

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 301**

[TD 9809]

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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 **Federal Register**. 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:

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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 **Federal Register**, 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 temporary 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 **Federal Register** 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)(1).

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 receipt 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 **Federal Register** 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 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 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 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 nonqualified 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)(1), which is modified in regulations published elsewhere in this issue of the **Federal Register** 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 **Federal Register** 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 email) 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 **Federal Register**, 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 **Federal Register**, § 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 country 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 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. 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 email) 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 regulations 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 nonqualified 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, non-consenting 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 withholdable 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 participating 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 Web site 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 Web site, 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 Web site. 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 on 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 arrangement 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)(1) 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)(1). In response to the comment, these final regulations provide that the income and asset tests should be performed 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)(j). 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)(j) 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 Web site. 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 Web site 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 **Federal Register**.

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 **Federal Register**).

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)(1). 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 2013 final regulations and correct 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 **Federal Register**, 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 revised in regulations published elsewhere in this issue of the **Federal Register** 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, email, 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 **Federal Register** 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 **Federal Register** 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 **Federal Register**, 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 withholding 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 acquisition, see section I.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 modifications 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 temporary 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 **Federal Register**. 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.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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 passthru 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) Passthru 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, NWP's, or NWT's, 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 withholding 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, executed, 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) supporting the claim of foreign status. 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, NWPs, or NWTs, 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 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. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471–3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI 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

institution 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) * * *

(1) 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)(1) 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), (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)(1) 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)(1), (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)(1), (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)(1) 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 nonparticipating 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.

* * * * *

(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 information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(2) *Special requirements for an FFI withholding statement*—(i) An FFI withholding statement may include either payee-specific information or pooled information that indicates the portion of the payment allocable to a chapter 4 withholding rate pool of U.S. payees, each class of recalcitrant account holders 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 nonqualified 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 withholding statement provided by a participating FFI that applies the election to backup withhold under § 1.1471-4(b)(3)(iii) must also indicate the portion of the reportable payment that is a withholdable payment allocated to each recalcitrant account 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)(1) 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 exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment. With respect to the amount of the payment allocable to each exempt beneficial owner and subject to withholding under chapter 3, see § 1.1441-1(e)(3)(iv).

(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 email) 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 sufficient 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 reviewing 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 acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, a participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or

transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on payments made 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, including a payee that is a foreign branch of a U.S. person (other than a branch that is treated as a QI) or is an FFI that has elected to be treated as a U.S. person for tax purposes under section 953(d), if it has a valid Form W-9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 contains a certification that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W-9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W-9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W-9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person.

* * * * *

(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) * * *

(1) 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 sponsored 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 email) 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 sponsoring entity's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle described in § 1.1471-5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a sponsored, closely held investment vehicle that is a flow-through entity or is acting as an

intermediary with respect to the payment, or by a U.S. branch of such vehicle.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a sponsored, closely held investment vehicle if it obtains a written statement that indicates that the payee is a sponsored, closely held investment vehicle, and provides the sponsoring entity's GIIN, which the withholding agent has verified in the manner described in paragraph (e)(3) of this section. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *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) * * *

(1) 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 withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section.

* * * * *

(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—

(1)(i) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

(ii) A written statement that the payee is a foreign entity that is not a financial institution and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

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

(C) *Special rule for preexisting offshore obligations.* A withholding

agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a direct reporting NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and it has received (either orally or in writing) a GIIN from the direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iii) of this section.

(xi) *Identifying a sponsored direct reporting NFFE*—(A) *In general.* A withholding agent may treat a payment as having been made to a sponsored direct reporting NFFE if it has a withholding certificate that identifies the payee as a sponsored direct reporting NFFE and the withholding certificate includes the sponsored direct reporting NFFE's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section (indicating when a withholding agent may rely upon a GIIN).

(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 email) 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—

(1) A written statement that the payee is a foreign entity that is a sponsored direct reporting NFFE and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section), and

(2) Received (either orally or in writing) the GIIN of the sponsored direct reporting NFFE and has verified the GIIN in the manner described in paragraph (e)(3)(iv) of this section. For payments prior to January 1, 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 payee's claim of status as a participating FFI or registered deemed-compliant FFI, and that is required under paragraph (d)(4) of this section to confirm that the FFI or branch thereof (including an entity that is disregarded as an entity separate from the FFI) claiming status as a participating FFI or registered deemed-compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is

not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. For purposes of this paragraph (e)(3)(i), the GIIN that the withholding agent must confirm is, with respect to a payee that is a participating FFI or registered deemed-compliant FFI, the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence) or, with respect to a payment that is made to a branch (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 sponsored entity has been removed from the list or the date that is one year from the date the sponsored entity's GIIN was actually removed from the list.

(B) *Sponsoring entities (transitional).* 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 documentation collected for AML due diligence purposes, conflicts with the chapter 4 status being claimed. A withholding agent will not, however, have reason to know that a person's claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created. In addition to the specific standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has obtained documentation to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only to the extent provided in this paragraph (e)(4). See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). The limits on reason to know for multiple 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 person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv).

