DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–121647–10]

RIN 1545–BK68

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: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed 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. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 30, 2012. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for May 15, 2012, at 10 a.m. must be received by May 1, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121647–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–121647–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–121647–10). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Sweeney, (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor, *Oluwafunmilayo.P.Taylor@irscounsel.treas.gov,* (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains proposed amendments to 26 CFR part 1 under sections 1471 through 1474 of the Code. On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (the HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. These provisions were originally introduced as part of the Foreign Account Tax Compliance Act of 2009 (H.R. 3933), commonly referred to as FATCA.

Chapter 4 generally requires foreign financial institutions (FFIs) to provide information to the Internal Revenue Service (IRS) regarding their United States accounts (U.S. accounts). Chapter 4 also requires certain non-financial foreign entities (NFFEs) to provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. Chapter 4 imposes a withholding tax on certain payments to FFIs and NFFEs that fail to comply with their obligations.

Since the enactment of chapter 4, the Department of the Treasury (Treasury Department) and the IRS have issued preliminary guidance on the implementation of chapter 4. See Notice 2010–60, 2010–37 I.R.B. 329, Notice 2011–34, 2011–19 I.R.B. 765, and Notice 2011–53, 2011–32 I.R.B. 124 (collectively, the FATCA Notices). See § 601.601(d)(2)(ii)(b). The Treasury Department and the IRS received numerous comments in response to the FATCA Notices, as well as on chapter 4 more generally. These comments were carefully considered in developing these proposed regulations.

II. Chapter 4 in the Context of the U.S. Federal Income Tax Laws

Like the tax systems in many countries, the U.S. Federal income tax system relies on voluntary compliance. That is, taxpayers are expected to compute, report, and remit their Federal income tax liability each year. Also, as is the case in many countries, third-party payors of certain items are required to report these amounts to the IRS. Such reporting serves as an important and long-standing check on voluntary compliance.

The reporting and diligence rules applicable to third-party payors are comprehensive. In particular, chapter 61 of subtitle A of the Code (chapter 61), comprised in relevant part of sections 6041 through 6049, requires certain payors to document their third-party payees and report certain types of payments (for example interest, dividends, and gross proceeds from broker transactions) made to those payees. These rules are subject to exceptions for certain non-U.S. payors (including many FFIs), certain payments of foreign source income, and certain payments to foreign persons. In addition, chapter 3 of subtitle A of the Code (chapter 3), comprised of sections 1441 through 1464, generally requires withholding agents to document their payees and to withhold and report with respect to certain U.S. source payments made to foreign persons. This third-party information reporting assists taxpayers in correctly computing and reporting their tax liabilities, increases compliance with tax obligations, reduces the incidence of and opportunities for tax evasion, and thus helps to maintain the fairness of the U.S. Federal income tax system.

As a result of recent improvements in international communications and the associated globalization of the world economy, U.S. taxpayers' investments have become increasingly global in scope. FFIs now provide a significant proportion of the investment opportunities for, and act as intermediaries with respect to the investments of, U.S. taxpayers. Like U.S. financial institutions, FFIs are generally in the best position to identify and report with respect to their U.S. customers. Absent such reporting by FFIs, some U.S. taxpayers may attempt to evade U.S. tax by hiding money in offshore accounts. To prevent this abuse of the voluntary compliance system and address the use of offshore accounts to facilitate tax evasion, it is essential in today's global investment climate that reporting be available with respect to both the onshore and offshore accounts of U.S. taxpayers. This information reporting strengthens the integrity of the voluntary 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.

To this end, chapter 4 extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. Chapter 4 also imposes increased disclosure obligations on certain NFFEs that present a high risk of U.S. tax avoidance. In addition, chapter 4 provides for withholding on FFIs and NFFEs that do not comply with the reporting and other requirements of chapter 4. This withholding generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, and generally may be

refunded to the extent the withholding exceeds such liability. An FFI that does not comply with the requirements of section 1471(b), however, and that beneficially owns the payment from which tax is withheld under chapter 4, may not receive a credit or refund of such tax except to the extent required by a treaty obligation of the United States.

Recognizing that there are costs associated with the implementation of any new reporting regime, the Treasury Department and the IRS have considered carefully all comments received and have met extensively with stakeholders to develop an implementation approach that achieves an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. Further to this end, the Treasury Department and the IRS will continue to engage with interested stakeholders, including foreign governments, in connection with finalizing these proposed regulations regarding the efficient and effective implementation of chapter 4. In particular, to minimize burden, facilitate coordination with local law restrictions, and improve collaboration in the battle against offshore tax evasion, the Treasury Department and the IRS are considering, in consultation with foreign governments, an alternative approach to implementation whereby an FFI could satisfy the reporting requirements of chapter 4 if: (1) the FFI collects the information required under chapter 4 and reports this information to its residence country government; and (2) the residence country government enters into an agreement to report this information annually to the IRS, as required by chapter 4, pursuant to an income tax treaty, tax information exchange agreement, or other agreement with the United States. Moreover, consistent with the policies underlying chapter 4, the Treasury Department and the IRS remain committed to working cooperatively with foreign jurisdictions on multilateral efforts to improve transparency and information exchange on a global basis.

III. Statutory Provisions and FATCA Notices

A. Statutory Provisions

Section 1471(a) requires any withholding agent to withhold 30 percent of any withholdable payment to an FFI that does not meet the requirements of section 1471(b). A withholdable payment is defined in section 1473(1) to mean, subject to certain exceptions: (i) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

An FFI meets the requirements of section 1471(b) if it either enters into an agreement (an FFI agreement) with the IRS under section 1471(b)(1) to perform certain obligations or meets requirements prescribed by the Treasury Department and the IRS to be deemed to comply with the requirements of section 1471(b). An FFI is defined as any financial institution that is a foreign entity, other than a financial institution organized under the laws of a possession of the United States (generally referred to as a U.S. territory in this preamble). For this purpose, section 1471(d)(5) defines a financial institution as, except to the extent provided by the Secretary, any entity that: (i) Accepts deposits in the ordinary course of a banking or similar business; (ii) as a substantial portion of its business, holds financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Section 1471(b)(1)(A) and (B) requires an FFI that enters into an FFI agreement (a participating FFI) to identify its U.S. accounts and comply with verification and due diligence procedures prescribed by the Secretary. A U.S. account is defined under section 1471(d)(1) as any financial account held by one or more specified United States persons, as defined in section 1473(3), (specified U.S. persons) or United States owned foreign entities (U.S. owned foreign entities), subject to certain exceptions. Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. A U.S. owned foreign entity is defined in section 1471(d)(3) as any foreign entity that has one or more substantial U.S. owners (as defined in section 1473(2)).

A participating FFI is required under section 1471(b)(1)(C) and (E) to report certain information on an annual basis to the IRS with respect to each U.S. account and to comply with requests for additional information by the Secretary with respect to any U.S. account. The information that must be reported with respect to each U.S. account includes: (i) The name, address, and taxpayer identifying number (TIN) of each account holder who is a specified U.S. person (or, in the case of an account holder that is a U.S. owned foreign entity, the name, address, and TIN of each specified U.S. person that is a substantial U.S. owner of such entity); (ii) the account number; (iii) the account balance or value; and (iv) except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide). In lieu of reporting account balance or value and reporting gross receipts and gross withdrawals or payments, a participating FFI may, subject to conditions provided by the Secretary, elect under section 1471(c)(2) to report the information required under sections 6041, 6042, 6045, and 6049 as if such institution were a U.S. person and each holder of such U.S. account that is a specified U.S. person or U.S. owned foreign entity were a natural person and citizen of the United States. If foreign law would prevent the FFI from reporting the required information absent a waiver from the account holder, and the account holder fails to provide a waiver within a reasonable period of time, the FFI is required under section 1471(b)(1)(F) to close the account.

Section 1471(b)(1)(D)(i) requires a participating FFI to withhold 30 percent of any passthru payment to a recalcitrant account holder or to an FFI that does not meet the requirements of section 1471(b) (nonparticipating FFI). A passthru payment is defined in section 1471(d)(7) as any withholdable payment or other payment to the extent attributable to a withholdable payment. Section 1471(d)(6) defines a recalcitrant account holder as any account holder that fails to provide the information required to determine whether the account is a U.S. account, or the information required to be reported by the FFI, or that fails to provide a waiver of a foreign law that would prevent reporting. A participating FFI may, subject to such requirements as the Secretary may provide, elect under section 1471(b)(3) not to withhold on passthru payments, and instead be subject to withholding on payments it receives, to the extent those payments are allocable to recalcitrant account

holders or nonparticipating FFIs. Section 1471(b)(1)(D)(ii) requires a participating FFI that does not make such an election to withhold on passthru payments it makes to any participating FFI that makes such an election.

Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group, as defined in section 1471(e)(2).

Section 1471(f) exempts from withholding under section 1471(a) certain payments beneficially owned by certain persons, including any foreign government, international organization, foreign central bank of issue, or any other class of persons identified by the Secretary as posing a low risk of tax evasion.

Section 1472(a) requires a withholding agent to withhold 30 percent of any withholdable payment to an NFFE if the payment is beneficially owned by the NFFE or another NFFE, unless the requirements of section 1472(b) are met with respect to the beneficial owner of the payment. Section 1472(d) defines an NFFE as any foreign entity that is not a financial institution as defined in section 1471(d)(5).

The requirements of section 1472(b) are met with respect to the beneficial owner of a payment if: (i) The beneficial owner or payee provides the withholding agent with either a certification that such beneficial owner does not have any substantial U.S. owners, or the name, address, and TIN of each substantial U.S. owner; (ii) the withholding agent does not know or have reason to know that any information provided by the beneficial owner or payee is incorrect; and (iii) the withholding agent reports the information provided to the Secretary.

Section 1472(c)(1) provides that withholding under section 1472(a) does not apply to payments beneficially owned by certain classes of persons, including any class of persons identified by the Secretary. In addition, section 1472(c)(2) provides that withholding under section 1472(a) does not apply to any class of payment identified by the Secretary for purposes of section 1472(c) as posing a low risk of tax evasion.

Section 1474(a) provides that every person required to withhold and deduct any tax under chapter 4 is made liable for such tax and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of chapter 4. In general, the beneficial owner of a payment is entitled to a refund for any overpayment of tax actually due under other provisions of the Code. However, with respect to any tax properly deducted and withheld under section 1471 from a payment beneficially owned by an FFI, section 1474(b)(2) provides that the FFI is not entitled to a credit or refund, except to the extent required by a treaty obligation of the United States (and, if a credit or refund is required by a treaty obligation of the United States, no interest shall be allowed or paid with respect to such credit or refund). In addition, section 1474(b)(3) provides that no credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under chapter 4 unless the beneficial owner of the payment provides the Secretary with such information as the Secretary may require to determine whether such beneficial owner is a U.S. owned foreign entity and the identity of any substantial U.S. owners of such entity.

