent standard for when to terminate a sponsoring entity's status should apply, these proposed regulations provide that the IRS will not revoke the status of a sponsoring entity of a sponsored FFI subject to a Model 2 IGA unless there is an event of default and the procedures for termination described in these proposed regulations have been applied.

## II. Trustees of Trustee-Documented Trusts

These proposed regulations provide that a trustee of a trustee-documented trust subject to a Model 2 IGA shall appoint a responsible officer who will maintain a compliance program and oversee the trustee's compliance with respect to each trustee-documented trust for purposes of satisfying the requirements of an applicable Model 2 IGA. The responsible officer must perform a periodic review of the sufficiency of the trustee's compliance program for each certification period. The responsible officer must also certify to the IRS that the trustee has established a compliance program, performed a periodic review, and reported to the IRS all of the information required to be reported with respect to each trustee-documented trust for each certification period. Certain late-joining trustee-documented trusts may be excluded from a certification under rules similar to those provided in these proposed regulations for sponsored FFIs. The IRS will not unilaterally revoke the status of, or issue a notice of default to, a trustee of such a trust. Instead, subject to the requirements of an applicable Model 2 IGA, these proposed regulations permit the IRS to make inquiries to the trustee regarding its compliance with its applicable requirements and notify the Model 2 IGA jurisdiction if the trustee has not complied with its requirements with respect to one or more trustee-documented trusts established in that jurisdiction. The IRS may also notify an applicable Model 1 IGA jurisdiction of the trustee's non-compliance with respect to its requirements as a trustee of a trustee-documented trust subject to a Model 2 IGA if the trustee also acts on behalf of trustee-documented trusts in the Model 1 IGA jurisdiction or if the trustee is located in the Model 1 IGA jurisdiction.

## III. Sponsoring Entities of Sponsored Direct Reporting NFFEs

These proposed regulations include verification requirements and the events of default for a sponsoring entity of a sponsored direct reporting NFFE. These proposed regulations also specify the requirements for a sponsorship agreement

between a sponsoring entity and each sponsored direct reporting NFFE for which it acts.

Under these proposed regulations, a sponsoring entity must appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored direct reporting NFFE. The responsible officer of the sponsoring entity must make a periodic certification to the IRS on the form and in the manner prescribed by the IRS. The certification requirements of a sponsoring entity of a sponsored direct reporting NFFE are more limited than the certification requirements of a sponsoring entity of a sponsored FFI because the obligations of a sponsoring entity of a sponsored direct reporting NFFE are more limited than those of a sponsoring entity of a sponsored FFI. A sponsoring entity of a sponsored direct reporting NFFE must certify that it meets the requirements of a sponsoring entity, that it has a written sponsorship agreement that meets the requirements in these proposed regulations in effect with each sponsored direct reporting NFFE, that there have been no events of default (or that such events have been remediated), and that the sponsoring entity has corrected any failures to report on Form 8966, "FATCA Report," with respect to any sponsored direct reporting NFFE.

In general, a sponsoring entity must make the periodic certification with respect to all sponsored direct reporting NFFEs for which it acts during the certification period. However, with respect to a certification period, a sponsoring entity is not required to certify for a sponsored direct reporting NFFE that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored direct reporting NFFE for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the sponsored direct reporting NFFE was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored direct reporting NFFE that, immediately before the NFFE agrees to be sponsored by the sponsoring entity, was a direct reporting

NFFE or sponsored direct reporting NFFE of another sponsoring entity. The sponsoring entity may certify for a sponsored direct reporting NFFE described in the preceding sentence for the portion of the certification period prior to the date that the NFFE first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the NFFE (or the NFFE's sponsoring entity, if applicable) a written certification that the NFFE has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored direct reporting NFFE for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such NFFE was sponsored by the sponsoring entity. The first certification period will begin on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014.

Under these proposed regulations, the IRS may make inquiries to a sponsoring entity to determine the sponsoring entity's compliance with its requirements. The IRS may also request any additional information from the sponsoring entity (including a copy of the sponsorship agreement that the sponsoring entity has entered into with each sponsored direct reporting NFFE). If the IRS determines that the sponsoring entity may not have substantially complied with the requirements of a sponsoring entity with respect to any sponsored direct reporting NFFE for which it acts, the IRS may request additional information to verify the sponsoring entity's compliance with such requirements and may request the performance of specified review procedures.

These proposed regulations also specify the events of default and termination procedures applicable to a sponsoring entity of a sponsored direct reporting NFFE. Consistent with the verification requirements for direct reporting NFFEs in the chapter 4 regulations, a notice of default is triggered by an event of default. An event of default may result in the termination of the sponsoring entity's status as a sponsoring entity, the statuses of one or more

sponsored direct reporting NFFEs as such, or both the status of a sponsoring entity and the statuses of one or more sponsored direct reporting NFFEs. A sponsored direct reporting NFFE whose sponsoring entity's status is terminated may register on the FATCA registration website as a direct reporting NFFE or sponsored direct reporting NFFE, unless the sponsored direct reporting NFFE's status is also terminated, in which case the sponsored direct reporting NFFE must obtain prior written approval from the IRS in order to register.

#### *IV. Modifications to the Verification Requirements for Participating FFIs and Compliance FIs*

These proposed regulations provide that the requirements for a participating FFI's certification of compliance (described in § 1.1471-4(f)(3)) may be modified through an amendment to the FFI agreement to include additional certifications or information (such as quantitative or factual information related to the FFI's compliance with the FFI agreement), provided that any additional information or certifications required are published at least 90 days before being added to the FFI agreement to allow for public comment. See also section 12.02 of the FFI agreement (covering modifications to the FFI agreement imposing additional requirements on participating FFIs). Additionally, any such amendment to the FFI agreement will be published only after these proposed regulations are published as final regulations.

These proposed regulations modify the procedures and timeframes for notices of default and terminations applicable to participating FFIs in the chapter 4 regulations to conform to the procedures and timeframes for sponsoring entities in these proposed regulations. These proposed regulations include a minimum period of 45 days for a participating FFI to respond to a notice of default. Within 30 days of a termination of an FFI's participating FFI status, the FFI must send a notice of termination to each withholding agent from which the FFI receives payments and each financial institution with which it holds an account to which a withholding certificate or other documentation was provided. Requests for reconsideration of a notice of

default or a notice of termination must be made within 90 days of the notice of default or notice of termination (as applicable). An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or a registered deemed-compliant FFI unless it receives written approval from the IRS.

The chapter 4 regulations provide that when an FFI elects to be part of a consolidated compliance program (electing FFI), each branch that it maintains (including a limited branch or a branch described in § 1.1471-5(f)(1)) must be subject to periodic review as part of such program. These proposed regulations clarify that a branch of an electing FFI located in a Model 1 IGA jurisdiction is excluded from the periodic review. In addition, these proposed regulations clarify that the responsible officer of the compliance FI must make the periodic certification described in § 1.1471-4(f)(3) (or a qualified certification) on the form and in the manner prescribed by the IRS. In general, the certification must be made on behalf of all electing FFIs in the compliance group during the certification period. However, with respect to a certification period, a compliance FI is not required to make a certification for an electing FFI that first elects to be part of the consolidated compliance program of the compliance FI during the six month period prior to the end of the certification period, provided that the compliance FI makes certifications for such electing FFI for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. However, the preceding sentence does not apply to an electing FFI that, immediately before the electing FFI elects to be part of the consolidated compliance program, was a participating FFI or registered deemed-compliant FFI. The compliance FI may certify for an electing FFI described in the preceding sentence for the portion of the certification period prior to the date that the electing FFI elects to be part of the consolidated compliance program if the compliance FI obtains from the FFI (or the FFI's former compliance

FI, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the compliance FI does not know that such certification is unreliable or incorrect; and (2) the certification for the electing FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. The first certification period for a compliance group begins on the later of the date the compliance FI is issued a GIIN or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

These proposed regulations provide that the responsible officer of a compliance FI must make the certification described in § 1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the certification period (as defined in § 1.1471-4(f)(3)(i)). Notwithstanding the preceding sentence, a preexisting account certification is not required for an electing FFI if, immediately before electing to be part of the consolidated compliance program under the compliance FI, the FFI was a participating FFI or a registered deemed-compliant FFI that is a local FFI or restricted fund, and the FFI (or the FFI's former compliance FI, if applicable) provides a written certification to the compliance FI that the FFI has made the preexisting account certification required of it, unless the compliance FI knows that such certification is unreliable or incorrect. In addition, a preexisting account certification is not required for a certification period for an electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the two year period prior to the end of such certification period, provided that the compliance FI makes the preexisting account certification for such FFI by the due date of the certification of compliance for the subsequent certification period.

The preexisting account certification, if required for a certification period, must be submitted by the due date of the FFI's periodic certification of compliance for the certification period, on the form and in the manner prescribed by the IRS.

#### V. Certification and Verification Requirements for Registered Deemed-Compliant FFIs

The chapter 4 regulations do not explicitly provide that the IRS may apply verification procedures and make inquiries regarding the certifications provided by registered deemed-compliant FFIs. These proposed regulations provide that the IRS may make inquiries of, and request additional information from and the performance of specified review procedures by, a registered deemed-compliant FFI to verify the FFI's compliance with the requirements of its applicable deemed-compliant status. These requirements are similar to the provisions for the IRS's verification of a participating FFI's compliance with the FFI agreement. If the IRS determines that a registered deemed-compliant FFI has not complied with the requirements of the deemed-compliant status claimed by the FFI, the IRS may terminate the FFI's deemed-compliant status. A registered deemed-compliant FFI that has had its status terminated may request reconsideration of the termination by submitting a written request to the IRS within 90 days of the notice of termination.

#### Proposed Effective/Applicability Dates

These proposed regulations apply on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

#### 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.

The IRS intends that the information collection requirements in these proposed regulations will be satisfied by submitting certifications to the IRS electronically. For

purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these proposed regulations will be reflected in the OMB Form 83-1, Paperwork Reduction Act Submission, associated with the certification.

It is hereby certified that the collection of information requirement in these proposed regulations will not have a significant economic impact on a substantial number of small entities because these proposed regulations affect foreign persons, not domestic entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and IRS request comments on all aspects of the proposed rules, including comments on the clarity of the proposed rules and how they could be made easier with which to comply. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

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

\* \* \* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1 - INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.1471-1 is amended by revising paragraphs (b)(99), (b)(116), and (b)(121) to read as follows:

#### § 1.1471-1 Scope of chapter 4 and definitions.

\* \* \* \* \*

(b) \* \* \*

(99) [The text of proposed § 1.1471-1(b)(99) is the same as the text of § 1.1471-1T(b)(99) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(116) *Responsible officer*. The term responsible officer means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term responsible officer means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of § 1.1471-5(f). The term responsible officer means, with respect to a sponsoring entity, an officer of the sponsoring entity with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-5(j) or § 1.1472-1(f) (as applicable). If a participating FFI elects to be part of a consolidated compliance program, the term responsible officer means an officer of the compliance FI (as described in § 1.1471-4(f)) with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-4(f)(2) and (3) on behalf of each FFI in the compliance group.

\* \* \* \* \*

(121) *Sponsored FFI*. The term sponsored FFI means any entity described in § 1.1471-5(f)(1)(i)(F) (describing sponsored investment entities and sponsored controlled foreign corporations) or § 1.1471-5(f)(2)(iii) (describing sponsored, closely held investment vehicles). The term sponsored FFI also means a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle treated as deemed-compliant under an applicable Model 2 IGA.

Par. 3. Section 1.1471-3 is amended by:

1. Revising paragraph (c)(1).
2. Adding paragraphs (c)(3)(iii)(B)(5) and (c)(6)(ii)(E)(4).
3. Revising paragraphs (c)(7)(ii) and (d)(6)(i)(F).