(B) *Standards of knowledge applicable to certain types of documentary evidence*—(1) *Financial statement*. A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold has reason to know that the chapter 4 status claimed is unreliable or incorrect only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds, or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in § 1.1472-1(c)(1)(iv) and the footnotes of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has

collected the financial statement in the course of its account opening or other procedures.

(2) *Organizational documents*. A withholding agent that obtains organizational documents for a payee solely for the purpose of supporting the chapter 4 status claimed by the entity will only be required to review the document sufficiently to establish that the entity is a foreign person and that the purposes for which the entity was formed and its basic activities appear to be of a type consistent with the chapter 4 status claimed, unless otherwise specified in paragraph (d) of this section. A withholding agent that obtains organizational documents for the purpose of establishing that an entity has a particular chapter 4 status will only be required to review the document to the extent needed to establish that the entity is a foreign person, that the requirements applicable to the particular chapter 4 status are met, and that the document was executed, but will not be required to review the remainder of the document.

(v) *Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section*. A withholding agent may not rely upon a classification described in paragraph (c)(5)(ii)(B) of this section or a standardized industry coding system to treat an entity as having a foreign status if there are U.S. indicia described in paragraph (e)(4)(v)(A) of this section associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

* * * * *

(B) * * *

(1) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity, the withholding agent may treat the entity as a foreign person only if the withholding agent obtains a withholding certificate for the entity and one form of documentary evidence, described in paragraph (c)(5) of this section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(2) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign

tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

* * * * *

(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.

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(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 reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent described in § 1.1474–1(a).

(g) *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)(ii) 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) and (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)(i), (d)(7)(ii)(A) introductory text, (d)(7)(ii)(A)(1), (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 (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 (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 subsequent 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 establish the account holder's status as a foreign individual under chapter 61. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(2) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(1) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI (or its 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 responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to

elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts. See chapter 61 for reporting requirements that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See § 301.1474-1(a) 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)(1) 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—

(1) 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)(1) 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)(1) and (3) of this section for its 2014 calendar year. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) * * *

(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

PPFI2 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)(1) 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 expanded 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 Web site, 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 Web site 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 Web site 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).

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

(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)(1) through (6) of this section are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(1) through (6) 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.

(1) 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 payments 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—

(1) through (2) [Reserved]. For further guidance, see § 1.1471-4(d)(4)(iv)(D)(1) 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)(1) 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)(1)(iv) and (v), (e)(5)(iv)(B), (f), (f)(1)(i)(A)(6) and (7), (f)(1)(i)(B)(1), (f)(1)(i)(B)(3), (f)(1)(i)(C)(2), (f)(1)(i)(D)(4) through (6), (f)(1)(i)(D)(7) introductory text, (f)(1)(i)(D)(8), (f)(1)(i)(E), (f)(1)(i)(F)(1)(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)(1) 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 withholdable 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) * * *

(1) 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—

(1) 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 foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473–1(b)). See § 1.1473–1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and indirect ownership in an entity, see § 1.1473–1(b)(2).

(d) *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—

(1) For the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending on December 31 (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) * * *

(1) * * *

(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) * * *

(1) 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) * * *

(1) * * *

(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 account, 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 pension accounts described in an applicable Model 1 or Model 2 IGA) are limited by reference to earned income and compensation of the employee, respectively;

* * * * *

(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 QL, 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 certification 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 Web site 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 interest 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)(1)(iii), (d)(1)(ii)(A)(1)(vi), (d)(1)(ii)(A)(1)(viii), (d)(1)(ii)(A)(1)(ix), (d)(1)(ii)(A)(1)(xi), (d)(1)(ii)(B)(1)(i), (d)(1)(ii)(B)(1)(iii) and (iv), (d)(1)(ii)(B)(1)(vi) and (vii), (d)(1)(ii)(B)(1)(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)(iii).
- 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) * * *
- (1) * * *

(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) * * *
- (1) * * *

(j) 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 reporting 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)(1)(x) of this section for an exempt beneficial owner;

(vii) Except as provided in paragraph (d)(1)(A)(1) 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)(iii)(B)(2). If, however, a participating FFI, deemed-compliant FFI, or QI (as applicable) has made an election under § 1.1471-4(b)(3)(iii), for the portion of the payment that the FFI allocates to each recalcitrant account holder that is subject to backup withholding under section 3406, the withholding agent must report on Form 1099 the amount of the payment and tax withheld in accordance with the form's requirements and accompanying instructions. See § 1.1471-2(a)(2)(i) for the requirement of a withholding agent to withhold on payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also § 1.1471-2(a)(2)(iii) in the case of payments made to a QI. See § 1.1461-1(c)(4)(A) for the extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042-S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under § 1.1461-1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042-S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual

reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) *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 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 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)(1)(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 not treated as U.S. persons—(A) In general.* Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWP, NWTs, and FFIs electing under section 1471(b)(3)) and § 1.1471-4(d)(2)(ii)(F) (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, or WT), and a U.S. branch 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 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 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 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 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 accounts held by recalcitrant account holders on Form 8966, "FATCA Report," regardless of whether withholdable payments are made to such accounts.

(C) *Reporting by a U.S. branch 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)(1) 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)(1) 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)(1) 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 following 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.** Need Authority

■ **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).

[FR Doc. 2016–31601 Filed 12–30–16; 4:15 pm]

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