Section 1474(c) provides that information provided under chapter 4 is confidential under rules similar to section 3406(f), except that the identity of an FFI that meets the requirements of section 1471(b) is not treated as return information for purposes of section 6103.

Section 1474(d) provides that the Secretary shall provide for the coordination of chapter 4 with other withholding provisions under the Code, including providing for the proper crediting of amounts deducted and withheld under chapter 4 against amounts required to be deducted and withheld under other provisions.

Section 1474(f) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, chapter 4.

B. FATCA Notices

On August 29, 2010, the Treasury Department and the IRS released Notice 2010–60, which provided preliminary guidance regarding the implementation of chapter 4. In particular, Notice 2010–60: (i) Defined the scope of certain grandfathered obligations; (ii) provided initial guidance on what entities would be considered FFIs and NFFEs; (iii) set forth the account due diligence procedures for FFIs and U.S. financial institutions with respect to new and preexisting accounts held by individuals and entities; (iv) provided initial guidance on the information required to be reported by FFIs with respect to their U.S. accounts and recalcitrant account holders; and (v) requested further comments on a number of issues.

On April 8, 2011, the Treasury Department and the IRS released Notice 2011–34, which modified and supplemented the guidance in Notice 2010–60. Specifically, Notice 2011–34: (i) Modified the account due diligence procedures for preexisting accounts held by individuals; (ii) provided initial guidance regarding the definition and identification of passthru payments; (iii) provided guidance on initial categories of FFIs that would be deemed compliant with the requirements of section 1471(b); (iv) modified and supplemented the guidance in Notice 2010–60 regarding the reporting required of FFIs with respect to their U.S. accounts; (v) provided initial guidance regarding the interaction of the qualified intermediary (QI) regime and chapter 4; and (vi) provided initial guidance regarding the application of section 1471(b) to expanded affiliated groups.

On July 14, 2011, the Treasury Department and the IRS released Notice 2011–53, which provides for phased implementation of certain requirements under chapter 4, and discusses certain substantive and procedural matters.

Explanation of Provisions

I. Executive Summary

These proposed regulations seek to implement the chapter 4 reporting and withholding regime efficiently and effectively by establishing adequate lead times to allow system development and by minimizing the overall compliance burdens in a manner that is consistent with chapter 4's enforcement goals. To accomplish this goal, the proposed regulations incorporate the guidance described in the FATCA Notices and, in response to comments and further consideration, revise and refine the rules discussed therein. The proposed regulations also provide guidance on topics that were not addressed in the FATCA Notices.

The proposed regulations take into account the numerous helpful comments received, provide extensive guidance on all major aspects of the implementation of chapter 4, and, in response to requests received by the Treasury Department and the IRS, provide detail and certainty on the scope of obligations required under chapter 4. To facilitate review of this detailed operational guidance, the following section provides a summary of the most significant modifications and additions the proposed regulations

make to the guidance provided in the FATCA Notices, an overview of the obligations of FFIs, and the timeline for phased implementation as currently proposed.

A. Modifications and Additions to FATCA Notices

Significant modifications and additions to the guidance in the FATCA Notices include the following:

1. *Expanded Scope of ''Grandfathered Obligations.''* Section 501(d)(2) of the HIRE Act provides that no amount shall be required to be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, or from the gross proceeds from any disposition of such an obligation. To facilitate implementation of chapter 4 by withholding agents and FFIs, the proposed regulations exclude from the definition of withholdable payment and passthru payment any payment made under an obligation outstanding on January 1, 2013, and any gross proceeds from the disposition of such an obligation.

2. *Transitional Rules for Affiliates with Legal Prohibitions on Compliance.* Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group. Notice 2011–34 states that the Treasury Department and the IRS intend to require that each FFI that is a member of an expanded affiliated group must be a participating FFI or deemed-compliant FFI in order for any FFI in the expanded affiliated group to become a participating FFI. Recognizing that some jurisdictions have in place laws that prohibit an FFI's compliance with certain of chapter 4's requirements, the proposed regulations, pursuant to the authority granted in section 1471(e), provide a two-year transition, until January 1, 2016, for the full implementation of this requirement. During this transitional period, an FFI affiliate in a jurisdiction that prohibits the reporting or withholding required by chapter 4 will not prevent the other FFIs within the same expanded affiliated group from entering into an FFI agreement, provided that the FFI in the restrictive jurisdiction agrees to perform due diligence to identify its U.S. accounts, maintain certain records, and meet certain other requirements. Similar rules apply to branches of FFIs that are subject to comparable legal prohibitions on compliance.

3. *Additional Categories of Deemed-Compliant FFIs.* Section 1471(b)(2) provides that an FFI may be deemed to comply with the requirements of section 1471(b) if it meets certain requirements. Notice 2011–34 provides initial guidance regarding certain categories of FFIs that will be deemed to comply with the requirements of section 1471(b). The proposed regulations expand the guidance in Notice 2011–34 and provide additional categories of deemed-compliant institutions. The expansion of categories of deemed-compliant institutions is intended to focus the application of chapter 4's obligations on financial institutions that provide services to the global investment community and reduce or eliminate burdens on truly local entities and other entities for which entering into an FFI agreement is not necessary to carry out the purposes of chapter 4.

4. *Modification of Due Diligence Procedures for the Identification of Accounts.* Section 1471(b) requires participating FFIs to identify their U.S. accounts. Notices 2010–60 and 2011–34 provide guidance regarding the due diligence procedures that participating FFIs will be required to undertake to identify their U.S. accounts. A number of comments suggested modifications to that guidance, in particular with respect to preexisting accounts, to reduce the administrative burden on FFIs. To address these concerns in a manner that is consistent with the policy objectives of chapter 4, the proposed regulations rely primarily on electronic reviews of preexisting accounts. For preexisting individual accounts that are offshore obligations, manual review of paper records is limited to accounts with a balance or value that exceeds $1,000,000 (unless the electronic searches meet certain requirements, in which case manual review is not required). In addition, the proposed regulations provide detailed guidance on the precise scope of paper records required to be searched. Additionally, with respect to preexisting accounts, individual accounts with a balance or value of $50,000 or less, and certain cash value insurance contracts with a value of $250,000 or less, are excluded from the due diligence procedure. With respect to preexisting entity accounts, a number of burden-reducing measures are proposed, including exclusions of accounts of $250,000 or less and extended reliance on information gathered in the context of the due diligence required to comply with anti-money laundering/''know your customer'' (AML/KYC) rules, and simplified procedures to identify the chapter 4 status of preexisting entity accounts. With respect to new accounts, the proposed due diligence rules rely extensively on an FFI's existing customer intake procedures. Accordingly, the proposed regulations generally do not require an FFI to make significant modifications to the information collected on customer intake, other than with respect to account holders identified as FFIs, as passive investment entities, or as having U.S. indicia.

5. *Guidance on Procedures Required to Verify Compliance.* Section 1471(b)(1)(B) requires a participating FFI to comply with such verification procedures as the Secretary may require with respect to the identification of U.S. accounts. Notice 2010–60 states that the Treasury Department and the IRS were exploring the possibility of relying on written certifications by high-level management employees regarding the steps taken to comply with chapter 4, and Notice 2011–34 provides further guidance on the certifications to be provided by officers of a participating FFI. The proposed regulations modify and supplement the guidance in Notices 2010–60 and 2011–34 by providing that responsible FFI officers will be expected to certify that the FFI has complied with the terms of the FFI agreement. Verification of such compliance through third-party audits is not mandated. If an FFI complies with the obligations set forth in an FFI agreement, it will not be held strictly liable for failure to identify a U.S. account.

6. *Refinement of the Definition of Financial Account.* Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. The proposed regulations refine the definition of financial accounts to focus on traditional bank, brokerage, money market accounts, and interests in investment vehicles, and to exclude most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule.

7. *Extension of the Transition Period for the Scope of Information Reporting.* Notice 2011–53 provides for phased implementation of the reporting required under chapter 4 with respect to U.S. accounts. Pursuant to Notice 2011–53, only identifying information (name, address, TIN, and account number) and account balance or value of U.S. accounts would be required to be reported in 2014 (with respect to 2013). Numerous commentators indicated that they would need additional time to make the systems adjustments necessary

to be able to report income and gross proceeds. To facilitate the implementation of chapter 4 by FFIs, the proposed regulations provide that reporting on income will be phased in beginning in 2016 (with respect to the 2015 calendar year), and reporting on gross proceeds will begin in 2017 (with respect to the 2016 calendar year). In addition, the proposed regulations provide that FFIs may elect to report information either in the currency in which the account is maintained or in U.S. dollars.

8. *Passthru Payments.* Section 1471(b)(1)(D) requires participating FFIs to withhold on passthru payments made to nonparticipating FFIs and recalcitrant account holders. Notice 2011–53 states that participating FFIs will not be obligated to withhold on passthru payments that are not withholdable payments (foreign passthru payments) made before January 1, 2015. The Treasury Department and the IRS have received numerous comments expressing concern about the costs, administrative complexity, and legal impediments associated with identifying and withholding on passthru payments. The comments indicated that, without additional time to work through these issues, it would be impossible for many FFIs to commit to fulfill their obligations under chapter 4. In recognition of these concerns, and to facilitate implementation of the chapter 4 rules by FFIs, the proposed regulations provide that withholding will not be required with respect to foreign passthru payments before January 1, 2017. Instead, until withholding applies, to reduce incentives for nonparticipating FFIs to use participating FFIs to block the application of the chapter 4 rules, the proposed regulations require participating FFIs to report annually to the IRS the aggregate amount of certain payments made to each nonparticipating FFI. With respect to the scope and ultimate implementation of withholding on foreign passthru payments, the Treasury Department and the IRS request comments on approaches to reduce burden, for example, by providing a *de minimis* exception from foreign passthru payment withholding and a simplified computational approach or safe harbor rules to determine an FFI's passthru payment percentage. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, the Treasury Department and the IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding. In addition, where such an agreement provides for the foreign government to report to the IRS information regarding U.S. accounts and recalcitrant account holders, FFIs in such jurisdictions may not be required to withhold on any foreign passthru payments to recalcitrant account holders.

B. Summary of Obligations of FFIs

The proposed regulations provide a detailed explanation of how an FFI can satisfy the obligations imposed by the statutory provisions of chapter 4 and thus avoid withholding. A summary of the proposed rules follows.