The revisions and additions read as follows:

§ 1.1471-3 *Identification of payee.*

\* \* \* \* \*

(c) \* \* \*

(1) [The text of proposed § 1.1471-3(c)(1) is the same as the text of § 1.1471-3T(c)(1) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(3) \* \* \*

(iii) \* \* \*

(B) \* \* \*

(5) [The text of proposed § 1.1471-3(c)(3)(iii)(B)(5) is the same as the text of § 1.1471-3T(c)(3)(iii)(B)(5) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(E) \* \* \*

(4) [The text of proposed § 1.1471-3(c)(6)(ii)(E)(4) is the same as the text of § 1.1471-3T(c)(6)(ii)(E)(4) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(7) \* \* \*

(ii) [The text of proposed § 1.1471-3(c)(7)(ii) is the same as the text of § 1.1471-3T(c)(7)(ii) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(i) \* \* \*

(F) [The text of proposed § 1.1471-3(d)(6)(i)(F) is the same as the text of § 1.1471-3T(d)(6)(i)(F) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

Par. 4. Section 1.1471-4 is amended by:

1. Revising paragraphs (c)(2)(ii)(B)(2)(iii), (d)(4)(iv)(C) and (D), (f)(2)(ii)(A), (f)(3)(i), and (g)(2).

2. Adding paragraphs (d)(2)(ii)(G) and (f)(2)(ii)(B)(I) and (2).

The revisions and additions read as follows:

§ 1.1471-4 *FFI agreement.*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(2) \* \* \*

(iii) [The text of proposed § 1.1471-4(c)(2)(ii)(B)(2)(iii) is the same as the text of § 1.1471-4T(c)(2)(ii)(B)(2)(iii) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(G) [The text of proposed § 1.1471-4(d)(2)(ii)(G) is the same as the text of § 1.1471-4T(d)(2)(ii)(G) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(4) \* \* \*

(iv) \* \* \*

(C) [The text of proposed § 1.1471-4(d)(4)(iv)(C) is the same as the text of § 1.1471-4T(d)(4)(iv)(C) published elsewhere in this issue of the **Bulletin**].

(D) [The text of proposed § 1.1471-4(d)(4)(iv)(D) is the same as the text of § 1.1471-4T(d)(4)(iv)(D) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *In general.* A participating FFI that is a member of an expanded affiliated group that includes one or more FFIs may elect to be part of a consolidated compliance program (and perform a consolidated

periodic review) under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) that is a member of the electing FFI's expanded affiliated group, regardless of whether all such members so elect. In addition, when an FFI elects to be part of a consolidated compliance program, each branch that it maintains (including a limited branch or a branch described in § 1.1471-5(f)(1)), other than a branch located in a Model 1 IGA jurisdiction, must be subject to periodic review as part of such program and included on the periodic certification (described in paragraph (f)(2)(ii)(B)(I) of this section). See § 1.1471-5(j) for the requirement of a sponsoring entity to establish and implement a compliance program for its sponsored FFIs.

(B) \* \* \*

(I) *Periodic certification.* On or before July 1 of the calendar year following the end of the certification period, the responsible officer of the compliance FI must make the certification described in either paragraph (f)(3)(ii) or (f)(3)(iii) of this section with respect to all electing FFIs for which it acts during the certification period on the form and in the manner prescribed by the IRS. The certification must be made on behalf of all electing FFIs in the compliance group during the certification period. In general, with respect to a certification period, a compliance FI is not required to make a certification for an electing FFI that first elects to be part of the consolidated compliance program of the compliance FI during the six month period prior to the end of the certification period, provided that the compliance FI makes certifications for such electing FFI for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. However, the preceding sentence does not apply to an electing FFI that, immediately before the electing FFI elects to be part of the consolidated compliance program, was a participating FFI or registered deemed-compliant FFI. The compliance FI may certify for an electing FFI described in the preceding sentence for the

portion of the certification period prior to the date that the electing FFI elects to be part of the consolidated compliance program if the compliance FI obtains from the FFI (or the FFI's former compliance FI, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the compliance FI does not know that such certification is unreliable or incorrect; and (2) the certification for the electing FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. The first certification period for a compliance group begins on the later of the date the compliance FI is issued a GIIN or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(2) *Preexisting account certification.* The responsible officer of a compliance FI must make the certification described in paragraph (c)(7) of this section (preexisting account certification of a participating FFI) with respect to each electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the certification period. However, a preexisting account certification is not required for an electing FFI if immediately before electing to be part of the consolidated compliance program under the compliance FI the FFI was a participating FFI or a registered deemed-compliant FFI that is a local FFI or restricted fund, and the FFI (or the FFI's former compliance FI, if applicable) provides a written certification to the compliance FI that the FFI has made the preexisting account certification required under paragraph (c)(7) of this section, § 1.1471-5(f)(1)(i)(A)(7), or § 1.1471-5(f)(1)(i)(D)(6) (as applicable), unless the compliance FI knows that such written certification is unreliable or incorrect. In addition, a preexisting account certification is not required for an electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the two year period prior

to the end of the certification period, provided that the compliance FI makes the preexisting account certification for such FFI for the subsequent certification period. The certification required under this paragraph (f)(2)(ii)(B)(2) for the certification period must be submitted by the due date of the FFI's certification of compliance required under paragraph (f)(2)(ii)(B)(1) of this section for the certification period, on the form and in the manner prescribed by the IRS.

(3) \* \* \*

(i) *In general.* In addition to the certifications required under paragraph (c)(7) of this section, on or before July 1 of the calendar year following the end of each certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section on the form and in the manner prescribed by the IRS. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three calendar year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has identified an event of default (defined in paragraph (g) of this section) or a material failure (defined in paragraph (f)(3)(iv) of this section) that it has not corrected as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section. The certification of compliance described in paragraph (f)(3)(ii) or (iii) of this section may be modified through an amendment to the FFI agreement to include any additional certifications or information (such as quantitative or factual information related to the FFI's compliance with the FFI agreement), provided that any additional information or certifications are published at least 90 days before being incorporated into the FFI agreement to allow for public comment.

\* \* \* \* \*

(g) \* \* \*

(2) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to

the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. If the FFI's participating FFI status is terminated, in addition to the requirements in § 1.1471-3(c)(6)(ii)(E)(2), the FFI must, within 30 days of the termination, send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided. An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS to register. A participating FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of a notice of default or notice of termination by written request to the IRS.

\* \* \* \* \*

Par. 5. Section 1.1471-5 is amended by:

1. Revising paragraph (f)(1)(i)(F)(3)(vi).
2. Removing paragraph (f)(1)(i)(F)(3)(vii).
3. Redesignating paragraph (f)(1)(i)(F)(3)(viii) as new paragraph (f)(1)(i)(F)(3)(vii).
4. Revising paragraph (f)(1)(i)(F)(4).
5. Adding paragraph (f)(1)(iv).
6. Revising paragraph (f)(2)(iii)(D)(4).
7. Removing paragraph (f)(2)(iii)(D)(5).
8. Redesignating paragraph (f)(2)(iii)(D)(6) as new paragraph (f)(2)(iii)(D)(5).
9. Revising paragraph (f)(2)(iii)(E).
10. Revising paragraphs (j) and (k).
11. Redesignating paragraph (l) as paragraph (m).

12. Adding new paragraph (l).

The revisions and additions read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(F) \* \* \*

(3) \* \* \*

(vi) Complies with the verification procedures described in paragraph (j) of this section;

\* \* \* \* \*

(4) The IRS may revoke a sponsoring entity's status with respect to one or more sponsored FFIs if there is an event of default as defined in paragraph (k)(1) of this section and following the termination procedures described in paragraphs (k)(2), (k)(3), and (k)(4) of this section.

\* \* \* \* \*

(iv) *IRS review of compliance by registered deemed-compliant FFIs—(A) General inquiries.* With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A), (C), or (D) of this section, the IRS, based upon the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in § 1.1471-4(d)(4)(v), or to confirm that the FFI has no reporting requirements for the calendar year. The IRS may request additional information from the FFI to determine the FFI's compliance with § 1.1471-4 (if applicable) and to assist the IRS with its review of account holder compliance with tax reporting requirements. For IRS review of compliance with respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(F) of this section (describing sponsored investment entities and controlled foreign corporations), see paragraph (j)(4) of this section.

(B) *Inquiries regarding substantial non-compliance.* With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this

section, the IRS, based on the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), the certifications made by the responsible officer described in paragraph (f)(1)(ii)(B) of this section (or the absence of such certifications), or any other information related to the FFI's compliance with the requirements of the deemed-compliant status claimed by the FFI, may determine in its discretion that the FFI may not have substantially complied with the requirements of the deemed-compliant status claimed by the FFI. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the FFI's compliance with the requirements for the deemed-compliant status claimed by the FFI. For example, in the case of a local FFI under paragraph (f)(1)(i)(A) of this section, the IRS may request a description or copy of the FFI's policies and procedures for identifying accounts held by specified U.S. persons not resident in the jurisdiction in which the FFI is incorporated or organized, identifying entities controlled or beneficially owned by such persons, and identifying non-participating FFIs. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the requirements of the deemed-compliant category claimed by the FFI. If the IRS determines that the FFI has not complied with the requirements of the deemed-compliant status claimed by the FFI, the IRS may terminate the FFI's deemed-compliant status. If the FFI's deemed-compliant status is terminated, the FFI must send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided within 30 days after the termination. An FFI that has had its deemed-compliant status terminated may not reregister on the FATCA registration website as a registered deemed-

compliant FFI or register on the FATCA registration website as a participating FFI unless it receives written approval from the IRS. A registered deemed-compliant FFI may request, within 90 days of a notice of termination, reconsideration of the notice of termination by written request to the IRS.

(2) \* \* \*

(iii) \* \* \*

(D) \* \* \*

(4) Complies with the verification procedures described in paragraph (j) of this section; and

\* \* \* \* \*

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to one or more sponsored FFIs if there is an event of default as defined in paragraph (k)(1) of this section and following the termination procedures described in paragraphs (k)(2), (k)(3), and (k)(4) of this section. A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

\* \* \* \* \*

(j) *Sponsoring entity verification—(1) In general.* This paragraph (j) describes the requirements for a sponsoring entity of a sponsored FFI to establish and implement a compliance program for satisfying its requirements as a sponsoring entity and to provide a certification of compliance with its requirements. This paragraph (j) also describes the procedures for the IRS to review the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of

paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. This paragraph (j) also requires a sponsoring entity to have in place a written sponsorship agreement as described in paragraph (j)(3)(v)(B) of this section with each sponsored FFI. References in this paragraph (j) or paragraph (k) of this section to a sponsored FFI mean a sponsored FFI to which the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA apply.

(2) *Compliance program.* The sponsoring entity must appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. The responsible officer must (either personally or through designated persons) establish a compliance program that includes policies, procedures, and processes sufficient for the sponsoring entity to satisfy the requirements described in the preceding sentence. The responsible officer (or designee) must periodically review the sufficiency of the sponsoring entity's compliance program, the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, and the compliance of each sponsored FFI with the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA during the certification period described in paragraph (j)(3)(iii) of this section. The results of the periodic review must be considered by the responsible officer in making the periodic certifications described in paragraph (j)(3) of this section.

(3) *Certification of compliance—(i) In general.* In addition to the certification required under paragraph (j)(5) of this section (preexisting account certification), on or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make the certification described in paragraph (j)(3)(v) of this section and either the certification described in paragraph (j)(3)(vi)(A) of this section or the certification described in paragraph (j)(3)(vi)(B) of this section with respect to

all sponsored FFIs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS.

(ii) *Late-joining sponsored FFIs.* In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored FFI for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored FFI that, immediately before the FFI agrees to be sponsored by the sponsoring entity, was a participating FFI, registered deemed-compliant FFI, or sponsored, closely held investment vehicle of another sponsoring entity. The sponsoring entity may certify for a sponsored FFI described in the preceding sentence for the portion of the certification period prior to the date that the FFI first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the FFI (or the FFI's sponsoring entity, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity.

(iii) *Certification period.* The first certification period begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(iv) *Additional certifications or information.* The certification of compliance described in paragraph (j)(3) of this sec-

tion may be modified to include additional certifications or information (such as quantitative or factual information related to the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA), provided that such additional information or certifications are published at least 90 days before being made effective in order to allow for public comment.

(v) *Certifications regarding sponsoring entity and sponsored FFI requirements.* The responsible officer of the sponsoring entity must certify to the following statements—

(A) The sponsoring entity meets all of the requirements of a sponsoring entity as described in paragraph (f)(1)(i)(F)(3) or (f)(2)(iii)(D) of this section or an applicable Model 2 IGA, including the chapter 4 status required of such entity;

(B) The sponsoring entity has a written sponsorship agreement in effect with each sponsored FFI authorizing the sponsoring entity to fulfill the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA with respect to each sponsored FFI; and

(C) Each sponsored FFI treated as a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle by the sponsoring entity meets the requirements of its respective status.

(vi) *Certifications regarding internal controls—(A) Certification of effective internal controls.* The responsible officer of the sponsoring entity must certify to the following statements—

(1) The responsible officer of the sponsoring entity has established a compliance program that is in effect as of the date of the certification and that has been subject to the review as described in paragraph (j)(2) of this section;

(2) With respect to material failures (defined in paragraph (j)(3)(vii) of this section)—

(i) There are no material failures for the certification period; or

(ii) If there were any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and

(3) With respect to any failure to withhold, deposit, or report to the extent required under § 1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI for any year during the certification period, the sponsored FFI has corrected such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return).

(B) *Qualified certification.* If the responsible officer of the sponsoring entity has identified an event of default (defined in paragraph (k)(1) of this section) or a material failure (defined in paragraph (j)(3)(vii) of this section) that the sponsoring entity has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(1) The responsible officer of the sponsoring entity has established a compliance program that is in effect as of the date of the certification and that has been subjected to the review as described in paragraph (j)(2) of this section;

(2) With respect to the event of default or material failure—

(i) The responsible officer (or designee) has identified an event of default; or

(ii) The responsible officer has determined that there are one or more material failures as defined in paragraph (j)(3)(vii) of this section and that appropriate actions will be taken to prevent such failures from reoccurring;

(3) With respect to any failure to withhold, deposit, or report to the extent required under § 1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI for any year during the certification period, the sponsored FFI will correct such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return); and

(4) The responsible officer (or designee) will respond to any notice of default under paragraph (k)(2) of this section or will provide to the IRS a description of each material failure and a written plan to correct each such failure when requested under paragraph (j)(4) of this section.

(vii) *Material failures defined.* A material failure is a failure of the sponsoring entity with respect to each sponsored FFI to satisfy the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA if the failure was the result of a deliberate action on the part of one or more employees of the sponsoring entity or was an error attributable to a failure of the sponsoring entity to implement internal controls sufficient for the sponsoring entity to meet its requirements. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a sponsoring entity has not substantially complied with the requirements described in the preceding sentence. Material failures include the following—

(A) With respect to any sponsored FFI, the deliberate or systematic failure of the sponsoring entity to report accounts that such sponsored FFI was required to treat as U.S. accounts, withhold on passthrough payments to the extent required, deposit taxes withheld to the extent required, accurately report recalcitrant account holders (or non-consenting U.S. accounts under an applicable Model 2 IGA), or accurately report with respect to nonparticipating FFIs as required under § 1.1471-4(d)(2)(ii)(F) or an applicable Model 2 IGA;

(B) A criminal or civil penalty or sanction imposed on the sponsoring entity or any sponsored FFI (or any branch or office of the sponsoring entity or any sponsored FFI) by a regulator or other governmental authority or agency with oversight over the sponsoring entity's or sponsored FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures;

(C) A potential future tax liability of any sponsored FFI related to its compliance (or lack thereof) with the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA for which such sponsored FFI has established, for financial statement purposes, a tax reserve or provision;

(D) A potential contractual liability under the agreement described in paragraph

(j)(3)(v)(B) of this section of the sponsoring entity to any sponsored FFI related to such sponsoring entity's compliance (or lack thereof) with paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA for which the sponsoring entity has established, for financial statement purposes, a reserve or provision; and

(E) Failure to register with the IRS as a sponsoring entity or to register each sponsored FFI required to be registered under paragraph (f)(1)(i)(F)(3)(iii) of this section or an applicable Model 2 IGA.

(4) *IRS review of compliance—(i) General inquiries.* The IRS, based upon the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsoring FFI, may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in § 1.1471-4(d)(4)(v) with respect to one or more sponsored FFIs, or confirmation that the FFI has no reporting requirements. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) necessary to determine the compliance with the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA with respect to each sponsored FFI and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* Based on the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored FFI (or the absence of reporting), the certifications made by the responsible officer described in paragraphs (j)(3) and (j)(5) of this section (or the absence of such certifications), or any other information related to the sponsoring entity's compliance with respect to any sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, the IRS may determine in

its discretion that the sponsoring entity may not have substantially complied with such requirements. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the sponsoring entity's compliance with such requirements. The IRS may request, for example, a description or copy of the sponsoring entity's policies and procedures for fulfilling the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, a description or copy of the sponsoring entity's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the sponsoring entity's potential failure to comply with respect to each sponsored FFI with the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA.

(iii) *Compliance procedures for a sponsored FFI subject to a Model 2 IGA.* In the case of a sponsored FFI subject to the requirements of an applicable Model 2 IGA, the procedures described in paragraph (j)(4) of this section apply, except as otherwise provided in the applicable Model 2 IGA.

(5) *Preexisting account certification.* The responsible officer of a sponsoring entity must make the certification described in § 1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the certification period (as defined in paragraph (j)(3)(iii) of this section). However, the preexisting account certification is not required for a sponsored FFI that, immediately before the FFI first agrees to be sponsored by the sponsoring entity, was a participating FFI, a sponsored FFI of another sponsoring entity, or a registered deemed-compliant FFI that is a local FFI or a restricted fund, if the FFI (or the FFI's former sponsoring entity, if applicable) provides a written certification to the

sponsoring entity that the FFI has made the preexisting account certification required under § 1.1471-4(c)(7) or paragraph (f)(1)(i)(A)(7) or (f)(1)(i)(D)(6) of this section (as applicable), unless the sponsoring entity knows that such written certification is unreliable or incorrect. In addition, the preexisting account certification is not required for a sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the two year period prior to the end of the certification period, provided that the sponsoring entity makes the preexisting account certification for such FFI for the subsequent certification period. The certification described in this paragraph (j)(5) for the certification period must be submitted by the due date of the sponsoring entity's certification of compliance required under paragraph (j)(3) of this section for the certification period, on the form and in the manner prescribed by the IRS. With respect to a sponsored FFI for which the sponsoring entity makes a preexisting account certification, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the sponsored FFI that is outstanding on the earlier of the date the FFI is issued a GIIN as a sponsored FFI or the date the FFI first agrees to be sponsored by the sponsoring entity.

(k) *Sponsoring entity event of default—(1) Defined.* An event of default with regard to a sponsoring entity occurs if the sponsoring entity fails to perform material obligations required with respect to the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI, to establish or maintain a compliance program as described in paragraph (j)(2) of this section, or to perform a periodic review described in paragraph (j)(2) of this section. An event of default also includes the occurrence of any of the following—

(i) With respect to any sponsored FFI, failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under § 1.1471-4(d), valid and effective waivers from holders of U.S. accounts or failure to otherwise close or

transfer such U.S. accounts as required under § 1.1471-4(i);

(ii) With respect to any sponsored FFI, failure to significantly reduce, over a period of time, the number of account holders or payees that such sponsored FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the sponsoring entity failing to comply with the due diligence procedures set forth in § 1.1471-4(c);

(iii) With respect to any sponsored FFI, failure to fulfill the requirements of § 1.1471-4(i) in any case in which foreign law prevents or otherwise limits withholding under § 1.1471-4(b);

(iv) Failure to take timely corrective actions to remedy a material failure described in paragraph (j)(3)(vii) of this section after making a qualified certification described in paragraph (j)(3)(vi)(B) of this section;

(v) Failure to make the preexisting account certification required under paragraph (j)(5) of this section or the periodic certification required under paragraph (j)(3) of this section with respect to any sponsored FFI within the specified time period;

(vi) Making incorrect claims for refund on behalf of any sponsored FFI;

(vii) Failure to cooperate with an IRS request for additional information under paragraph (j)(4) of this section;

(viii) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity for an entity other than an entity for which it acts as a sponsoring entity;

(ix) The sponsoring entity is no longer authorized to perform the requirements of a sponsoring entity with respect to one or more sponsored FFIs; or

(x) Failure to have the written sponsorship agreement described in paragraph (j)(3)(v)(B) of this section in effect with each sponsored FFI.

(2) *Notice of event of default.* Following an event of default known by or disclosed by the sponsoring entity to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored FFI to which the notice relates. The IRS will request that the sponsoring entity remediate the event

of default within 45 days (unless additional time is requested and agreed to by the IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) *Remediation of event of default.* A sponsoring entity will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a sponsoring entity to remediate an event of default described in paragraph (k)(1) of this section with respect to a sponsored FFI by providing specific information regarding the U.S. accounts maintained by such sponsored FFI when the sponsoring entity has been unable to report all of the information with respect to such accounts as required under § 1.1471-4(d) and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity or the performance of the specified review procedures described in paragraph (j)(4)(ii) of this section.

(4) *Termination—(i) In general.* If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (k)(2) of this section or does not remediate the event of default as described in paragraph (k)(3) of this section, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored FFIs as deemed-compliant FFIs, or both the sponsoring entity and one or more sponsored FFIs.

(ii) *Termination of sponsoring entity.* If the IRS terminates the status of the sponsoring entity, the sponsoring entity must send notice of the termination to each sponsored FFI for which it acts, as well as each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided with respect to each sponsored FFI within 30 days after the date of termination. A sponsoring entity that has had its status terminated cannot register on the FATCA registration website to act as a sponsoring entity for any sponsored FFI or for any entity that is

a sponsored entity under a Model 1 IGA unless it receives written approval from the IRS to register. Unless the status of a sponsored FFI has been terminated, the sponsored FFI may register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI (as applicable). However, a sponsored FFI whose sponsoring entity has been terminated may not register or represent its status as a sponsored FFI of a sponsoring entity that has a relationship described in section 267(b) to the sponsoring entity that was terminated without receiving written approval from the IRS.

(iii) *Termination of sponsored FFI.* If the IRS notifies the sponsoring entity that the status of a sponsored FFI is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored FFI from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination to each withholding agent from which the sponsored FFI receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided with respect to such sponsored FFI within 30 days after the date of termination. A sponsored FFI that has had its status as a sponsored FFI terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS.

(iv) *Reconsideration of notice of default or notice of termination.* A sponsoring entity or sponsored FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

(v) *Sponsoring entity of sponsored FFIs subject to a Model 2 IGA.* Subject to the provisions of an applicable Model 2 IGA, the IRS may revoke the status of a sponsoring entity with respect to one or more sponsored FFIs subject to a Model 2 IGA if there is an event of default as defined in paragraph (k)(1) of this section and following the notice, remediation, and termination procedures described in para-

graphs (k)(2), (k)(3), and (k)(4) of this section.

(1) *Trustee-documented trust verification—(1) Compliance program.* A trustee of a trust treated as a trustee-documented trust under an applicable Model 2 IGA must establish and implement a compliance program for purposes of satisfying the requirements of an applicable Model 2 IGA with respect to each such trust. The trustee must appoint a responsible officer who must (either personally or through designated persons) establish policies, procedures, and processes sufficient for the trustee to implement the compliance program. The responsible officer (or designee) must periodically review the sufficiency of the trustee's compliance program and the trustee's compliance with respect to each trust for purposes of satisfying the requirements of an applicable Model 2 IGA for each certification period described in paragraph (1)(2) of this section. The results of the periodic review must be considered by the responsible officer in making the certification described in paragraph (1)(2) of this section.

(2) *Certification of compliance—(i) In general.* On or before July 1 of the calendar year following the end of the certification period, the responsible officer must make a certification for the certification period with respect to all trustee-documented trusts described in paragraph (1)(1) of this section on the form and in the manner prescribed by the IRS.