1. Due Diligence Required To Identify U.S. Accounts

Chapter 4 requires FFIs to identify U.S. accounts, which include both accounts held by U.S. individuals and certain U.S. entities, and accounts held by foreign entities with substantial U.S. owners (generally, owners with a greater than ten percent interest). To provide certainty, and minimize costs and burdens in a manner that is consistent with policy objectives, the proposed regulations outline the due diligence required to be undertaken by FFIs to identify U.S. accounts. For this purpose, the proposed regulations distinguish between the diligence expected with respect to individual accounts and entity accounts and between preexisting accounts and new accounts. It is intended that FFIs that adhere to the diligence guidelines outlined in the proposed regulations will be treated as compliant with the requirement to identify U.S. accounts and will not be held to a strict liability standard.

a. Preexisting Individual Accounts

- Accounts with a balance or value that does not exceed $50,000 are exempt from review, unless the FFI elects otherwise.
- Certain cash value insurance and annuity contracts held by individual account holders that are preexisting accounts with a value or balance of $250,000 or less are exempt from review, unless the FFI elects otherwise.
- Accounts that are offshore obligations with a balance or value that exceeds $50,000 ($250,000 for a cash value insurance or annuity contract) but does not exceed $1,000,000 are subject only to review of electronically searchable data for indicia of U.S. status. For this purpose, U.S. indicia include: (1) Identification of an account holder as a U.S. person; (2) a U.S. place of birth; (3) a U.S. address; (4) a U.S. telephone number; (5) standing instructions to transfer funds to an account maintained in the United States; (6) a power of attorney or signatory authority granted to a person with a U.S. address; or (7) a U.S. ''in-care-of'' or ''hold mail'' address that is the sole address the FFI has identified for the account holder. No further search of records or contact with the account holder is required unless U.S. indicia are found through the electronic search. The $1,000,000 threshold replaces the $500,000 threshold and the private banking test proposed in the FATCA Notices. Accordingly, FFIs will not be required to distinguish between private banking accounts and other accounts.
- Accounts with a balance that exceeds $1,000,000 are subject to review of electronic and non-electronic files for U.S. indicia, including an inquiry of the actual knowledge of any relationship manager associated with the account. To minimize burden, review of non-electronic files is limited to the current customer files and certain other documents, and is required only to the extent that the electronically searchable files do not contain sufficient information about the account holder.

b. New Individual Accounts

For individual accounts opened after the effective date of an FFI's agreement, the FFI will be required to review the information provided at the opening of the account, including identification and any documentation collected under AML/KYC rules. If U.S. indicia are identified as part of that review, the FFI must obtain additional documentation or treat the account as held by a recalcitrant account holder. Accordingly, FFIs will generally not need to make significant changes to the information collected during the account opening process in order to identify U.S, accounts, except to the extent that U.S. indicia are identified.

c. Preexisting Entity Accounts

- Preexisting entity accounts with account balances of $250,000 or less are exempt from review until the account balance exceeds $1,000,000.
- For remaining preexisting entity accounts, FFIs can generally rely on AML/KYC records and other existing account information to determine whether the entity is an FFI, is a U.S. person, is excepted from the requirement to document its substantial U.S. owners (for example, because it is engaged in a nonfinancial trade or business), or is a passive investment entity (referred to in the regulations as a ''passive NFFE'').

○ In the case of preexisting accounts of passive investment entities with account balances that do not exceed $1,000,000, FFIs may generally rely on information collected for AML/KYC due diligence purposes to identify substantial U.S. owners.

○ In the case of preexisting entity accounts of passive investment entities with account balances that exceed $1,000,000, FFIs must obtain information regarding all substantial U.S. owners or a certification that the entity does not have substantial U.S. owners.

d. New Entity Accounts

• The following new entity accounts are exempt from documentation of substantial U.S. owners:

○ Accounts of another FFI (other than an owner-documented FFI for which the participating FFI has agreed to perform reporting); and

○ Accounts of an entity engaged in an active nonfinancial trade or business or otherwise excepted from documentation requirements.

• With respect to the remaining entities (essentially, passive investment entities), FFIs will be required to determine whether the entity has any substantial U.S. owners upon opening a new account, generally by obtaining a certification from the account holder.

2. Deemed-Compliant FFIs

The statute grants the Treasury Department and the IRS regulatory authority to identify certain FFIs as ''deemed-compliant'' FFIs that may avoid withholding under chapter 4 without entering into an FFI agreement. The FATCA Notices identified certain types of FFIs that would be deemed to be compliant with chapter 4. The proposed regulations implement the exclusions provided in the FATCA Notices, and expand the categories of deemed-compliant FFIs to include certain banks and investment funds conducting business only with local clients, low-risk entities, or participating FFIs, subject to restrictions designed to prevent the FFIs from being used for U.S. tax evasion. In addition, the proposed regulations expand the category of retirement plans that are treated as posing a low risk of tax evasion and thus are excepted from the chapter 4 requirements.

3. Transitional Rule for Affiliated Groups

The proposed regulations provide that, until January 1, 2016, a nonparticipating FFI or branch that is subject to foreign laws that prohibit that FFI or branch from complying with the requirements of section 1471(b) will not disqualify an otherwise participating FFI group with which it is affiliated, as long as the FFI or branch complies with the due diligence procedures required of participating FFIs for identifying U.S. accounts and maintains records of the account holder documentation it collects. These ''limited FFI affiliates'' and ''limited branches'' will be subject to withholding upon receipt of withholdable payments.

4. Phase-In of Reporting Obligations

The proposed regulations phase in the reporting obligations of FFIs as follows:

• For reporting in 2014 and 2015 (with respect to calendar years 2013 and 2014), participating FFIs are required to report only name, address, TIN, account number, and account balance with respect to U.S. accounts.

• Beginning with reporting in 2016 (with respect to calendar year 2015), in addition to the aforementioned information, income associated with U.S. accounts must be reported.

• Beginning with reporting in 2017 (with respect to calendar year 2016), full reporting, including information on the gross proceeds from broker transactions, will be required.

5. Phase-In of Scope of Passthru Payments

The proposed regulations phase in the passthru payment regime in two steps.

• Beginning on January 1, 2014, FFIs, like U.S. withholding agents, will be required to withhold on passthru payments that are withholdable payments. FFIs will also be required to report annually on the aggregate amount of certain payments to each nonparticipating FFI for the 2015 and 2016 calendar years.

• Beginning no earlier than January 1, 2017, the scope of passthru payments will be expanded beyond withholdable payments and FFIs will be required to withhold on such payments pursuant to and in accordance with future guidance. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, Treasury and IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding.

6. Refunds

The statute provides that, to the extent withholding on a payment under chapter 4 exceeds the beneficial owner's underlying U.S. tax liability, the beneficial owner may claim a refund for the overwithheld amount. No refund is available, however, for payments beneficially owned by nonparticipating FFIs, except to the extent required under an income tax treaty. In addition, the proposed regulations provide that an NFFE claiming a refund (other than a refund attributable to a reduced rate of tax under a tax treaty obligation of the United States) must provide information regarding the NFFE's substantial U.S. owners, or certification that the NFFE does not have substantial U.S. owners. The Treasury Department and the IRS intend to issue future guidance regarding the substantiation requirements necessary for claiming a refund.

II. Detailed Description of the Provisions of the Proposed Regulations

A. Section 1.1471–1—Scope of Chapter 4 Provisions and Definitions

Proposed § 1.1471–1(a) describes the purpose and scope of the proposed regulations under sections 1471 through 1474. Paragraph (b) provides definitions of terms relevant to the provisions of chapter 4 and the regulations thereunder. In order to maintain consistency with the structure of the statutory provisions of chapter 4, certain terms are defined in other sections of the regulations. For example, § 1.1471–5 contains certain definitions that apply only for purposes of section 1471 and the regulations thereunder, and § 1.1473–1 contains definitions of certain terms contained in section 1473. In order to facilitate review of the regulations, § 1.1471–1(b) contains specific cross-references to the sections in which each such term is defined. Many of the relevant terms are also used in chapters 3 and 61, and the proposed regulations in most cases adopt the terms and definitions provided in the regulations under those chapters. In the instances in which a different definition is used for purposes of the proposed regulations, the Treasury Department and the IRS generally intend to revise the definitions provided in the regulations under chapter 3 or 61 to conform to the chapter 4 definitions. It is expected that these conforming changes, and the other changes to chapter 3 or 61 guidance needed to conform to chapter 4, as noted in this preamble, will become effective on January 1, 2014, when the withholding and reporting obligations under chapter 4 begin to be phased in.

B. Rules Applicable to Withholding Agents

1. Overview

Under the proposed regulations, the rules relating to the requirement to withhold U.S. tax on certain payments

apply principally to U.S. financial institutions or withholding agents. FFIs, other than FFIs serving as intermediaries with respect to withholdable payments, will generally not be required to withhold tax on payments made to account holders or nonparticipating FFIs before January 1, 2017. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, Treasury and IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding. In addition, where such an agreement provides for the foreign government to report to the IRS information regarding U.S. accounts and recalcitrant account holders, FFIs in such jurisdictions may not be required to withhold on any foreign passthru payments to recalcitrant account holders. The proposed regulations generally coordinate withholding under chapters 3 and 4 by requiring a withholding agent to withhold on payments of U.S. source FDAP income under chapter 4 when the withholding agent would be responsible for withholding under chapter 3.

2. Section 1.1471–2—Requirement To Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

Paragraph (a)(1) of § 1.1471–2 provides the general rule that, absent an exception, a withholding agent must withhold under section 1471(a) on a withholdable payment made after December 31, 2013, to an FFI regardless of whether the FFI receives the withholdable payment as a beneficial owner or intermediary. Paragraph (a)(2) provides special withholding rules, including a requirement for withholding agents to withhold with respect to payments of U.S. source FDAP to a participating FFI that is not a QI and is acting as an intermediary or that is a nonwithholding flow-through entity for chapter 3 purposes, unless the participating FFI provides the documentation necessary to determine the portion of the payment for which no withholding is required under chapter 4. A participating FFI that acts as an intermediary or that is a nonwithholding flow-through entity and that provides a valid withholding certificate and all required documentation is not required to withhold or report such payment under chapter 4 unless it knows or has reason to know that the withholding agent failed to withhold the correct amount or failed to report the payment correctly. These rules are intended to reduce instances in which overwithholding occurs because a withholding agent applies withholding under chapter 3 to a withholdable payment that is also subject to withholding by the participating FFI with respect to its own account holders under chapter 4.

Paragraph (a)(2)(iii) describes the circumstance in which a participating FFI will be permitted to make an election under section 1471(b)(3) to be withheld upon rather than to withhold on a passthru payment. Generally, a participating FFI that is a QI may make an election under section 1471(b)(3) to be withheld upon rather than to withhold only with respect to a payment that is U.S. source FDAP income and only if the participating FFI has not assumed primary withholding responsibility under chapter 3. A participating FFI that is a QI and that does not make the election under section 1473(b)(3) with respect to U.S. source FDAP income must assume primary withholding responsibility under chapter 3. The election under section 1471(b)(3) is not extended to withholding foreign partnerships (WPs) or withholding foreign trusts (WTs) because these entities are generally required to assume chapter 3 withholding responsibilities under their respective agreements with respect to their partners, beneficiaries, or owners, and the Treasury Department and the IRS intend to expand their responsibilities to assume chapter 4 withholding to coordinate their withholding requirements. Similarly, a foreign branch of a U.S. financial institution that is a QI not assuming primary withholding responsibility under chapter 3 must provide a withholding agent with the documentation necessary to perform withholding under chapter 4 with respect to payments of U.S. source FDAP income.

Paragraph (a)(2)(iv) describes the obligation of a financial institution organized under the laws of one of the U.S. territories (territory financial institution) to withhold on withholdable payments. Similar to the rules provided in chapter 3, a territory financial institution that acts as an intermediary with respect to a withholdable payment may agree to be treated similarly to a U.S. financial institution with respect to withholding and reporting under chapter 4. If a territory financial institution is a flow-through entity or acts as an intermediary with respect to a withholdable payment, the territory financial institution does not have an obligation to withhold under chapter 4, if it has provided its withholding agent with certain information to allow the withholding agent to withhold.

Paragraph (a)(2)(v) provides that when multiple withholding agents that are brokers are involved in effecting a sale, each broker must determine whether it is required to withhold on its payment of gross proceeds by reference to the status of its payee for chapter 4 purposes.

This paragraph also provides that for a ''delivery versus payment'' transaction, ''cash on delivery'' transaction, or other similar account or transaction, each broker that pays the gross proceeds is a withholding agent with respect to the payment.

Paragraph (a)(3) coordinates the withholding requirements of sections 1471(a) and 1471(b) with respect to participating FFIs that make withholdable payments to account holders, and generally provides that a participating FFI that complies with the withholding requirements of section 1471(b), as described in § 1.1471–4(b) and its FFI agreement, will be deemed to satisfy its withholding obligations with respect to withholdable payments under section 1471(a).

Paragraph (a)(4) describes payments for which no withholding is required, including payments for which the withholding agent lacks control, custody, or knowledge, and certain payments to participating FFIs and territory financial institutions. Paragraph (a)(4) also sets forth a transitional rule that exempts from withholding under section 1471(a) certain payments made prior to January 1, 2015, with respect to a preexisting account for which the withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, unless the payee is a prima facie FFI. The rules for determining if a payee is a prima facie FFI require the withholding agent to search its electronic data for certain indications that the payee is an FFI. In addition, paragraph (a)(4) provides for certain exceptions to withholding for payments made to certain classes of payees.

Paragraph (b) of § 1.1471–2 describes certain obligations the payments on which will be exempt from withholding under chapter 4. Section 501(d)(2) of the HIRE Act provides that no amount shall be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, (two years after the date of enactment of the HIRE Act) or from the gross proceeds from any disposition of such an obligation. Paragraph (b)(1) provides that withholding is not required with respect to any payment under a grandfathered obligation or from the gross proceeds from any disposition of

such an obligation. Paragraph (b)(2)(ii) defines the term *grandfathered obligation* as any obligation outstanding on January 1, 2013, and the term *obligation* as a legal agreement that produces or could produce a withholdable payment or passthru payment, other than an instrument that is treated as equity for U.S. tax purposes or that lacks a stated expiration or term.

Paragraphs (b)(2)(iii) and (iv) provide that the determination of whether an obligation is outstanding on January 1, 2013, depends upon the type of obligation. A debt instrument is outstanding on January 1, 2013, if it has an issue date, as determined under U.S. tax law, before January 1, 2013. A significant modification under § 1.1001–3 will result in the obligation being treated as newly issued as of the date of the significant modification. An obligation that is not a debt instrument is outstanding on January 1, 2013, if a legally binding agreement establishing the obligation was executed before January 1, 2013. A material modification of the obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification, and whether (and when) a material modification has occurred will be determined based upon all relevant facts and circumstances. Paragraph (b)(3) describes special rules to determine when a payment is made under a grandfathered obligation in the case of a flow-through entity with respect to a partner, beneficiary, or owner in such entity. See section XIX.G of this preamble for a request for comments regarding a potential grandfather status for certain investment vehicles.

IV. Section 1.1471–3—Establishing a Payee's Chapter 4 Status

Paragraph (a) of § 1.1471–3 sets forth the rules for determining the payee for chapter 4 purposes and the documentation requirements to establish a payee's chapter 4 status. These rules generally follow the rules under § 1.1441–1(b)(2) for determining the payee of a payment subject to withholding or reporting for chapter 3 purposes, but are modified in several ways, including to account for the requirement of withholding agents to determine an FFI's status for chapter 4 purposes and to determine whether an NFFE that is a flow-through entity is an active NFFE under § 1.1472–1(c)(1)(v). The Treasury Department and the IRS intend to revise Forms W–8 and W–9 as necessary to permit a payee to establish its status for both chapters 3 and 4 on one form.

Paragraph (c) of § 1.1471–3 provides rules for when a withholding agent may reliably associate a withholdable payment with valid documentation. Paragraph (c)(2) sets forth the documentation requirements for payments made through an intermediary or flow-through entity that is not the payee. Paragraph (c)(3) provides the standards for withholding certificates, written statements (in lieu of withholding certificates), withholding statements, and documentary evidence; describes a withholding agent's responsibilities with respect to changes in circumstances and documenting payees after payments are made; allows for the electronic transmission of withholding certificates (including by facsimile); and allows a withholding agent to continue to accept a prior version of the withholding certificate for six months after an IRS revision of the withholding certificate (based on the revision date shown on the updated withholding certificate).

Paragraph (d) of § 1.1471–3 provides the general documentation requirements to establish a payee's chapter 4 status for determining whether withholding applies under section 1471 or 1472. Paragraph (d) also sets forth the specific documentation requirements that must be met in order to treat a payee as having a particular chapter 4 status, and provides certain exceptions and special rules for payees that hold offshore and preexisting accounts. Consistent with the rules for documentation of offshore accounts contained in § 1.6049–5(c)(4), paragraph (d) allows a withholding agent that makes a payment to an account that is an offshore obligation to rely on documentary evidence, in certain cases supplemented by a written statement, to establish the payee's chapter 4 status in lieu of obtaining a withholding certificate. To minimize the burden on withholding agents to collect new documentation for preexisting accounts, paragraph (d) provides that for withholdable payments made prior to January 1, 2017, with respect to a preexisting account, a withholding agent may treat a payee as a participating FFI or a registered deemed-compliant FFI if it has a valid withholding certificate establishing the payee's foreign status and the withholding agent has verified the payee's FFI–EIN (provided by the payee either orally or in writing) on the IRS's published FFI list. With respect to preexisting accounts held by passive NFFEs with a balance or value of $1,000,000 or less, paragraph (d)(11)(vi)(D)(*2*) permits a withholding agent to rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee.

Paragraph (e) sets forth the standards of knowledge for when a withholding agent knows or has reason to know that a withholding certificate is unreliable or incorrect, and modifies the standards set forth in chapter 3 for a withholding agent to determine the foreign status of a payee by adding a telephone number in the United States and a U.S. place of birth as reasons to know that a withholding certificate establishing foreign status is unreliable or incorrect, unless additional documentation of foreign status is obtained. The Treasury Department and the IRS intend to modify the chapter 3 rules regarding standards of knowledge to conform to these requirements. Paragraph (e) also requires a withholding agent to review the IRS's published FFI list and to check annually to confirm a payee's claim to be a participating FFI or registered deemed-compliant FFI.

Paragraph (f) of § 1.1471–3 sets forth presumption rules for determining the payee's chapter 4 status in the absence of documentation or when documentation is unreliable or incorrect. The presumption rules set forth in paragraph (f) for purposes of chapter 4 differ from the presumption rules of chapters 3 and 61 because the rules in paragraph (f) require a withholding agent to presume that certain entities that are treated as exempt recipients under § 1.6049–4(c)(1)(ii) and for which reliable documentation is not obtained are foreign persons. The Treasury Department and the IRS intend to make a conforming change to the presumption rules set forth in chapters 3 and 61.

V. Section 1.1471–4—Foreign Financial Institution Agreement (FFI Agreement)

A. In General

The Treasury Department and the IRS intend to publish a draft model FFI agreement in early 2012, and intend to publish a final model FFI agreement, incorporating comments received, in the fall of 2012. Section 1.1471–4 sets forth the general requirements that will apply to an FFI under an FFI agreement. Paragraph (a) of § 1.1471–4 includes a general description of the withholding, due diligence, reporting, verification, and certain other requirements under the FFI agreement. Paragraphs (b), (c), and (d) set forth in more detail the withholding, due diligence, and account reporting requirements that will apply to an FFI under an FFI agreement.

The FFI agreement will also provide the IRS's verification process for

determining a participating FFI's compliance with its FFI agreement. As described in paragraph (a), this will require, among other things, that a participating FFI: (i) Adopt written policies and procedures governing the participating FFI's compliance with its responsibilities under the FFI agreement; (ii) conduct periodic internal reviews of its compliance (rather than periodic external audits, as is presently required for many QIs); and (iii) periodically provide the IRS with a certification and certain other information that will allow the IRS to determine whether the participating FFI has met its obligations under the FFI agreement. The Treasury Department and the IRS intend to include the requirements to conduct these periodic reviews and to provide their certifications in the FFI agreement or in other guidance. The Treasury Department and the IRS request comments regarding the scope and content of such reviews and the factual information and representations FFIs should be required to include as part of such certifications. The proposed FFI agreement also will provide that repetitive or systematic failures of the participating FFI's processes relating to its compliance with the FFI agreement may result in enhanced compliance verification requirements such as an external audit of one or more issues identified by the IRS. The proposed FFI agreement also will provide the egregious circumstances that will cause a participating FFI to be in default with respect to its FFI agreement.

B. Withholding Requirements Under the FFI Agreement

Paragraph (b) of § 1.1471–4 describes the withholding requirements of participating FFIs and provides that a participating FFI is required to withhold on any passthru payment that is a withholdable payment made to a recalcitrant account holder or a nonparticipating FFI (or a participating FFI that has made an election to be withheld upon under section 1471(b)(3)) after December 31, 2013. The requirements for withholding on foreign passthru payments are reserved.

Paragraph (b) of § 1.1471–4 also provides that a participating FFI is a withholding agent for purposes of chapter 4 and thus is subject to the requirements of sections 1471(a) and 1472(a) with respect to withholdable payments. Paragraph (b)(2) provides, however, that a participating FFI that complies with the withholding requirements of paragraph (b) and its FFI agreement will be deemed to satisfy its withholding obligations with respect to withholdable payments under sections 1471(a) and 1472(a).