(ii) *Late-joining trustee-documented trusts.* In general, with respect to a certification period, the responsible officer of a trustee is not required to make a certification for a trustee-documented trust for which the trustee first agreed to act as the trustee for purposes of the trust's status as a trustee-documented trust during the six month period prior to the end of the certification period, provided that the responsible officer of the trustee makes certifications for such trustee-documented trust for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the trustee acted as the trustee of the trustee-documented trust. However, the preceding sentence does not apply to a trustee-documented trust that, immediately before the trustee first agrees

to act as the trustee for purposes of the trust's status as a trustee-documented trust, was a trustee-documented trust of another trustee. The trustee of a trustee-documented trust may certify for a trustee-documented trust described in the preceding sentence for the portion of the certification period prior to the date that the trustee first agrees to act as the trustee for purposes of the trust's status as a trustee-documented trust if the trustee obtains from the trustee-documented trust (or the trust's former trustee, if applicable) a written certification that the trust has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the trustee does not know that such certification is unreliable or incorrect; and (2) the certification for the trustee-documented trust for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which the trustee acts as the trustee for purposes of the trust's status as a trustee-documented trust.

(iii) *Certification period.* The first certification period begins on the later of the date the trustee is issued a GIIN to act as a trustee of a trustee-documented trust or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(iv) *Certifications.* The responsible officer of the trustee must certify to the following statements—

(A) The responsible officer of the trustee has established a compliance program that is in effect as of the date of the certification and has performed a periodic review described in paragraph (1)(1) of this section for the certification period; and

(B) The trustee has reported to the IRS on Form 8966, "FATCA Report" (or such other form as the IRS may prescribe), all of the information required to be reported pursuant to the applicable Model 2 IGA with respect to all U.S. accounts of each trustee-documented trust for which the trustee acts during the certification period by the due date of Form 8966 (including extensions) for each year.

(3) *IRS review of compliance by trustees of trustee-documented trusts—(i) General inquiries.* Based upon the information reporting forms filed with the IRS (or the absence of such reporting) by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year, and subject to the requirements of an applicable Model 2 IGA, the IRS may request from the trustee additional information with respect to the information reported on the forms with respect to any trustee-documented trust or a confirmation that the trustee has no reporting requirements with respect to any trustee-documented trust. The IRS may also request any additional information to determine the trustee's compliance for purposes of satisfying the trust's requirements as a trustee-documented trust under an applicable Model 2 IGA or to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* The IRS, based on the information reporting forms filed with the IRS by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year (or the absence of such reporting), the certification described in paragraph (1)(2) of this section (or the absence of such certification), or any other information related to the trustee's compliance with respect to any trustee-documented trust for purposes of satisfying the trust's applicable Model 2 IGA requirements, may determine in its discretion that the trustee may not have substantially complied with the requirements applicable to a trustee of a trustee-documented trust. In such a case, the IRS may request from the responsible officer information necessary to verify the trustee's compliance with such requirements. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the circumstances surrounding the trustee's potential failure to comply with the requirements of an applicable Model 2 IGA with respect to one or more trustee-documented trusts. The IRS may notify the applicable Model 2 IGA jurisdiction that the trustee has not com-

plied with its requirements as a trustee of one or more trustee-documented trusts  
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Par. 6. Section 1.1472-1 is amended by revising paragraphs (c)(5)(iii), (f), and (g) to read as follows:

*§ 1.1472-1 Withholding on NFFEs.*

\* \* \* \* \*  
(c) \* \* \*  
(5) \* \* \*

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is an event of default as defined in paragraph (g) of this section with respect to any sponsored direct reporting NFFE.

\* \* \* \* \*

(f) *Sponsoring entity verification—(1) In general.* This paragraph (f) describes the requirements for a sponsoring entity to provide a certification of compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section and defines the certification period for such certifications. This paragraph (f) also describes the procedures for the IRS to review the sponsoring entity's compliance with such requirements during the certification period. Finally, this paragraph (f) describes the requirement that a sponsoring entity have in place a written sponsorship agreement with each sponsored direct reporting NFFE for which it acts and specifies the terms of such agreement. See paragraph (g)(1)(i) of this section, describing an event of default for a sponsoring entity that does not have a sponsorship agreement with each sponsored direct reporting NFFE for which it acts as a sponsoring entity. References in this paragraph (f) or paragraph (g) of this section to a sponsored direct reporting NFFE mean a sponsored direct reporting NFFE for which the sponsoring entity acts as a sponsoring entity under paragraph (c)(5)(ii) of this section.

(2) *Certification of compliance—(i) In general.* The sponsoring entity must appoint a responsible officer to oversee the sponsoring entity's compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the re-

quirements of paragraph (c)(5) of this section. On or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make a certification for the certification period with respect to all sponsored direct reporting NFFEs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS.

(ii) *Late-joining sponsored direct reporting NFFEs.* In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored direct reporting NFFE that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored direct reporting NFFE for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the sponsored direct reporting NFFE was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored direct reporting NFFE that, immediately before the NFFE agrees to be sponsored by the sponsoring entity, was a direct reporting NFFE or sponsored direct reporting NFFE of another sponsoring entity. The sponsoring entity may certify for a sponsored direct reporting NFFE described in the preceding sentence for the portion of the certification period prior to the date that the NFFE first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the NFFE (or the NFFE's sponsoring entity, if applicable) a written certification that the NFFE has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored direct reporting NFFE for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such NFFE was sponsored by the sponsoring entity.

(iii) *Certification period.* The first certification period begins on the later of the date the sponsoring entity is issued a GIIN

to act as a sponsoring entity or June 30, 2014, and ends at the close of the third full calendar year after such date. Each subsequent certification period is the three calendar year period following the close of the previous certification period.

(iv) *Certifications.* The certification will require the responsible officer of the sponsoring entity to certify to the following statements—

(A) The sponsoring entity meets all of the requirements of a sponsoring entity described in paragraph (c)(5)(ii) of this section;

(B) The sponsoring entity has the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(C) There were no events of default (as defined in paragraph (g) of this section) with respect to the sponsoring entity, or, to the extent there were any such events of default, appropriate measures were taken by the sponsoring entity to remediate and prevent such events from reoccurring; and

(D) With respect to any failure to report to the extent required under paragraph (c)(3)(ii) of this section with respect to one or more sponsored direct reporting NFFEs, the sponsoring entity has corrected such failure by filing the appropriate information returns.

(3) *IRS review of compliance—(i) General inquiries.* The IRS, based upon the information reporting forms described in paragraph (c)(3)(ii) of this section filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE, may request additional information with respect to the information reported (or required to be reported) on the forms about any substantial U.S. owner reported on the form or the records for each direct reporting NFFE described in paragraph (c)(3)(iv) of this section. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) to determine its compliance with paragraph (f) of this section with respect to each sponsored direct reporting NFFE and to assist the IRS with its review of any

substantial U.S. owners' compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* If, based on the information reporting forms referenced in paragraph (c)(3)(ii) of this section filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE (or the absence of such reporting), the certification made by the responsible officer described in paragraph (f)(2) of this section (or the absence of such certification), or any other information related to the sponsoring entity's compliance with the requirements of a sponsoring entity with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section, the IRS determines in its discretion that the sponsoring entity may not have substantially complied with these requirements, the IRS may request from the responsible officer information necessary to verify the sponsoring entity's compliance with such requirements. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the circumstances surrounding the sponsoring entity's potential failure to comply with the requirements of a sponsoring entity.

(4) *Sponsorship agreement.* The sponsoring entity must have a written sponsorship agreement in effect between the sponsoring entity and each sponsored direct reporting NFFE in which—

(i) The sponsored direct reporting NFFE agrees to provide the sponsoring entity access to the sponsored direct reporting NFFE's books and records regarding each of its owners (including AML/KYC documentation regarding the sponsored direct reporting NFFE's owners provided by the sponsored direct reporting NFFE with respect to each financial account it holds) and such other information sufficient for the sponsoring entity to determine the direct and indirect substantial U.S. owners of the sponsored direct reporting NFFE, including the information about such owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966, "FATCA Report" (or

such other form as the IRS may prescribe);

(ii) The sponsored direct reporting NFFE obtains a valid and effective waiver of any legal prohibitions on reporting the information about its direct and indirect substantial U.S. owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966 (or such other form as the IRS may prescribe);

(iii) The sponsored direct reporting NFFE authorizes the sponsoring entity to act on the sponsored direct reporting NFFE's behalf with respect to the sponsored direct reporting NFFE's obligations as a sponsored direct reporting NFFE (for example, authorizing the sponsoring entity to file Form 8966 on the sponsored direct reporting NFFE's behalf, responding to the IRS inquiries described in paragraph (f)(3) of this section, and providing the certification described in paragraph (f)(2) of this section);

(iv) The sponsored direct reporting NFFE agrees to identify to the sponsoring entity on request each withholding agent and financial institution to which the sponsored direct reporting NFFE reports its status as a sponsored direct reporting NFFE and agrees to provide to the sponsoring entity a copy of the withholding certificate or written statement prescribed in § 1.1471-3(d)(11)(x)(B) (as applicable) that the sponsored direct reporting NFFE provides to each such withholding agent or financial institution;

(v) The sponsored direct reporting NFFE represents that it does not have any formal or informal practices or procedures to assist its substantial U.S. owners with the avoidance of the requirements of chapter 4;

(vi) The sponsored direct reporting NFFE agrees to cooperate with the sponsoring entity in responding to any IRS inquiries under paragraph (f)(3) of this section with respect to the sponsored direct reporting NFFE; and

(vii) The sponsoring entity retains the records described in paragraphs (c)(3)(iii) and (iv) of this section for the longer of six years or the retention period under the sponsoring entity's normal business procedures. A sponsoring entity may be required to extend the retention period if the IRS requests such an extension prior to the expiration of the period.

(g) *Sponsoring entity event of default*—(1) *Defined*. An event of default by the sponsoring entity means the occurrence of any of the following—

(i) Failure to have the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(ii) Failure to satisfy the requirements of paragraph (c)(3)(iii) of this section with respect to each sponsored direct reporting NFFE that the NFFE would have been required to satisfy as a direct reporting NFFE;

(iii) Failure to report to the IRS on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) all of the information required under paragraph (c)(3)(ii) of this section with respect to each sponsored direct reporting NFFE and each of its substantial U.S. owners (or report to the IRS on Form 8966 that the sponsored direct reporting NFFE had no substantial U.S. owners) by the due date of the form (including any extensions);

(iv) Failure to make the certification required under paragraph (f)(2) of this section;

(v) Failure to cooperate with an IRS request for additional information described in paragraph (f)(3) of this section, including requests for the records described in paragraph (c)(3)(iv) of this section and requests to extend the retention period for these records as described in (f)(4)(vii) of this section;

(vi) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity under paragraph (c)(5) of this section for an entity other than an entity for which it acts as a sponsoring entity; or

(vii) Failure to obtain from each sponsored direct reporting NFFE the information required to report on Form 8966.

(2) *Notice of event of default*. Following an event of default known by or disclosed to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored direct reporting NFFE to which the notice relates. The IRS will request that the sponsoring entity remediate the event of default within 45 days (unless additional time is requested and agreed to by the

IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) *Remediation of event of default*. A sponsoring entity will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity, remedial actions, or the performance of the specified review procedures described in paragraph (f)(3)(ii) of this section.

(4) *Termination*—(i) *In general*. If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (g)(2) of this section, or if the sponsoring entity does not satisfy the conditions of the remediation plan within the time period specified by the IRS, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored direct reporting NFFEs as a direct reporting NFFE, or both the sponsoring entity and one or more sponsored direct reporting NFFEs.

(ii) *Termination of sponsoring entity*. If the IRS notifies the sponsoring entity that its status is terminated, the sponsoring entity must send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or written statement prescribed in § 1.1471-3(d)(11)(x)(B) (as applicable) was provided with respect to each sponsored direct reporting NFFE within 30 days after the date of termination. A sponsoring entity that has had its status terminated cannot reregister on the FATCA registration website to act as a sponsoring entity for any sponsored direct reporting NFFE unless it receives written approval from the IRS. Unless the status of the sponsored direct reporting NFFEs has been terminated, the sponsored direct reporting NFFEs may register on the FATCA registration website as direct reporting NFFEs or as sponsored direct reporting NFFEs of another sponsoring entity, other than a sponsoring entity that is related to the sponsoring entity that was terminated.

An entity is related to the terminated sponsoring entity if they have a relationship with each other that is described in section 267(b).