Paragraph (b)(4) provides a special rule for dormant accounts, under which a participating FFI that withholds on passthru payments (including withholdable payments) made to a recalcitrant account holder of a dormant account 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. Paragraph (b)(4) provides that within 90 days of the account ceasing to be dormant, the participating FFI must obtain the appropriate documentation for the account holder, in which case the tax withheld is refunded to the account holder. If the participating FFI fails to obtain the required documentation within 90 days, the participating FFI must deposit the tax withheld.

Paragraph (b)(5) provides a special withholding rule for U.S. branches of participating FFIs, which treats a U.S. branch similar to a U.S. financial institution with respect to the withholding requirements under chapter 4. This paragraph provides that a U.S. branch that satisfies its backup withholding obligations under section 3406(a) with respect to accounts treated as held by U.S. non-exempt recipients will be treated as satisfying its withholding obligations under section 1471(b) with respect to such accounts. Paragraph (b)(5) thereby eliminates duplicate withholding that would otherwise occur with respect to account holders of a U.S. branch that are (or are presumed to be) U.S. non-exempt recipients to which backup withholding under section 3406 would apply. A U.S. branch of a participating FFI is also subject to special reporting requirements described in paragraph (d) of § 1.1471–4, which are coordinated with its withholding requirements under this paragraph.

C. Identification of Account Holders Under the FFI Agreement

Paragraph (c) of § 1.1471–4 describes the procedures for participating FFIs to identify and document U.S. accounts and accounts other than U.S. accounts. Paragraph (c)(2) describes the general requirements with respect to identification of account holders and incorporates the principles of § 1.1471–3 that determine the chapter 4 status of an account holder, associate an account with valid documentation (without regard to payments), and establish the standards of knowledge for reliance on documentation. Paragraph (c)(2) also requires a participating FFI to retain records of documentation collected, including electronic searches and responses to relationship manager inquiries with respect to certain high-value accounts, for a minimum of six years. The account identification and documentation for participating FFIs described in paragraph (c) generally follow the procedures described in Notice 2011–34 with some modifications made in response to comments.

For identification of entity accounts, paragraph (c)(3) incorporates the identification and documentation rules of § 1.1471–3 and provides an exception from these procedures for preexisting accounts held by entities that are offshore obligations with an account balance or value of $250,000 or less, subject to further diligence if the account balance or value subsequently exceeds $1,000,000. An account that meets this exception is not treated as a U.S. account, and the account holder is not treated as a nonparticipating FFI for withholding and reporting purposes with respect to the account.

For new accounts established for individual account holders, a participating FFI is required to review all information collected under its existing account opening procedures to determine whether the account holder has U.S. indicia (defined in paragraph (c)(4)(i)(A)). Where an account has U.S. indicia, paragraph (c)(4)(i)(B) describes the documentation a participating FFI is required to obtain in order to establish whether the account is a U.S. account. For accounts that are required to be treated as U.S. accounts, the participating FFI is generally required to collect a Form W–9 from each individual account holder. Except for such cases, these rules are intended to minimize the extent to which participating FFIs would need to modify their account opening and documentation collection procedures to comply with these requirements.

Paragraph (c)(4)(ii) of § 1.1471–4 incorporates the rule provided in § 1.1471–5(a)(4), which provides that a participating FFI may treat as other than a U.S. account a preexisting account with a balance or value of $50,000 or less that is held by one or more individuals. Paragraph (c)(4)(iii) provides a documentation exception for preexisting accounts of individual account holders that are offshore obligations, other than cash value insurance or annuity contracts, with an account balance or value of $50,000 or less. Paragraphs (c)(4)(iii)(A), (B), and (C) provide the requirements for accounts to meet this documentation exception, including aggregation rules. Paragraph (c)(4)(iv) provides a

documentation exception for preexisting cash value insurance or annuity contracts of individual account holders if such account has an account balance or value of $250,000 or less on the last day of the calendar year preceding the effective date of the FFI's FFI agreement. Accounts that meet these two exceptions will be subject to further due diligence procedures if the account balance or value subsequently exceeds $1,000,000. Further, an account that meets a documentation exception is not treated as a U.S. account and the account holder of such account is not treated as a recalcitrant account holder for withholding and reporting purposes.

Paragraph (c)(5) provides the currency translation rules for determining the account balance or value. Paragraph (c)(6) provides several examples illustrating the application of the aggregation rules described in paragraphs (c)(4)(iii) and (iv).

Paragraph (c)(7) provides an alternative to the general identification and documentation procedure of paragraph (c)(4)(i) for preexisting offshore accounts of individual account holders. Paragraph (c)(7)(ii) requires, as part of this alternative procedure, that the participating FFI conduct an electronic search for U.S. indicia and obtain the appropriate documentation to establish the account holder's status if U.S. indicia are found. A participating FFI that follows this alternative procedure with respect to an account will not be attributed knowledge with respect to information contained in any account files that the participating FFI did not review and that it was not required to review under this alternative procedure. Additionally, under this alternative procedure, a participating FFI will be treated as having obtained the required documentary evidence if the participating FFI's file contains a notation stating that documentary evidence has been examined and listing the type of document examined and the name of the employee that reviewed the document. The rule described in the preceding sentence is intended to limit those cases in which a participating FFI would need to contact its preexisting account holders to obtain additional documentation of their chapter 4 status.

In response to comments, the proposed regulations do not incorporate the requirement to identify and perform an enhanced review of private banking accounts, as described in Notice 2011–34. Instead, paragraph (c)(8) requires that a participating FFI perform an additional enhanced review of high-value accounts. A high-value account is any account with a balance or value that exceeds $1,000,000 at the end of the calendar year preceding the effective date of the participating FFI's FFI agreement, or at the end of any subsequent calendar year. As part of the enhanced review, the participating FFI must identify all high-value accounts for which a relationship manager has actual knowledge that the account holder is a U.S. person. For these accounts, the participating FFI is required to obtain from the account holder a Form W–9, and a valid and effective waiver, if necessary. For other high-value accounts, paragraph (c)(8)(iii) also requires an enhanced review of paper and electronic files. In response to comments, paragraph (c)(8)(iii)(B) provides that the paper review is limited to the current customer master file and certain documents, described in paragraphs (c)(8)(iii)(A)(*1*) through (*5*), obtained by the participating FFI in the five years prior to the effective date of its FFI agreement, and the review is required only to the extent sufficient information about the account holder is not available in the participating FFI's electronically searchable information. Paragraph (c)(8)(iv) provides an exception from the enhanced review requirement for any high-value account for which the participating FFI has obtained a Form W–8BEN and documentary evidence to establish the foreign status of the account holder, but the participating FFI is still required to perform the relationship manager inquiry. Paragraph (c)(9) provides an exception from the electronic search and, if the account is a high-value account, the enhanced review requirement (excluding the relationship manager inquiry) if the account was previously documented by the participating FFI to establish the account holder's status as a foreign individual in order to meet its obligations under a QI, WP, or WT agreement or to fulfill its reporting obligations as a U.S. payor under sections 6041, 6042, 6045, and 6049.

Paragraph (c)(10) requires a responsible officer of a participating FFI to make certain certifications. The first certification is required to confirm, with respect to its preexisting accounts that are high-value accounts, that within one year of the effective date of the FFI agreement the participating FFI has completed the required review and to the best of the responsible officer's knowledge, after conducting a reasonable inquiry, the participating FFI did not have any formal or informal practices or procedures in place at any time from August 6, 2011 (120 days from the release of Notice 2011–34 to the public) through the date of such certification to assist account holders in the avoidance of chapter 4. The Treasury Department and the IRS request comments regarding alternative due diligence or other procedures that should be required of FFIs that are unable to certify that no such practices or procedures were in place after such date in order to maintain participating FFI status.

The second certification by a responsible officer is required to confirm, with respect to all of its preexisting accounts, that within two years of the effective date of its FFI agreement the participating FFI has completed the account identification procedures and documentation requirements or, if it has not obtained the documentation required to be obtained with respect to an account, the participating FFI treats the account holder of such an account as a recalcitrant account holder or nonparticipating FFI.

D. Reporting Requirements of Participating FFIs

Paragraph (d) of § 1.1471–4 describes the reporting responsibilities of participating FFIs with respect to U.S. accounts and accounts held by recalcitrant account holders, and includes rules to phase in the reporting requirements. Paragraph (d)(2)(i) provides that a participating FFI is required to report any account that it is required to treat as a U.S. account or as held by a recalcitrant account holder that it maintained at any time during the preceding calendar year or as of the end of the year, respectively.

Paragraph (d)(2)(ii) provides that the participating FFI that maintains the account is responsible for reporting the account for each calendar year subject to an exception that requires a participating FFI to report with respect to account holders of a territory financial institution that acts as an intermediary with respect a withholdable payment and that does not agree to be treated as a U.S. person with respect to the payment. Paragraph (d)(2)(ii)(C) also provides an exception for a participating FFI that elects for one or more of its branches to separately report the accounts maintained by each such branch. This election is intended to address legal restrictions on sharing account holder information across branches located in different jurisdictions and the limitations of many FFIs' information technology systems.

Paragraph (d)(2)(iii)(A) provides a special reporting rule for participating FFIs (other than U.S. branches) that are U.S. payors to coordinate their chapter

61 reporting requirements with respect to U.S. non-exempt recipients with their chapter 4 reporting with respect to U.S. accounts. This rule provides that a participating FFI that is a U.S. payor may add the information required under paragraph (d)(5)(ii) to its reporting for chapter 61 purposes to satisfy the participating FFI's reporting requirements for U.S. accounts under chapter 4. Paragraph (d)(2)(iii)(B) describes a special reporting rule for a U.S. branch of a participating FFI to satisfy its reporting requirements under chapter 4 and to coordinate this reporting with its withholding requirements under § 1.1471–4(b). This reporting rule requires a U.S. branch to report for chapter 4 purposes in the same manner as a U.S. financial institution.

Paragraph (d)(2)(iv) requires a participating FFI that maintains an account held by a financial institution that it has identified as an owner-documented FFI to report information with respect to each owner of the owner-documented FFI that is a specified U.S. person.

Paragraph (d)(3) provides rules for reporting accounts held by specified U.S. persons and accounts held by U.S. owned foreign entities under section 1471(c)(1). These rules prescribe the information to be reported with respect to accounts required to be treated as U.S. accounts, the time and manner of filing the required form, and procedures for requesting an extension to file such forms. If a separate reporting election is not made with respect to a branch (as described in this preamble), a participating FFI is also required to report the jurisdiction of the branch that maintains the U.S. account being reported.

Paragraph (d)(4) provides guidance on the information required to be included on the U.S. account information reporting form, including the methods for determining the account balance or value and the currency to be used for reporting account balances and payments made with respect to the account. These rules generally follow the proposed guidance described in Notice 2011–34, but allow a participating FFI to report its U.S. accounts in the currency in which the account is maintained. Paragraph (d)(4)(vi) provides record retention requirements for account statements. The IRS is developing a form for U.S. account reporting and the procedures for processing the form.

Paragraph (d)(5) prescribes the reporting requirements for those participating FFIs that elect to report U.S. accounts under section 1471(c)(2). This paragraph provides that a participating FFI that makes such election must report under sections 6041, 6042, 6045, and 6049 with respect to reportable payments to the same extent as is required of a U.S. payor and requires that the participating FFI treat each holder of a U.S. account that is a specified U.S. person or U.S. owned foreign entity as a payee who is an individual and citizen of the United States. Paragraph (d)(5) also provides that the election under section 1471(c)(2) does not apply to cash value insurance or annuity contracts that are financial accounts and that would otherwise be subject to the reporting requirements of section 6047.

For accounts held by recalcitrant account holders, paragraph (d)(6) provides for aggregate reporting of recalcitrant account holders in separate categories. The separate categories of accounts held by recalcitrant account holders are accounts with U.S. indicia, accounts of other recalcitrant account holders, and dormant accounts. Paragraph (d)(6)(ii) defines dormant accounts and prescribes when an account ceases to be treated as a dormant account.

Paragraph (d)(7) sets forth special reporting rules for accounts maintained for the 2013 through 2015 calendar years. Paragraph (d)(7)(v)(B) provides that, with respect to the 2013 year, participating FFIs must report by September 30, 2014, those accounts identified as U.S. accounts or as held by recalcitrant account holders as of June 30, 2014. However, this paragraph further provides that a U.S. payor (including a U.S. branch) is not required to follow this special June 30, 2014, determination date and may instead report with respect to the 2013 calendar year in accordance with the reporting dates provided under chapter 61 with respect to all accounts identified as U.S. accounts or as held by recalcitrant account holders as of December 31, 2013. These rules also phase in the extent of information required to be reported by participating FFIs with respect to the 2013 through 2015 calendar years.

Paragraphs (d)(8) through (10) reserve on the reporting requirements for participating FFIs that are QIs, and for WPs and WTs with respect to their partners, owners, and beneficiaries. The Treasury Department and the IRS seek comments on coordinating the chapter 3 reporting requirements and existing withholding requirements of these entities under their respective agreements with the reporting and withholding requirements under chapter 4 (including QIs that are foreign branches of U.S. financial institutions). With respect to QIs, the Treasury Department and the IRS do not intend to limit reporting under chapter 4 to QI designated accounts as currently defined in the QI model agreement.

E. Expanded Affiliated Group Requirements

Paragraph (e)(1) of § 1.1471–4 provides the general rule that, for any member of an expanded affiliated group to be a participating FFI or registered deemed-compliant FFI, each FFI that is a member of the group must be either a participating FFI or registered deemed-compliant FFI. Paragraphs (e)(2), (3), and (4) provide exceptions to this general rule for certain branches, FFI affiliates, and QIs. Paragraph (e)(1) also provides that each FFI that is a member of an expanded affiliated group must complete a registration form with the IRS and agree to all the requirements for the status for which it applies with respect to all of the accounts it maintains.

Paragraph (e)(2) permits an FFI to be a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of the FFI agreement. Paragraph (e)(2)(ii) defines a branch as a unit, business or office of the FFI that is treated as a branch under the regulatory regime of the country in which it is located or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI, and maintains books and records separate from the books and records of the participating FFI (and any other of its branches). Further, all units, businesses, or offices of a participating FFI in a single country (including the country of organization or incorporation) are treated as a single branch. Paragraph (e)(2)(iii) defines a *limited branch* as a branch that cannot report the information required to be reported with respect to its U.S. accounts to the IRS and cannot close or transfer such accounts, or that cannot withhold on its recalcitrant account holders or accounts held by nonparticipating FFIs and cannot close or transfer such accounts. To qualify for limited branch status, the FFI, as part of its registration process, must: (i) Identify the relevant jurisdiction of each branch for which it seeks limited branch status; (ii) agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs; (iii) retain account holder documentation pertaining to those identification requirements for six years from the effective date of its FFI agreement; (iv) report to the IRS with

respect to its accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch; (v) treat each such branch as a separate entity for purposes of withholding; (vi) agree that each such branch will not open new accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs; and (vii) agree that each such branch will identify itself to withholding agents (including affiliates of the FFI) as a nonparticipating FFI. Paragraph (e)(2)(v) requires a participating FFI to withhold on certain withholdable payments that it is considered to receive on behalf of a limited branch. Paragraph (e)(2)(vi) provides that a branch will cease to be a limited branch after the earlier of December 31, 2015, or the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of the FFI agreement. In order to retain its status, a participating FFI must notify the IRS by such date that the branch will comply with the FFI agreement.

Paragraph (e)(3) permits an FFI that is a member of an expanded affiliated group to obtain status as a participating FFI notwithstanding that one or more members of the group cannot satisfy the requirements of the FFI agreement. Similar to the requirements under paragraph (e)(2) for a limited branch, paragraph (e)(3)(ii) defines a *limited FFI* as an FFI that, under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, cannot report or withhold as required under the FFI agreement. Paragraph (e)(3)(iii) also provides registration requirements for limited FFI status that are similar to those for limited branches. Paragraph (e)(3)(iv) requires participating and deemed-compliant FFIs to treat limited FFIs as nonparticipating FFIs with respect to withholdable payments made to these affiliates. No withholding will be required, however, with respect to foreign passthru payments made to a limited FFI. Paragraph (e)(3)(v) provides that an FFI will cease to qualify as a limited FFI either after December 31, 2015, or the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of the FFI agreement. Participating and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by such date, the FFI that ceased to be limited notifies the IRS that it will comply with the FFI agreement.

Paragraph (e)(4) provides a special rule for QIs. The Treasury Department and the IRS intend to require all QIs that are FFIs to become participating FFIs. Therefore, in order for an FFI to renew its QI agreement for chapter 3 purposes, an FFI will be required to be a participating FFI. However, paragraph (e)(4) permits QIs to retain their status as a QI for a limited period of time (until December 31, 2015) even though the QI cannot comply with the provisions of an FFI agreement. In such case, the QI is treated as a limited FFI and must identify itself to its withholding agents as a nonparticipating FFI.

VI. Section 1.1471–5—Section 1471 Definitions

Section 1.1471–5 sets forth additional definitions that are applicable to the regulations under section 1471 and to the FFI agreement.

A. U.S. Account

Paragraph (a)(2) of § 1.1471–5 defines the term *U.S. account* as any financial account maintained by a financial institution that is held by one or more specified U.S. persons or U.S. owned foreign entities. Paragraph (a)(3) generally provides that an account is held by the person listed or identified as the holder of such account with the financial institution that maintains the account, even if that person is a flow-through entity. Paragraphs (a)(3)(ii) through (v) set forth exceptions and other rules that supplement the general rule for determining the holder of an account. For accounts held by a grantor trust, the grantor is treated as the owner of the account or assets in the account to the extent required under the principles of sections 671 through 679. For accounts held by agents, investment advisors, and similar persons, the person on whose behalf such person is acting is treated as the account holder. For accounts held jointly, each joint holder will be treated as owning the account. Finally, for accounts that are insurance and annuity contracts, the account holder is the person who can access the cash value of the contract or change the beneficiary, or, if there is no such person, the account holder is the beneficiary.

Paragraph (a)(4) sets forth the exception from U.S. account status provided in section 1471(d)(1)(B) for any depository account held by one or more individuals with an aggregate balance or value that does not exceed $50,000. Paragraph (a)(4)(ii) provides aggregation rules for determining the aggregate balance or value of the account for purposes of this exception to U.S. account status. The same rules apply to both preexisting and new accounts. Generally, the rules provide that depository accounts are aggregated with other depository accounts only for purposes of applying the exception from U.S. account status provided in section 1471(d)(1)(B).

B. Financial Account

Section 1471(d)(2) provides that except as provided by the Secretary, the term *financial account* means, with respect to any financial institution, any depository account maintained by such financial institution; any custodial account maintained by such financial institution; and any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market). In addition, the technical explanation of the HIRE Act prepared by the Joint Committee on Taxation states that the Secretary may ''prescribe special rules addressing circumstances in which certain categories of companies, such as insurance companies, are financial institutions or the circumstances in which certain contracts or policies, for example annuity contracts or cash value life insurance contracts, are financial accounts or United States accounts * * *.'' Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310,* the ''Hiring Incentives to Restore Employment Act,'' under Consideration by the Senate,'' (JCX–4–10), February 23, 2010, at 44 (Technical Explanation).

Paragraph (b)(1) of § 1.1471–5 defines the term *financial account.* First, the proposed regulations define a *depository account* to include a commercial, checking, savings, time, or thrift account, an account evidenced by a certificate of deposit or similar instruments, and any amount held with an insurance company under an agreement to pay interest. A *custodial account* is defined to include an account that holds any financial instrument or contract held for investment for the benefit of another person. The proposed regulations exclude from the definition of a financial account certain savings accounts (including both retirement and pension accounts and nonretirement savings accounts) that meet certain requirements with respect to tax treatment and the type and amount of contributions. They also exclude any account that otherwise constitutes a financial account if it is held solely by one or more exempt beneficial owners described in § 1.1471–6 or by nonparticipating FFIs that hold the

account as intermediaries solely on behalf of one or more such owners. Thus, a participating FFI need not determine whether such an account is a U.S. account or held by a recalcitrant account holder.

The proposed regulations also provide guidance on the treatment of debt or equity as a financial account. First, as provided in section 1471(d)(2)(C), debt or equity that is regularly traded on an established securities market is not a financial account. For this purpose, debt or equity interests are considered regularly traded on an established securities market if trades in such interests are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior year, and the aggregate number of such interests that are traded on such market or markets during the prior year is at least ten percent of the average number of such interests outstanding during the prior year.

Second, the proposed regulations provide that an equity interest includes a capital or profits interest in a partnership and, in the case of a trust that is a financial institution, the interest of an owner under sections 671 through 679 and a beneficial interest in a trust described in § 1.1473–1(b)(3).

Third, the proposed regulations provide that an equity or debt interest in a financial institution is a financial account if it is an equity or debt interest in a financial institution that is engaged primarily in the business of investing, reinvesting, or trading securities. In the case of a financial institution that is engaged in a banking or similar business, holds financial assets for the account of others, or is an insurance company, equity or debt instruments in such financial institution will constitute financial accounts only if the value of those interests is determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments.