(iii) *Termination of sponsored direct reporting NFFE.* If the IRS notifies the sponsoring entity that the status of a sponsored direct reporting NFFE is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored direct reporting NFFE from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination to each withholding agent from which the sponsored direct reporting NFFE receives payments and each financial institution with which it holds an account for which a withholding certificate or written statement prescribed in § 1.1471-3(d)(11)(x)(B) (as applicable) was provided with respect to such sponsored direct reporting NFFE within 30 days after the date of termination. A sponsored direct reporting NFFE that has had its status as a sponsored direct reporting NFFE terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a direct reporting NFFE or as a sponsored direct reporting NFFE of another sponsoring entity unless it receives written approval from the IRS.

(iv) *Reconsideration of notice of default or notice of termination.* A sponsoring entity or sponsored direct reporting NFFE may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

\* \* \* \* \*

Par. 7. Section 1.1474-1 is amended by adding paragraph (d)(4)(vii) to read as follows:

*§ 1.1474-1 Liability for withheld tax and withholding agent reporting.*

(d) \* \* \*  
(4) \* \* \*

(vii) [The text of proposed § 1.1474-1(d)(4)(vii) is the same as the text of § 1.1474-1T(d)(4)(vii) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

John Dalrymple  
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on December 30, 2016, 4:15 p.m., and published in the issue of the Federal Register for January 6, 2017, 82 F.R. 1629)

## Notice of proposed rulemaking.

### Electronic Filing of the Report of Health Insurance Provider Information

#### REG-123829-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, "Report of Health Insurance Provider Information." These proposed regulations affect those entities.

DATES: Written or electronic comments and requests for a public hearing must be received by March 9, 2017.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-123829-16), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-123829-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS REG-123829-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Bergman, (202) 317-6844; concerning submissions of comments or to request a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document proposes to amend the Health Insurance Providers Fee Regulations (26 CFR part 57) under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). All references in this preamble to section 9010 are references to the ACA.

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. A covered entity, defined under section 9010(c), is any entity that provides health insurance for any United States health risk during each year, subject to certain exclusions. The total aggregate amount of the fee for all covered entities is determined by statute and is called the applicable amount. *See* section 9010(e). Each covered entity's annual fee is equal to an amount that bears the same ratio to the applicable amount as the covered entity's portion of net premiums written with respect to health insurance for United States health risks that are taken into account compared to the aggregate amount of net premiums written for all covered entities that are taken into account. Section 9010(b)(2) clarifies which net premiums are taken into account for purposes of calculating the fee. A covered entity (including a controlled group) with no more than \$25 million in net premiums written does not have any premiums taken into account and is not liable for a fee.

Section 9010(b)(3) requires the Secretary to calculate the amount of each covered entity's fee on a calendar year basis. To facilitate these calculations, section 9010(g)(1) requires that each covered entity must report to the Secretary the covered entity's net premiums written for health insurance for any United States health risk for the preceding calendar year by the date prescribed by the Secretary. Section 9010(g)(1) also provides the Secretary with authority to prescribe the manner in which a covered entity reports its

net premiums written. The reporting requirement applies regardless of whether a covered entity will be liable for a fee. Section 9010(g)(2) imposes a penalty on a covered entity for any failure to report the required information by the date prescribed by the Secretary (determined with regard to any extension of time for filing), unless such failure is due to reasonable cause. Section 9010(g)(3) imposes an accuracy-related penalty for understating the covered entity's net premiums written for health insurance for any United States health risk for any calendar year.

Section 57.3 of the Health Insurance Providers Fee regulations implements section 9010(g) and provides the rules for covered entities to report net premiums written for health insurance of United States health risks to the IRS. Under that section, information is reported to the IRS on Form 8963, "Report of Health Insurance Provider Information," which must be filed in accordance with the form instructions by April 15 of the year following the calendar year for which data is being reported. That section further provides that rules for the manner of reporting may be provided in guidance in the Internal Revenue Bulletin. The IRS uses the information reported on Form 8963 as part of the determination of each covered entity's annual fee under section 9010. Neither the statute nor the regulations currently specify whether Form 8963 must be submitted electronically or on paper. Covered entities currently have the option of filing the form in either manner.

Section 57.5 requires the IRS to send each covered entity notice of a preliminary fee calculation for that fee year (the calendar year in which the fee must be paid, beginning with 2014), and provides the content of that notice. Section 57.5 further provides that the timing of the notice will be provided in guidance published in the Internal Revenue Bulletin. Notice 2013-76 (2013-51 IRB 769) provides that the IRS will mail each covered entity its notice of preliminary fee calculation by June 15 of each fee year. Section 57.6 requires that a covered entity correct any errors identified after receiving the preliminary fee calculation by filing a corrected Form 8963. Notice 2013-76 provides that a corrected Form 8963 must be filed by July 15 of the fee year. The cor-

rected Form 8963 replaces the original Form 8963 for all purposes, including the determination of whether an accuracy-related penalty applies. The covered entity remains liable for any failure to report penalty if it failed to timely submit the original Form 8963. As with the original report, the corrected Form 8963 may currently be submitted either electronically or on paper.

Under § 57.7(b), the IRS must send each covered entity its final fee calculation no later than August 31. The IRS validates the data on Form 8963 in performing the final calculation, and, pursuant to section 9010(b)(3), the IRS is authorized to use any other source of information to determine each covered entity's net premiums written for health insurance of United States health risks. The covered entity must pay the fee by September 30 of the fee year, as provided by section 9010(a)(2). The fee must be paid by electronic funds transfer. *See* §§ 57.7(d); 57.6302-1.

The Consolidated Appropriations Act of 2016 imposes a moratorium on the fee for the 2017 calendar year. P.L. 114-113, section 201. Thus, covered entities are not required to pay the fee or file Form 8963 for the 2017 fee year.

### Explanation of Provisions

The IRS has now had three years of experience administering the Health Insurance Providers Fee. Based on this experience, the IRS concludes that the fee could be more efficiently administered if certain covered entities were required to file Forms 8963 and corrected Forms 8963 electronically.

The calculation of the fee is complex, and the statute requires that it be paid by the covered entity by September 30. The calculation of any one covered entity's fee depends upon the data reported on Form 8963 by all covered entities – an adjustment to one covered entity's fee affects other covered entities' fees. Covered entities need time after the end of the year to compile the information that needs to be reported. Accordingly, there is a short window of time for (1) the IRS to compile and analyze the reported information and send out preliminary letters, (2) covered entities to respond with any corrections, (3) the IRS to compile and analyze the

amended reporting and issue final fee letters, and (4) covered entities to pay the fee.

Paper reporting slows this process because paper forms take time to travel through the mail. Additionally, once the paper Form 8963 (or corrected Form 8963) reaches IRS personnel, the information on the paper form must be transcribed into IRS computers to calculate the fee. Transcription of paper forms is costly and time-consuming. And, because of the nature of the fee, no entity's proposed or final assessment can be determined until all the reporting of all payers has been taken into account.

The IRS uses electronic filing in several other contexts to streamline the collection of large volumes of paper forms and to efficiently use the information provided. Electronic filing of Forms 8963 and corrected Forms 8963 would benefit the administration of the fee by significantly reducing delays and the resources needed to calculate the preliminary and final fee amounts. Electronic filing will also benefit fee payers by facilitating the process for computing the fee for all covered entities.

Accordingly, pursuant to section 9010(g)(1), which provides authority to prescribe the manner for reporting, the proposed regulations amend § 57.3(a)(2) to provide that a covered entity (including a controlled group) reporting more than \$25 million in net premiums written on a Form 8963 or corrected Form 8963 must electronically file these forms after December 31, 2017. Forms 8963 reporting \$25 million or less in net premiums written are not required to be electronically filed. This is because a covered entity (including a controlled group) reporting no more than \$25 million in net premiums written is not liable for a fee and therefore the time constraints applicable to computation of the fee are not applicable with respect to these entities. *See* § 57.4(a)(4). The proposed regulation also provides that if a Form 8963 or corrected Form 8963 is required to be filed electronically, any subsequently filed Form 8963 filed for the same fee year must also be filed electronically, even if such subsequently filed Form 8963 reports \$25 million or less in net premiums written. In addition, the proposed regulation provides that failure to

electronically file will be treated as a failure to file for purposes of § 57.3(b).

### Proposed Effective/Applicability Date

These amendments are proposed to apply to any covered entity reporting more than \$25 million in net premiums written on any Form 8963 filed after December 31, 2017.

### Special Analyses

Certain IRS regulations, including this one, 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 is hereby certified that the electronic filing requirement would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the rule is expected to affect primarily larger entities because the electronic filing requirement is not met unless the filer must report more than \$25 million in net premiums. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the Federal Register.

### Drafting Information

The principal author of the proposed regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 57 is proposed to be amended to read as follows:

#### PART 57—HEALTH INSURANCE PROVIDERS FEE

Paragraph 1. The authority citation for 26 CFR part 57 continues to read in part as follows:

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

Par. 2. Section 57.3 is amended by revising paragraph (a)(2) to read as follows:

#### § 57.3 Reporting requirements and associated penalties.

\* \* \* \* \*

(a) \* \* \*

(2) *Manner of reporting*—(i) *In general*. The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(ii) *Electronic filing required*. Any Form 8963 (including corrected forms) filed pursuant to paragraph (a)(1) of this section reporting more than \$25 million in net premiums written must be filed electronically in accordance with the instructions to the form. If a Form 8963 or corrected Form 8963 is required to be filed electronically under this paragraph (a)(2)(ii), any subsequently filed Form 8963 filed for the same fee year must also be filed electronically. For purposes of paragraph (b) of this section, any Form 8963 required to be filed electronically under this section will not be considered filed unless it is filed electronically.

\* \* \* \* \*

Par. 3 Section 57.10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

#### § 57.10 Effective/applicability date.

(a) Except as provided paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

\* \* \* \* \*

(c) Section 57.3(a)(2)(ii) applies to Forms 8963, including corrected Forms 8963, filed after December 31, 2017.

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

(Filed by the Office of the Federal Register on December 8, 2016, 8:46 a.m., and published in the issue of the Federal Register for December 9, 2016, 81 F.R. 89020)

## Notice of proposed rulemaking

## Withholding on Payments of Certain Gambling Winnings

### REG-123841-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking

SUMMARY: This document contains proposed regulations under section 3402(q) with respect to withholding on certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The proposed regulations affect both payers and payees of the gambling winnings subject to withholding under section 3402(q).

DATES: Written or electronic comments and requests for a public hearing must be received by March 30, 2017.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-123841-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-123841-16), Courier's Desk, Internal Revenue Service,

1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-123841-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Bergman, (202) 317-6845; concerning submissions of comments or to request a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget through Form W-2G (OMB No. 1545-0238) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Notice and an opportunity to comment on the proposed changes to burden hours for the forms related to this proposed rule will be published in a separate notice in the Federal Register.

##### **Background**

This document contains proposed regulations to amend the Employment Tax Regulations (26 CFR 31) under section 3402 of the Internal Revenue Code relating to withholding from gambling winnings for horse races, dog races, and jai alai. The proposed regulations update and clarify other provisions of §31.3402(q)-1 and make conforming changes to §31.3406(g)-2.

Section 3402(q)(1) requires every person, including the United States government, a state, a political subdivision thereof, or any instrumentality of the foregoing, that makes any payment of gambling winnings to deduct and withhold tax on certain payments at the third-lowest tax rate applicable under section 1(c), which for the 2016 tax year is 25 percent. Section 3402(q)(2) provides an exemption from withholding under this section for payments of winnings to nonresident aliens and foreign corporations subject to withholding under sections 1441(a) or 1442(a). Section 3402(q)(3) describes the winnings subject to withholding as pro-

ceeds from a wager determined in accordance with the rules in that subsection.

Whether winnings are subject to withholding depends on the type of wagering transaction, the proceeds from a wager, and in some cases the odds associated with a wager. Under sections 3402(q)(3)(B) and (C)(i), payers generally must withhold if the proceeds from a wager exceed \$5,000 in a State-conducted lottery, other lottery, sweepstakes, or wagering pool. Under section 3402(q)(3)(A) and (C)(ii), in the case of a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai, the payer must withhold if the proceeds exceed \$5,000 and are at least 300 times as large as the amount wagered. Winnings from bingo, keno, and slot machines are exempted from withholding under section 3402(q)(1) by section 3402(q)(5).

##### *Proceeds from a Wager and Identical Wagers*

Section 3402(q)(4) provides that proceeds from a wager are determined by reducing the amount received by the amount of the wager, and proceeds which are not money are taken into account at fair market value. The current regulations provide rules for determining the amount of proceeds from a wager, including a special rule for “identical wagers.” The rule treats “identical wagers” as paid with respect to a single wager for purposes of calculating the proceeds from the wager. See §31.3402(q)-1(c)(ii).

Neither the statute nor the existing regulations explicitly define the terms “wager” or “identical wagers,” but the regulation text of §31.3402(q)-1(c)(ii), regarding rules for determining the amount of proceeds from a wager, and §31.3402(q)-1(d) provide examples of wagers that are and are not identical wagers. For example, amounts paid on two bets placed in a parimutuel pool on a particular horse to win a particular race are treated as paid with respect to the same wager. These two bets would not be identical, however, if one bet was for the horse to win and the other bet was for the horse to place (which are bets in two separate parimutuel pools, as explained below). Those two bets would also not be identical if one bet was placed in a pool conducted by the racetrack and the other bet was placed in a

separate pool conducted by an off-track betting establishment and such wagers are not pooled with those placed at the racetrack. In addition, two bets on the same race are not identical where the bettor makes an exacta bet on horse M to win and horse N to place and a trifecta bet on horse M to win, horse N to place, and horse O to show. See §31.3402(q)-1(d), Example 11. The preamble to the current regulations provides the following definition for identical bets: “Identical bets are those in which winning depends on the occurrence (or non-occurrence) of the same event or events.” T.D. 7919 (48 FR 46296) (Oct. 12, 1983).

The statute does not explicitly address how to determine the amount of the wager in the case of exotic wagers. Exotic wagers are those other than straight wagers. Straight wagers include bets to win (selecting the first-place finisher), place (selecting a finisher to place first or second), and show (selecting a finisher to place first, second, or third). Examples of exotic bets include multi-contestant bets, such as an exacta (selecting the first and second-place finishers in a single contest, in the correct order) and a trifecta (selecting the first, second, and third-place finishers in a single contest, in the correct order). Other examples include multi-contest bets such as a Pick 6 (selecting the first-place finisher in six consecutive contests).

The instructions to Form W-2G provide the rule for multiple wagers reflected on a single ticket as follows: “For multiple wagers sold on one ticket, such as the \$12 box bet on a Big Triple or Trifecta, the wager is considered as six \$2 bets and not one \$12 bet for purposes of computing the amount to be reported or withheld.” See, e.g., 2016 Instructions to Forms W-2G and 5754, at 2, available at <https://www.irs.gov/pub/irs-pdf/iw2g.pdf>. Thus, according to the instructions, the bettor may only consider the cost of a single winning combination when determining the amount wagered for purposes of determining whether proceeds from a wager meets the threshold for withholding in section 3402(q)(3)(C)(ii).

##### *2015 Request for Comments*

The Treasury Department and the IRS requested comments from the public on the treatment of wagers in parimutuel

gambling on March 4, 2015, in a notice of proposed rulemaking (REG-132253-11) under section 6041 regarding information returns to report winnings from bingo, keno, and slot machine play. The notice of proposed rulemaking stated that taxpayers required to report winnings from parimutuel gambling may have concerns relating to when wagers with respect to horse races, dog races, and jai alai may be treated as identical and that the Treasury Department and the IRS intend to amend the regulations under §31.3402(q)-1.

Multiple commentators requested a rule that would take into account all money wagered in a particular parimutuel pool when determining proceeds from a wager for purposes of determining whether withholding under section 3402(q) was required. In particular, some commentators requested that the Treasury Department and the IRS revise the regulations to provide a definition of the “amount of the wager” when multiple bets are placed in the same pool to include the total amount wagered by a bettor into a specific parimutuel pool for purposes of determining whether wagering proceeds are subject to withholding and reporting. The commentators stated that this change would reflect innovations and changes to today’s modern parimutuel wagering strategies.

### *Reporting Rules*

Section 3402(q)(6) provides that recipients of gambling winnings subject to withholding must furnish a statement to the payer, under penalties of perjury, containing the name, address, and taxpayer identification number of the recipient and each person entitled to any portion of the payment. The current regulations provide that the statement, furnished on a Form W-2G, Certain Gambling Winnings, or Form 5754, Statement by Person(s) Receiving Gambling Winnings, also must indicate if the payee and any other persons entitled to payment are entitled to winnings from identical wagers. §§1.6011-3, 31.3402(q)-1(c)(ii). The payer may rely on this statement in determining the amount of proceeds from the wager. §31.3402(q)-1(c)(ii).

On or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment is made, the payer must file a return on

Form W-2G with the Internal Revenue Service reporting the gambling winnings subject to withholding. §31.3402(q)-1(f). Section 6041(d) and the instructions to Form W-2G require that the payer filing a Form W-2G also furnish a statement to the payee on or before January 31 of the calendar year following the calendar year in which the payment is made.

### **Explanation of Provisions**

The current regulations for withholding from gambling winnings under section 3402(q) were last substantively amended in 1983. According to commentators, since that time, exotic bets on horse races, dog races, and jai alai have accounted for an increasing percentage of total bets placed on horse races, dog races, and jai alai. The increase in exotic betting, and in particular the use of certain methods of exotic betting, has resulted in scenarios where the current rules may result in withholding that significantly exceeds the individual gambler’s ultimate income tax liability. In light of this, the proposed regulations amend the rules regarding how payers determine the amount of the wager in parimutuel wagering transactions with respect to horse races, dog races, and jai alai. Specifically, these proposed regulations address exotic bets on horse races, dog races, and jai alai by providing a new rule to determine the amount of the wager when wagers are placed in a single parimutuel pool and are reflected on a single ticket. In addition, the current regulations under section 3402(q) are updated to reflect current law regarding the withholding thresholds and certain information reporting requirements.

#### *I. Wagers in the Case of Horse Races, Dog Races, and Jai Alai*

##### *A. Parimutuel Betting*

In parimutuel betting, which translates to betting “amongst ourselves,” the bettors themselves establish the odds and payouts, as opposed to having fixed odds. Each type of bet on a contest or series of contests goes into its own parimutuel pool. For example, each win bet goes into the win pool for that contest, regardless of the finisher selected to win. As amounts are wagered in the pool, the odds and

payouts adjust accordingly. Following the contest or contests determinative of a particular pool, all bettors who placed a winning bet share the money placed in that particular pool, less the applicable take-out. Parimutuel betting in the United States is used in betting on horse races, dog races, and jai alai.

Parimutuel betting involves both straight and exotic bets. Each type of straight or exotic bet is placed in its own parimutuel pool. For example, a trifecta bet on a particular contest goes into that contest’s trifecta pool, regardless of the finishers or order of finish selected, and the trifecta pool is separate from the win pool, the exacta pool, and all other pools associated with that particular contest. Exotic bets provide greater odds and bigger pay-offs than straight bets.

Multiple combinations of exotic bets may be placed on a single ticket, making it easier for bettors to place wagers on the various possible outcomes. For example in horse racing, bettors often use box, key, and wheel bets to place the same type of exotic bet (e.g., exacta or trifecta) on multiple combinations of outcomes. Box bets involve betting on all possible outcomes of a specific group of horses in the same race; for example, a three-horse exacta box is a bet in which three specific horses are selected to place first or second in any combination or order of finish. A bettor wins a three-horse exacta box bet if any combination of the bettor’s three horses finishes first and second. Key bets involve betting a single horse in one position with all possible combinations of the other selected horses; for example, a trifecta key is a bet where a single horse is selected to win and the other horses included in the bet are selected to place second or third in any combination or order of finish. Finally, a wheel bet involves multiple horses in multiple combinations in multiple races; for example, a Daily Double wheel is a bet where a single horse is selected to win the first race and every horse is selected in the second race.

##### *B. Comments Regarding Current Treatment of Parimutuel Betting*

Commentators stated that since the regulations were last substantively amended, the rise in the number of exotic

bets available at certain racetracks and the popularity of exotic betting has altered parimutuel betting practices. Commentators stated that, for example, in the 1978 Kentucky Derby, there were three types of bets available to be placed at Churchill Downs racetrack, where the Kentucky Derby is run. Those bets were bets to win, place, or show. By contrast, in the 2015 Kentucky Derby, there were twenty-three types of bets available to be placed at Churchill Downs racetrack, including the superfecta, super high five, and pick 7 jackpot. Furthermore, commentators stated that today approximately 67% of all parimutuel wagering occurs on exotic wagers (versus straight wagers), as compared to the 1970s when approximately 10% of parimutuel wagering occurred on exotic wagers.

Further, commentators stated that the increase in availability of exotic betting has caused bettors to substantially increase their amounts wagered, often by placing box, key, and wheel bets, in a particular parimutuel pool to increase their chances of winning and increase the potential payout. In addition, commentators attributed the rise in popularity of exotic bets to the fact that exotic bets offer significantly higher odds. As a result, commentators stated that modern bettors are putting more money towards bets with greater potential payouts in anticipation of significant winnings.

Commentators also stated that payouts from straight bets were rarely subject to withholding because they virtually never came close to exceeding the 300 to 1 ratio of proceeds to the amount of the wager. On the other hand, exotic bets do result in proceeds exceeding the amount of the wager by a 300 to 1 ratio; for example, seven different exotic bets at the 2015 Kentucky Derby produced payouts exceeding the 300 to 1 ratio. However, given the vast number of potential outcomes possible with exotic bets, the commentators stated that bettors are using techniques such as box, key, or wheel bets to increase their odds. As a result, it is undoubtedly the case that the winners wagered far more into the pool than the cost of the winning bet.

Commentators stated that the tax treatment under the current rules ignores the actual investment in a single parimutuel

pool and may result in withholding that significantly exceeds the amount necessary to cover the individual gambler's ultimate income tax liability and suggested changing the rule to take into account all wagers in the same parimutuel pool. The commentators provided the following example to illustrate this. A bettor makes a seven-horse trifecta box wager, which involves selecting a group of seven horses to place first, second, and third, in any order. This bet has 210 unique possible results. Assuming the bettor bets \$20 on each combination, the total amount wagered is \$4,200. At race time the winning combination carries 304 to 1 odds. After the race, the bettor holds a winning ticket that pays \$6,100 ( $\$304 \times \$20$  wagered + \$20 return of bet). Under the current rules, the racetrack would withhold \$1,520 ( $(\$6,100 - 20) \times 25\%$ ) and report \$6,080 in winnings ( $\$6,100 - \$20$ ) because the rules treat only the \$20 paid for the single winning combination as the amount wagered. However, the commentators stated that the individual has netted only \$1,900 ( $\$6,100$  winnings less  $\$4,200$  wagered), and is left with \$380 ( $\$1,900 - \$1,520$ ) once withholding taxes are taken out, which makes the withholding rate 80% of net winnings.

Under the commentators' proposed change, the amount of the wager would be considered to be \$4,200. Thus the racetrack would not withhold because the proceeds from the wager (\$1,900) are less than the \$5,000 withholding threshold and are also less than \$1,260,000 (300 times the amount wagered). Similarly, the racetrack would not report the proceeds because they are not at least 300 times the amount wagered.

The commentators noted that although the bettor may be able to deduct the losing wagers on the bettor's tax return at the end of the year as a miscellaneous itemized deduction, there would be other consequences. For example, the \$1,520 withholding lowers the amount of money in circulation at the racetrack that day and reduces the bettor's cash on hand, whereas the commentators' proposed change would result in additional cash on hand to be bet in subsequent races.

In addition, the commentators stated that the deduction for losing wagers results in reporting of higher adjusted gross

income than would result under the commentator's proposed change. Commentators further stated that a higher adjusted gross income can cause the bettor to lose unrelated tax benefits. In addition, the deduction is only available if the bettor itemizes deductions and is not subject to the alternative minimum tax. Finally the commentators noted that many states limit itemized deductions for state tax purposes.