Finally, to address the circumstances in which certain insurance or annuity contracts are financial accounts, paragraph (b)(1)(iv) includes in the definition of a financial account insurance contracts that include an investment component—namely cash value insurance contracts and annuity contracts. The proposed regulations exclude from the definition of financial account insurance contracts that provide pure insurance protection (such as term life, disability, health, and property and casualty insurance contracts).

C. U.S. Owned Foreign Entity

Paragraph (c) of § 1.1471–5 defines the term *U.S. owned foreign entity* as any foreign entity that has one or more substantial U.S. owners. Additionally, paragraph (c) provides that an owner-documented FFI will be treated as a U.S. owned foreign entity if it has one or more direct or indirect owners that are specified U.S. persons, whether or not it has a substantial U.S. owner.

D. Financial Institution and FFI

Section 1471(d)(4) and § 1.1471–5(d) provide that an FFI means any financial institution that is a foreign entity. A territory financial institution is not an FFI.

Section 1471(d)(5) provides that except as otherwise provided by the Secretary, the term *financial institution* means any entity that: (i) Accepts deposits in the ordinary course of a banking or similar business; (ii) holds as a substantial portion of its business financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

In addition, the Technical Explanation states that the Secretary has authority to ''prescribe special rules addressing circumstances in which certain categories of companies, such as insurance companies, are financial institutions.'' Technical Explanation, at 44.

Paragraph (e) of § 1.1471–5 provides guidance on the types of entities that constitute ''financial institutions.'' Paragraph (e)(2) lists the activities that constitute a ''banking or similar business'' for a deposit-taking institution, and clarifies that entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as a ''bank'' under section 585(a)(2) (including ''banks'' as defined in section 581 and any corporation to which section 581 would apply except for the fact that it is a foreign corporation). Instead, the proposed regulations provide that the determination of whether an entity conducts a banking or similar business is based on the character of the business conducted, and the fact that the entity is subject to local regulation is relevant, but not necessarily determinative.

Paragraph (e)(3) defines what constitutes holding financial assets as a ''substantial portion'' of an entity's business by reference to a bright line test based on gross income. As in the case of deposit-taking institutions, the fact that an entity is subject to the banking or credit laws of one or more jurisdictions is relevant to, but not necessarily determinative of, financial institution status.

The proposed regulations also provide guidance regarding whether an entity is engaged primarily in the business of investing, reinvesting, or trading securities and other relevant assets. Paragraph (e)(1)(iii) includes within the types of securities that cause a financial institution to be engaged primarily in the business of investing, reinvesting, or trading notional principal contracts and insurance and annuity contracts that are traded, held for investment, or securitized. Paragraph (e)(4) provides that an entity is engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income from those activities is at least 50 percent of the entity's total gross income over the testing period.

Paragraph (e)(1)(iv) of the proposed regulations provides that an entity that is an insurance company and issues (or is obligated to make payments with respect to) a cash value insurance policy or an annuity contract is a financial institution.

Finally, the proposed regulations describe entities that are excluded from the definition of a financial institution and are treated as excepted NFFEs. These entities are certain nonfinancial holding companies, certain start-up companies, nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy, hedging/financing centers of a nonfinancial group, and entities described in section 501(c).

E. Deemed-Compliant FFIs

Paragraph (f) of § 1.1471–5 describes the FFIs that will be deemed compliant with the requirements of section 1471(b), and therefore exempt from withholding under section 1471(a) and (b). The categories of deemed-compliant FFIs described in these proposed regulations are broader than the categories of deemed-compliant FFIs described in Notice 2011–34. Paragraph (f) provides for two general types of deemed-compliant FFI: registered and certified deemed-compliant FFIs. A registered deemed-compliant FFI generally is required to register with the IRS to declare its status as deemed-compliant and to attest to the IRS that it satisfies certain procedural requirements. The categories of registered deemed-compliant FFIs are

local FFIs, nonreporting members of participating FFI groups, qualified investment vehicles, restricted funds, and FFIs that comply with the requirements of section 1471(b) under an agreement between the United States and a foreign government.

To qualify as a local FFI, generally, each FFI in the group (or in the case of a standalone FFI, the FFI) must meet certain licensing and regulation requirements. In addition, it must have no fixed place of business outside its country of organization and must not solicit account holders outside its country of organization. In addition, 98 percent of the accounts maintained by the FFI must be held by residents of the FFI's country of organization, and the FFI must be subject to reporting or withholding requirements in its country of organization with respect to resident accounts. For this purpose, an FFI that is organized in a European Union (EU) Member State may treat account holders that are residents of other EU Member States as residents of the country in which the FFI is organized. The Treasury Department and the IRS included this rule for FFIs established in EU Member States because financial institutions in EU Member States have common tax reporting or withholding obligations with respect to EU residents. A local FFI must also establish policies and procedures to ensure that it does not open or maintain accounts for specified U.S. persons that are not residents in the country in which the FFI is organized, for nonparticipating FFIs, or for entities controlled or beneficially owned by specified U.S. persons, and must perform due diligence with respect to its entity accounts and certain individual accounts.

The registered deemed-compliant category for nonreporting members of participating FFI groups permits an FFI that is a member of an expanded affiliated group that includes at least one participating FFI to become a deemed-compliant FFI if it transfers any preexisting accounts that are identified under specified procedures as U.S. accounts or accounts held by nonparticipating FFIs to an affiliate that is a participating FFI or U.S. financial institution. Paragraph (f)(1)(i)(B) also requires the nonreporting member to implement policies and procedures to ensure that if it opens or maintains any U.S. accounts or accounts held by nonparticipating FFIs, it either transfers any such accounts to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days of having opened the account or of having knowledge or reason to know of a change in circumstances resulting in an account becoming a U.S. account or an account held by a nonparticipating FFI. In response to comments, this type of deemed-compliant FFI is not limited to those FFIs that operate within a single country and that solicit account holders in such country, as was required under Notice 2011–34.

Paragraph (f)(1)(i)(C) sets forth a deemed-compliant category for qualified investment vehicles. In general, an FFI regulated as a collective investment vehicle (CIV) is a qualified investment vehicle if all holders of record of a direct interest in the FFI are participating FFIs, deemed-compliant FFIs, or exempt beneficial owners.

In response to comments, paragraph (f)(1)(i)(D) provides a separate deemed-compliant category for an FFI that is regulated as an investment fund under the law of its country of organization and for which each distributor of the investment fund's interests is a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank, or a restricted distributor (defined in paragraph (f)(4)). Paragraph (f)(1)(i)(D) requires that each agreement that governs the distribution of the investment fund's debt or equity interests (other than interests which are both distributed by and held through a participating FFI) prohibit sales of debt or equity interests in the fund to U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners, and its prospectus must indicate that sales to U.S. persons, passive NFFEs, and nonparticipating FFIs (other than interests which are both distributed by and held through a participating FFI) are prohibited. The FFI must also establish procedures to review preexisting direct accounts and ensure proper treatment of new direct accounts.

Paragraph (f)(1)(ii) sets forth the procedural requirements for registered deemed-compliant FFIs and provides that a registered deemed-compliant FFI must certify to the IRS that it meets the requirements of its applicable deemed-compliant category, agrees to the conditions for deemed-compliant status, and will renew its certification every three years (or earlier if there is a change in circumstance).

The certified categories of deemed-compliant FFIs are nonregistering local banks, retirement plans, non-profit organizations, certain owner-documented FFIs, and FFIs with only low-value accounts. Institutions that satisfy the requirements of these categories are not required to register with the IRS, but each will certify to the withholding agent that it meets the requirements of its certified deemed-compliant category on a Form W–8.

To qualify as a nonregistering local bank, generally, a bank must offer basic banking services, operate solely in its country of incorporation (or if it is a member of an expanded affiliated group, all members must operate in the same country), and the assets on each member FFI's balance sheet must be no more than $175 million (and the entire expanded affiliated group must have no more than $500 million on their combined balance sheets).

Paragraph (f)(2)(ii) describes the requirements for retirement plans to qualify for certified deemed-compliant status. Generally, the FFI must be organized for the provision of retirement or pension benefits under the law of each country in which it is established or in which it operates. Contributions to the FFI must consist only of employer, government, or employee contributions and must be limited by reference to earned income. In addition, no single beneficiary may have a right to more than five percent of the FFI's assets. Finally, contributions to the FFI must be excluded from the income of the beneficiary and/or taxation of the income attributable to the beneficiary must be deferred under the laws of the country in which the FFI is organized or operates, or the FFI must receive 50 percent or more of its total contributions from the government or employers. Alternative criteria are provided for FFIs that provide retirement or pension benefits and that have fewer than 20 participants and meet certain other requirements.

Paragraph (f)(2)(iii) describes the requirements for non-profit organizations to qualify for certified deemed-compliant status. A non-profit organization will qualify for certified deemed-compliant status if it: (i) Is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; (ii) is exempt from income tax in its country of residence; (iii) has no shareholders or members that have a proprietary interest in its income or assets; and (iv) is subject to restrictions preventing the private inurement of its income and assets.

Paragraph (f)(2)(iv) describes the requirements for FFIs with only low-value accounts to qualify for certified deemed-compliant status. An FFI with only low-value accounts will qualify for certified deemed-compliant status if: (i) The FFI is an FFI solely because it accepts deposits in the ordinary course of a banking or similar business as

described in § 1.1471–5(e)(1)(i) or, as a substantial portion of its business, holds financial assets for the account of others as described in § 1.1471–5(e)(ii); (ii) no financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000; and (iii) the FFI has no more than $50 million in assets on its balance sheet (and, in the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group has no more than $50 million in assets on its consolidated or combined balance sheet).

Paragraph (f)(3) provides, generally, that an owner-documented FFI is eligible for certified deemed-compliant status if it is not described in § 1.1471–5(e)(1)(i), (ii), or (iv) and is not affiliated with another FFI described in those sections, it maintains no financial accounts for nonparticipating FFIs, it does not issue debt that constitutes a financial account in excess of $50,000 to any person, it provides a withholding agent with all required documentation regarding its owners, and the withholding agent agrees to report to the IRS the information required with respect to any of the owners of the owner-documented FFI that are specified U.S. persons. Because an owner-documented FFI is required to provide each withholding agent with documentation and the withholding agent must agree to report on behalf of the owner-documented FFI, an owner-documented FFI may have certified deemed-compliant status only with respect to a specific withholding agent.

The Treasury Department and the IRS are considering how to address specific organizations or classes of organizations that may not be deemed to comply with the requirements of section 1471(b) due to their use to circumvent the purposes of chapter 4.

In addition, the Treasury Department and the IRS are considering how the conditions for deemed-compliant status should apply where an FFI is described in more than one subparagraph of section 1471(d)(5), because, for example, it accepts deposits in the ordinary course of a banking business and, as a substantial portion of its business, holds financial assets for the account of others.