### *C. Proposed Rule for the Amount of the Wager in the Case of Horse Races, Dog Races, and Jai Alai*

Proposed §31.3402(q)-1(c)(ii) provides a new rule for purposes of determining the amount of the wager for wagering transactions in horse races, dog races, and jai alai. The proposed rule allows all wagers placed in a single parimutuel pool and represented on a single ticket to be aggregated and treated as a single wager for purposes of determining the amount of the wager. The proposed rule allows a payer to take into account the total amount wagered in a particular pool as reflected on a single ticket to determine whether the winnings are subject to withholding and reporting. This treatment better reflects the full cost of exotic bets. In addition, straight wagers are unlikely to have odds and produce payouts of at least 300 to 1, so they generally are not subject to withholding, regardless of the application of the proposed rule. The proposed regulations contain examples to illustrate the proposed rule for wagering transactions in the case of horse races, dog races, and jai alai.

The proposed rule for determining the amount of the wager addresses the fact that the current rules may result in withholding that significantly exceeds the amount necessary to cover the individual gambler's ultimate income tax liability, and that creates an unnecessary burden on the bettor and the horse racing, dog racing, and jai alai industries. As described in the commentators' example, current rules for exotic bets placed as box, key, or wheel bets can result in an 80% withholding rate on net winnings from wagers placed in the same pool. This result has become more common in the decades since the regulations were last amended because the number of exotic bet types

and the popularity of exotic bets have increased substantially, and various combinations of these exotic bets are often placed together on a single ticket as part of the same transaction.

By limiting the amount of the wager in a wagering transaction with respect to horse races, dog races, and jai alai to the wagers represented on a single ticket, the proposed rule limits the potential for fraud and creates an administrable system for payers. The rule is administrable because it does not require payers to collect information regarding winning wagers where additional wagers placed in the same pool are reflected on multiple tickets. If bettors want to place additional wagers in the same parimutuel pool after already having purchased a ticket, commentators stated that bettors may be able to cancel the first ticket and place the original and additional wagers for that pool on a new ticket.

The proposed regulations maintain the current rule regarding identical wagers. To clarify the meaning of the term, however, the proposed regulations provide a definition of identical wagers taken from the preamble of the current regulations. T.D. 7919 (48 FR 46296). The proposed regulations also move examples of identical wagers from the regulatory text to the examples section.

The Treasury Department and the IRS request comments regarding whether the proposed rule addressing the amount of the wager in a wagering transaction in the case of horse races, dog races, and jai alai should apply to other types of gambling subject to withholding under section 3402(q), such as lotteries.

## *II. Ministerial Updates to Current Regulations*

In addition to the proposed rule for wagers in horse races, dog races, and jai alai, the proposed regulations make ministerial updates to the current regulations to reflect current law.

Proposed regulations §31.3402(q)-1(a) and (b) are amended to reflect the current statutory tax rate for withholding (the third-lowest tax rate under section 1(c)) and the current statutory thresholds for withholding for all types of gambling covered by this regulation (\$5,000). In 1992 and again in 2001, Congress

amended section 3402(q)(1) to change the withholding rate first from 20 percent to 28 percent and then to its current level of “the third lowest rate of tax applicable under section 1(c),” but the current regulations do not reflect either of these statutory amendments. *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub.L. 107-16, § 101(c)(8); Energy Policy Act of 1992, Pub.L. 102-486, § 1934(a). In 1992, Congress also amended sections 3402(q)(3)(A) and (C) to change the withholding threshold for certain types of gambling from \$1,000 to \$5,000, which the current regulations do not reflect. Energy Policy Act, § 1942(a). In addition, the proposed regulations remove certain dates reflecting transition periods, which are no longer necessary.

In addition, proposed regulation §31.3402(q)-1(c)(4) updates the rule regarding payments to nonresident aliens or foreign corporations.

## *III. Information Reporting for Gambling Winnings Subject to Withholding Under Section 3402(q)*

Proposed regulations §31.3402(q)-1(d) and (e) update and clarify the reporting rules for gambling winnings subject to withholding under section 3402(q). The amendments to §31.3402(q)-1(d), regarding the statement by the payee of gambling winnings subject to withholding under section 3402(q), reorganize the current regulations into new sub-sections. Proposed §31.3402(q)-1(d)(1) provides the general rule that each payer of gambling winnings subject to withholding under section 3402(q) must obtain a payee statement. Proposed §31.3402(q)-1(d)(2) describes the content of the payee statement. Proposed §31.3402(q)-1(d)(3) states the reliance rule currently described in §31.3402(q)-1(c)(1)(ii) that where a payee furnishes the required payee statement and, as required by §1.6011-3, indicates that he or she is entitled to winnings from identical wagers, the payer may rely on the statement in determining the total amount of proceeds from the wager.

The amendments to proposed §31.3402(q)-1(e), regarding the information return filed by the payer on Form W-2G, modernize the current reporting rules. First, the proposed regulations re-

place outdated references to the place of filing with a requirement that the return be filed with the appropriate Internal Revenue Service location designated in the instructions to the form.

Second, the proposed regulations require the payer to report the taxpayer identification number of the winner in lieu of the social security number to allow for a broader range of taxpayer identification numbers, including individual taxpayer identification numbers (ITINs) and adoption taxpayer identification numbers (ATINs). This amendment allows truncation of the taxpayer identification number on the statement furnished by the payer to the payee because the regulation no longer requires a social security number. For provisions relating to the use of truncated taxpayer identification numbers, see §31.6109-4 of this chapter.

Third, the proposed regulations update the payee identification provisions. Section 31.3402(q)-1(f)(1)(v) of the current regulations provides that the identification verifying the payee’s identity must include the payee’s social security number. According to the current regulations, examples of acceptable identification include a driver’s license, a social security card, or a voter registration card. However, today most forms of identification do not include a person’s social security number. Therefore, many payees do not have identification that contains the payee’s social security number and, even if they do, they may not have this identification with them at the time that they receive a payment of gambling winnings subject to withholding under section 3402(q).

To address this issue, proposed §§31.3402(q)-1(e)(1)(v) and (e)(2) provide that, in addition to government-issued identification, a properly completed Form W-9 signed by the payee is an acceptable form of identification to verify the payee’s identifying information. Payers who verify payee information using identification set forth in proposed §§31.3402(q)-1(e)(1)(v) and (e)(2) before the date that final regulations implementing these provisions are published in the Federal Register will be treated as meeting the requirements of §31.3402(q)-1(f)(1)(v) of the current regulations.

Fourth, the proposed regulations contain a special rule in §31.3402(q)-1(e)(3) that tribal member identification cards need not contain the payee's photograph to meet the identification requirements in §31.3402(q)-1(e)(1)(v) of the proposed regulations, provided specific criteria are met. This special rule responds to comments raised by Indian tribes in response to the notice of proposed rulemaking (REG-132253-11) under section 6041 regarding information returns to report winnings from bingo, keno, and slot machine play that many tribal identification cards do not contain photographs.

Fifth, the proposed regulations update the obsolete reference to Form W-3G to reflect that payers should use Form 1096 to transmit Forms W-2G to the Internal Revenue Service.

Finally, the proposed regulations in §31.3402(q)-1(e)(5) provides that a payer filing an information return with the Internal Revenue Service must furnish a statement to the payee containing the same information on or before January 31<sup>st</sup> of the year following the calendar year in which payment of the winnings subject to withholding is made. See section 6041(d).

Proposed amendments to the regulations under section 3406 update the reporting requirements to address horse races, dog races, and jai alai. Proposed §31.3406(g)-2(d) is amended to clarify the definition of a reportable gambling winning and to add a cross-reference to §31.3402(q)-1(c) for determining the amount of the wager in a wagering transaction with respect to horse races, dog races, and jai alai, or amounts paid with respect to identical wagers.

### **Proposed Effective/Applicability Date**

These regulations are proposed to apply to payments made after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

### **Statement of Availability of IRS Documents**

IRS published guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington,

DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance regarding withholding and reporting requirements for payers of certain gambling winnings. The requirement for payers to withhold and make information returns is imposed by statute and not these regulations. In addition, this rule reduces the existing burden on payers to comply with the statutory requirement by decreasing the number of payments subject to withholding and reporting. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the requests for comments noted in the Background Section, Treasury and the IRS request comments on any other aspects of the proposed rules, and any other issues relating to the payment of gambling winnings that are not addressed in the proposed regulations. All comments will be available at [www.regulations.gov](http://www.regulations.gov) for public inspection or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hear-

ing will be published in the Federal Register.

### **Drafting Information**

The principal author of these proposed regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

### **List of Subjects in 26 CFR Part 31**

Employment Taxes and Collection of Income Tax at Source.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

#### **PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAXES AT THE SOURCE**

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3402(q)-1 is amended:

1. By revising paragraphs (a)(1), (b), and (c)(1) and (4).

2. By redesignating paragraph (d) as paragraph (f), paragraph (e) as paragraph (d), and paragraph (f) as paragraph (e).

3. By revising newly designated paragraphs (d) and (e).

4. In paragraph (f), removing Example 3 and Example 11, by redesignating Examples 4 through 10 as Examples 3 through 9, and adding examples 10 through 16.

5. In paragraph (f), in newly redesignated Example 4 by removing the language "Example 4" and adding in its place the language "Example 3" and in newly redesignated Example 6 by removing the language "Example 6" and adding in its place the language "Example 5" wherever it appears.

6. By adding paragraph (g).

The revisions and additions read as follows:

*§ 31.3402(q)-1 Extension of withholding to certain gambling winnings.*

(a) *Withholding obligation—(1) General rule.* Every person, including the

Government of the United States, a State, or a political subdivision thereof, or any instrumentality of any of the foregoing making any payment of “winnings subject to withholding” (defined in paragraph (b) of the section) shall deduct and withhold a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment. The tax shall be deducted and withheld upon payment of the winnings by the person making such payment (“payer”). See paragraph (c)(5)(ii) of this section for a special rule relating to the time for making deposits of withheld amounts and filing the return with respect to those amounts. Any person receiving a payment of winnings subject to withholding must furnish the payer a statement as required in paragraph (d) of this section. Payers of winnings subject to withholding must file a return with the Internal Revenue Service and furnish a statement to the payee as required in paragraph (e) of this section. With respect to reporting requirements for certain payments of gambling winnings not subject to withholding, see section 6041 and the regulations thereunder.

\* \* \* \* \*

(b) *Winnings subject to withholding.*

(1) *In general.* Winnings subject to withholding means any payment from—

(i) A wager placed in a State-conducted lottery (defined in paragraph (c)(2) of this section) but only if the proceeds from the wager exceed \$5,000;

(ii) A wager placed in a sweepstakes, wagering pool, or lottery other than a State-conducted lottery but only if the proceeds from the wager exceed \$5,000; or

(iii) Any other wagering transaction (as defined in paragraph (c)(3) of this section) but only if the proceeds from the wager (A) exceed \$5,000 and (B) are at least 300 times as large as the amount of the wager.

(2) *Total proceeds subject to withholding.* If proceeds from the wager qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$5,000, are subject to withholding.

(c) *Definitions; special rules—*(1) *Rules for determining amount of proceeds from a wager—*(i) *In general.* The amount of “proceeds from a wager” is the amount

paid with respect to the wager, less the amount of the wager.

(ii) *Amount of the wager in the case of horse races, dog races, and jai alai.* In the case of a wagering transaction with respect to horse races, dog races, or jai alai, all wagers placed in a single parimutuel pool and represented on a single ticket are aggregated and treated as a single wager for purposes of determining the amount of the wager. A ticket in the case of horse races, dog races, or jai alai is a written or electronic record that the payee must present to collect proceeds from a wager or wagers.

(iii) *Amount paid with respect to a wager—*(A) *Identical wagers.* Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. Two or more wagers are identical wagers if winning depends on the occurrence (or non-occurrence) of the same event or events; the wagers are placed with the same payer; and, in the case of horse races, dog races, or jai alai, the wagers are placed in the same parimutuel pool. Wagers may be identical wagers even if the amounts wagered differ as long as the wagers are otherwise treated as identical wagers under this paragraph (c)(1)(iii)(A). Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, e.g., the drawing of a particular number.

(B) *Non-monetary proceeds.* In determining the amount paid with respect to a wager, proceeds which are not money are taken into account at the fair market value.

(C) *Periodic payments.* Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the amount paid with respect to the wager. The aggregate amount of periodic payments to be made for a person’s life is based on that person’s life expectancy. See §§ 1.72–5 and 1.72–9 of this chapter for rules used in computing the expected return on annuities. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

\* \* \* \* \*

(4) *Certain payments to nonresident aliens or foreign corporations.* A payment of winnings that is subject to withholding tax under section 1441(a) (relating to withholding on nonresident aliens) or 1442(a) (relating to withholding on foreign corporations) is not subject to the tax imposed by section 3402(q) and this section if the payer complies with the requirements of withholding, documentation, and information reporting rules of section 1441(a) or 1442(a) and the regulations thereunder. A payment is treated as being subject to withholding tax under section 1441(a) or 1442(a) notwithstanding that the rate of such tax is reduced (even to zero) as may be provided by an applicable treaty with another country. However, a reduced or zero rate of withholding of tax shall not be applied by the payer in lieu of the rate imposed by sections 1441 and 1442 unless the person receiving the winnings has provided to the payer the documentation required by §1.1441–6 of this chapter to establish entitlement to treaty benefits.

\* \* \* \* \*

(d) *Statement furnished by payee—*(1) *In general.* Each person who is making a payment subject to withholding under this section must obtain from the payee a statement described in paragraph (d)(2) of this section.

(2) *Contents of statement.* (i) Each person who is to receive a payment of winnings subject to withholding under this section must furnish the payer a statement on Form W–2G or 5754 (whichever is applicable) made under the penalties of perjury containing—

(A) The name, address, and taxpayer identification number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment, or

(B) The name, address, and taxpayer identification number of the payee and of every person entitled to any portion of such payment.

(3) If more than one payment of winnings subject to withholding is to be made with respect to a single wager, for example in the case of an annuity, the payee is required to furnish the payer a statement with respect to the first such payment only, provided that such other payments

are taken into account in a return required by paragraph (e) of this section.

(4) *Reliance on statement for identical wagers.* If the payee furnishes the statement which may be required pursuant to § 1.6011-3 of this chapter (regarding the requirement of a statement from payees of certain gambling winnings), indicating that the payee (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers, as defined in paragraph (c)(1)(iii)(A) of this section, and indicating the amount of such winnings, if any, then the payer may rely upon such statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section.

(e) *Return of payer*—(1) *In general.* Every person making payment of winnings for which a statement is required under paragraph (d) of this section shall file a return on Form W-2G with the Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment of winnings is made. The return required by this paragraph (e) need not include the statement by the payee required by paragraph (d) of this section and, therefore, need not be signed by the payee, provided such statement is retained by the payer as long as the contents thereof may become material in the administration of any internal revenue law. In addition, the return required by this paragraph (e) need not contain the information required by paragraph (e)(1)(v) of this section provided such information is obtained with respect to the payee and retained by the payer as long as the contents thereof may become material in the administration of any internal revenue law. For payments to more than one winner, a separate Form W-2G, which in no event need be signed by the winner, shall be filed with respect to each such winner. Each Form W-2G shall contain the following:

- (i) The name, address, and employer identification number of the payer;
- (ii) The name, address, and taxpayer identification number of the winner;
- (iii) The date, amount of the payment, and amount withheld;

(iv) The type of wagering transaction;

(v) Except with respect to winnings from a wager placed in a State-conducted lottery, a general description of the two types of identification (as described in paragraph (e)(2) of this section), one of which must have the payee's photograph on it (except in the case of tribal member identification cards in certain circumstances as described in paragraph (e)(3) of this section), that the payer relied on to verify the payee's name, address, and taxpayer identification number;

(vi) The amount of winnings from identical wagers; and

(vii) Any other information required by the form, instructions, or other applicable guidance published in the Internal Revenue Bulletin.

(2) *Identification.* The following items are treated as identification for purposes of paragraph (e)(1)(v) of this section—

(i) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, tribal member identification card issued by a federally-recognized Indian tribe, or voter registration card) in the name of the payee; and

(ii) A Form W-9, "Request for Taxpayer Identification Number and Certification," signed by the payee that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W-9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(3) *Special rule for tribal member identification cards.* A tribal member identification card need not contain the payee's photograph to meet the identification requirement described in paragraph (e)(1)(v) of this section if—

(i) The payee is a member of a federally-recognized Indian tribe;

(ii) The payee presents the payer with a tribal member identification card issued by a federally-recognized Indian tribe stating that the payee is a member of such tribe; and

(iii) The payer is a gaming establishment (as described in §1.6041-

10(b)(2)(iv) of this chapter) owned or licensed (in accordance with 25 U.S.C. 2710) by the tribal government that issued the tribal member identification card referred to in paragraph (e)(3)(ii) of this section.

(4) *Transmittal form.* Persons making payments of winnings subject to withholding shall use Form 1096 to transmit Forms W-2G to the Internal Revenue Service.

(5) *Furnishing a statement to the payee.* Every payer required to make a return under paragraph (e)(1) of this section must also make and furnish to each payee, with respect to each payment of winnings subject to withholding, a written statement that contains the information that is required to be included on the return under paragraph (e)(1) of this section. The payer must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the winnings subject to withholding is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(f) *Examples.* \* \* \*

*Example 10.* B places a \$15 bet at the cashier window at the racetrack for horse A to win the fifth race at the racetrack that day. After placing the first bet, B gains confidence in horse A's prospects to win and places an additional \$40 bet at the cashier window at the racetrack for horse A to win the fifth race, receiving a second ticket for this second bet. Horse A wins the fifth race, and B wins a total of \$5,500 (100 to 1 odds) on those bets. The \$15 bet and the \$40 bet are identical wagers under paragraph (c)(1)(iii)(A) of this section because winning on both bets depended on the occurrence of the same event and the bets are placed in the same parimutuel pool with the same payer. This is true regardless of the fact that the amount of the wager differs in each case.

B cashes the tickets at different cashier windows. Pursuant to paragraph (d) of this section and §1.6011-3, B completes a Form W-2G indicating that the amount of winnings is from identical wagers and provides the form to each cashier. The payments by each cashier of \$1,500 and \$4,000 are less than the \$5,000 threshold for withholding, but under paragraph (c)(1)(iii)(A) of this section, identical wagers are treated as paid with respect to a single wager for purposes of determining the proceeds from a wager. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$5,445 (\$1,500 + \$4,000 - \$55), the proceeds from the wager are not at least 300 times as great as the amount wagered (\$55 x 300 = \$16,500).

*Example 11.* B makes two \$1,000 bets in a single “show” pool for the same jai alai game, one bet on Player X to show and one bet on Player Y to show. A show bet is a winning bet if the player comes in first, second, or third in a single game. The bets are placed at the same time at the same cashier window, and B receives a single ticket showing both bets. Player X places second in the game, and Player Y does not place first, second, or third in the game. B wins \$8,000 from his bet on Player X. Because winning on both bets does not depend on the occurrence of the same event, the bets are not identical bets under paragraph (c)(1)(iii)(A) of this section. However, pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is the aggregate amount of both wagers (\$2,000) because the bets were placed in a single parimutuel pool and reflected on a single ticket. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$6,000 (\$8,000 – \$2,000), the proceeds from the wager are not at least 300 times as great as the amount wagered (\$2,000 x 300 = \$600,000).

*Example 12.* B bets a total of \$120 on a three-dog exacta box bet (\$20 for each one of the six combinations played) at the dog racetrack and receives a single ticket reflecting the bet from the cashier. B wins \$5,040 from one of the selected combinations. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is \$120, not \$20 for the single winning combination of the six combinations played. The payment is not subject to withholding under section 3402(q) because the proceeds from the wager are \$4,920 (\$5,040 – \$120), which is below the section 3402(q) withholding threshold.

*Example 13.* B makes two \$12 Pick 6 bets at the horse racetrack at two different cashier windows and receives two different tickets each representing a single \$12 Pick 6 bet. In his two Pick 6 bets, B selects the same horses to win races 1–5 but selects different horses to win race 6. All Pick 6 bets on those races at that racetrack are part of a single parimutuel pool from which Pick 6 winning bets are paid. B wins \$5,020 from one of his Pick 6 bets. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the bets are reflected on separate tickets. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$1,252 (((\$5,020 – \$12) x 25%) because the amounts of the proceeds of \$5,008 (\$5,020 – \$12) is greater than \$5,000 and is at least 300 times as great as the amount wagered (\$12 x 300 = \$3,600). The racetrack also must report B’s winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to B.

*Example 14.* C makes two \$50 bets in two different parimutuel pools for the same jai alai game. One bet is an “exacta” in which C bets on player M to win and player N to “place”. The other bet is a “trifecta” in which C bets on player M to win, player N to “place,” and player O to “show.” C wins both bets and is paid \$2,000 with respect to the bet in the “exacta” pool and \$3,100 with respect to the bet in the “trifecta” pool. Under paragraph (c)(1)(iii)(A) of this section, the bets are not identical bets. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount

of the wager for either payment because they are not wagers in the same parimutuel pool. No section 3402(q) withholding is required on either payment because neither payment separately exceeds the \$5,000 withholding threshold.

*Example 15.* C makes two \$100 bets for the same dog to win a particular race. C places one bet at the racetrack and one bet at an off-track betting establishment, but the two pools constitute a single pool. C receives separate tickets for each bet. C wins both bets and is paid \$4,000 from the racetrack and \$4,000 from the off-track betting establishment. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the wager placed at the racetrack and the wager placed at the off-track betting establishment are reflected on separate tickets, despite being placed in the same parimutuel pool. No section 3402(q) withholding is required because neither payment separately exceeds the \$5,000 withholding threshold.

*Example 16.* C places a \$200 Pick 6 bet for a series of races at the racetrack on a particular day and receives a single ticket for the bet. No wager correctly picks all six races that day, so that portion of the pool carries over to the following day. On the following day, C places an additional \$200 Pick 6 bet for that day’s series of races and receives a new ticket for that bet. C wins \$100,000 on the second day. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are on two separate tickets, so C’s two Pick 6 bets are not aggregated for purposes of determining the amount of the wager. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$24,950 ((\$100,000 – \$200) x 25%) because the amount of the proceeds of \$99,800 (\$100,000 – \$200) is greater than \$5,000, and is at least 300 times as great as the amount wagered (\$200 x 300 = \$60,000). The racetrack also must report C’s winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to C.

(g) *Applicability date.* These rules apply to payments made after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For rules that apply to payments made before that date, see 26 CFR 31.3402(q)–1 (revised April 2015).

Par. 3. Section 31.3406–0 is amended by adding an entry for paragraph (h) to §31.3406(g)–2 to read as follows:

§31.3406–0 Outline of the backup withholding regulations.

\* \* \* \* \*

§31.3406(g)–2 *Exception for reportable payments for which backup withholding is otherwise required.*

\* \* \* \* \*

(h) Effective/applicability date.

\* \* \* \* \*

Par. 4. Section 31.3406(g)–2 is amended by revising paragraphs (d)(2)

and (3) and adding paragraph (h) to read as follows:

§ 31.3406(g)–2 *Exception for reportable payment for which withholding is otherwise required.*

\* \* \* \* \*

(d) \* \* \*

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. A gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is \$600 or more and if the proceeds are at least 300 times as large as the amount wagered. See § 1.6041–10 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payer; by

(ii) The amount of the wager.

(3) *Special rules.* For special rules for determining the amount of the wager in a wagering transaction with respect to horse racing, dog racing, and jai alai, or amounts paid with respect to identical wagers, see § 31.3402(q)–1(c).

\* \* \* \* \*

(h) *Applicability date.* The rules apply to reportable gambling winnings paid after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For reportable gambling winnings paid on or before [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], §31.3406(g)–2 (as contained in 26 CFR part 31, revised April 2015) applies.

John Dalrymple  
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the federal Register on December 29, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 30, 2016 81 F.R. 96406)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **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/*.

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