F. Recalcitrant Account Holder

Paragraph (g) defines the term *recalcitrant account holder* and provides guidance on when an account holder will be treated as recalcitrant. Generally, a recalcitrant account holder is any holder of an account maintained by a participating FFI if the account holder is not an FFI and the account holder either (i) Fails to comply with the participating FFI's request for documentation or information to establish whether the account is a U.S. account, (ii) fails to provide a valid Form W–9 upon the request of the participating FFI, (iii) fails to provide a correct name and TIN upon request of the FFI after the participating FFI receives notice from the IRS indicating a name/TIN mismatch, or (iv) fails to provide a valid and effective waiver of foreign law if foreign law prevents reporting with respect to the account holder by the participating FFI. The IRS intends to extend the ''B'' notice process currently used for name/TIN mismatches in Form 1099 reporting to the reporting of U.S. accounts and will notify a participating FFI if a name and TIN combination provided on a form is incorrect. The Treasury Department and the IRS are considering whether participating FFIs should be required to use the IRS on-line TIN matching program to ensure that its U.S. account holders have provided the correct name and TIN combination prior to filing the form for reporting U.S. accounts with the IRS, but if this requirement were adopted, it would begin no earlier than January 1, 2015. Paragraph (g) also sets forth the rules for when a participating FFI will start and cease treating an account holder as recalcitrant.

G. Passthru Payments

Paragraph (h) of § 1.1471–5 defines a passthru payment as any withholdable payment and any foreign passthru payment. The proposed regulations reserve on the definition of a foreign passthru payment, but see the discussions regarding the proposed implementation of reporting on certain foreign payments in section X of this preamble and withholding in section XIX of this preamble.

H. Expanded Affiliated Groups

Section 1471(e)(2) provides the definition of an expanded affiliated group for purposes of section 1471(e) and chapter 4, and § 1.1471–5(i) incorporates that definition.

VII. Section 1.1471–6—Exempt Payments to Certain Beneficial Owners

Section 1.1471–6 describes classes of beneficial owners that are exempt from withholding under section 1471(a) pursuant to section 1471(f) (exempt beneficial owners). The classes of persons treated as exempt beneficial owners are: foreign governments, political subdivisions of a foreign government, and wholly owned instrumentalities and agencies of a foreign government; international organizations and wholly owned agencies or instrumentalities of an international organization; foreign central banks of issue; governments of U.S. territories; and certain foreign retirement plans.

In general, the principles of section 892 and the regulations thereunder apply in determining whether a beneficial owner qualifies as a foreign government. The definition of a controlled entity of a foreign government has been expanded from the definition set forth in § 1.892–2T to include entities that are owned and controlled by more than one foreign sovereign, and paragraph (b)(5) prescribes that such entities will qualify as exempt beneficial owners except when they are financial institutions described in section 1471(d)(5)(A) or (B) and the regulations thereunder. The principles of section 7701(a)(18) and the regulations thereunder generally apply to determine whether a beneficial owner qualifies as an international organization. The principles of section 895 and the regulations thereunder generally apply to determine whether a beneficial owner qualifies as a foreign central bank. Additionally, a foreign central bank is exempt from withholding under chapter 4 with respect to income earned on collateral held by the foreign central bank in the normal course of its operations.

Under paragraph (f), certain foreign retirement funds will qualify as exempt beneficial owners. Specifically, a fund that is eligible for the benefits of an income tax treaty with the United States with respect to income that the fund derives from U.S. sources and that is generally exempt from income tax in that country is an exempt beneficial owner if it operates principally to administer or provide pension or retirement benefits. A fund that is formed for the provision of retirement or pension benefits under the law of the country in which it is established will also qualify as an exempt beneficial owner if: (i) It receives only employer, government, or employee contributions that are limited by reference to earned income, (ii) no single beneficiary has a right to more than five percent of the fund's assets, and (iii) its investment income is exempt from tax under the laws of the country in which it is organized or in which it operates as a result of its status as a retirement or pension plan in that country, or it receives 50 percent or more of its total contributions from the government or employers.

An entity that is described in § 1.1471–6(g) and is wholly owned by one or more exempt beneficial owners is also an exempt beneficial owner.

VIII. Section 1.1472–1—Withholdable Payments to Non-Financial Foreign Entities (NFFEs)

A. General Rules for Withholding Under Section 1472

Section 1.1472–1 provides rules regarding the withholding and reporting requirements of section 1472. Except as otherwise provided in section 1472 and § 1.1472–1, a withholding agent must withhold tax of 30 percent of any withholdable payment made to an NFFE, unless the beneficial owner of such payment is the NFFE or another NFFE, the withholding agent can treat the beneficial owner as an NFFE that does not have any substantial U.S. owners or as an NFFE that has identified its substantial U.S. owners, and the withholding agent reports the required information with respect to any substantial U.S. owners. Paragraph (b)(2) also provides a rule to coordinate the withholding obligations under these proposed regulations with the withholding obligations set forth in an applicable FFI agreement for withholdable payments made by a participating FFI. In general, a participating FFI that complies with its FFI agreement is considered to have satisfied its obligations under section 1472(a) and § 1.1472–1.

C. Exceptions From Withholding Under Section 1472

Paragraph (c) contains exceptions to the withholding rules described in § 1.1472–1(b) for withholdable payments made to certain excepted NFFEs. Paragraphs (c)(1)(i) through (vi) of § 1.1472–1 identify categories of entities that are exempt from withholding under section 1472(a) and (c). Paragraph (c)(1)(iv) of § 1.1472–1 expands the statutory exception to include a government of a U.S. territory. Paragraph (c)(1)(v) provides an exception for an NFFE that is an active NFFE. An active NFFE is any NFFE if less than 50 percent of its gross income for the calendar year is passive income and less than 50 percent of its assets are assets that produce or are held for the production of dividends, interest, rents and royalties (other than those derived in the active conduct of a trade or business), annuities, or other passive income. Paragraph (c)(1)(vi) clarifies that an entity that is the recipient and beneficial owner of a withholdable payment that is described in § 1.1471–5(e)(5) shall not be subject to withholding under section 1472.

Paragraph (c)(2) provides that payments to a WP and a WT are not subject to withholding under section 1472(a). This is because a WP or WT must generally assume primary withholding responsibilities with respect to reportable amounts under chapter 3 on behalf of their partners, owners, or beneficiaries, respectively, pursuant to their withholding agreements with the IRS under section 1441. Because WP and WT agreements are expected to be modified to take into account withholding obligations under chapter 4, it is not necessary to withhold under section 1472(a) on payments to such entities. Instead, the WP or WT will be required to assume primary chapter 4 withholding responsibility and to identify the chapter 4 status of its partners, owners, or beneficiaries to determine whether it must withhold under section 1471 or 1472.

D. Establishing When a Withholding Agent May Treat a Withholdable Payment as Made to a Payee

Paragraphs (d)(1) through (5) of § 1.1472–1 provide rules that clarify the coordination between §§ 1.1472–1 and 1.1471–3. In general, for purposes of § 1.1472–1, a withholding agent may treat the payee of a payment (as determined under § 1.1471–3) as the beneficial owner of the payment, and must determine the chapter 4 status of such payee in accordance with the rules of § 1.1471–3. In addition, paragraph (d)(5) provides that the presumption rules under § 1.1471–3(f) must be applied to determine the chapter 4 status of a payee when the withholding agent does not have valid documentation that it can rely upon to determine the chapter 4 status of the payee.

E. Information Reporting Requirement

Paragraph (e) of § 1.1472–1 provides information reporting requirements with respect to withholdable payments made to a payee and the income tax filing requirement of a withholding agent that withholds under § 1.1472–1. In addition, it sets forth the information reporting rules with respect to substantial U.S. owners of certain NFFEs.

IX. Section 1.1473–1—Section 1473 Definitions

A. Withholdable Payment

Generally, paragraph (a) of § 1.1473–1 defines withholdable payment as any payment of U.S. source FDAP income and any gross proceeds from the sale or other disposition of any property which may produce interest or dividends from sources within the United States with respect to a sale or disposition occurring after December 31, 2014. For chapter 4 purposes, the term *FDAP income* means fixed or determinable annual or periodic income as defined for purposes of chapter 3 (without regard to the exemptions from withholding). Paragraph (a)(2)(i)(B) clarifies that an exclusion from withholding under chapter 3 or an exclusion from taxation under section 881 does not exclude such amount from the definition of U.S. source FDAP for the purpose of determining whether a payment is a withholdable payment under chapter 4. In addition, paragraphs (a)(2)(vi) and (a)(3)(iii)(B) provide that interest accrued between payment dates is not treated as FDAP, but is instead treated as gross proceeds solely for purposes of chapter 4.

To determine the source of income, paragraph (a)(2)(ii)(A) cross-references the rules provided in sections 861 through 865 and other relevant Code provisions. However, as provided in section 1473(1)(C), paragraph (a)(2)(ii)(B) provides that interest described in section 861(a)(1)(A)(i) or (ii) (bank deposit interest paid with respect to offshore accounts) is treated as income from sources within the United States for purposes of the definition of withholdable payment. Similar to the rule that applies for purposes of withholding under chapter 3, paragraph (a)(2)(ii)(A) provides that if a withholding agent cannot determine the source of a payment at the time the payment is made, the payment is treated as U.S. source.

Generally, paragraph (a)(3) defines the term *sale or other disposition* as any sale, exchange, or other disposition that requires the recognition of gain or loss under section 1001 from property of a type that can produce interest or dividends from sources within the United States. Paragraph (a)(3)(i)(C) provides a special rule that limits gross proceeds paid by a clearing organization to the net amount paid or credited to an account of a member of the clearing organization if the clearing organization settles sales and purchases of securities between member organizations on a net basis. Paragraph (a)(3)(ii) provides rules for determining when property is of a type that can produce interest or dividends from sources within the United States. Paragraph (a)(3)(iii)(A) provides rules for determining when gross proceeds are paid. Paragraph (a)(3)(iii)(B) sets forth the rules for determining the amount of gross

proceeds from a sale or other disposition.

Paragraph (a)(4) provides a list of payments that are excluded from the definition of withholdable payments. This list includes original issue discount from certain short-term obligations, income that is taken into account as effectively connected with the conduct of a trade or business in the United States, certain payments in the ordinary course of the withholding agent's business, gross proceeds from the sale of property that can produce income that is excluded from the definition of withholdable payment, and certain broker transactions that involve the sale of fractional shares. While the proposed regulations do not explicitly exempt payments with respect to State and local bonds, interest on State and local bonds is excluded from gross income under section 103, and such interest is thus not a withholdable payment. Moreover, interest that is excluded from gross income under section 103 is not treated as gross income from sources within the United States under section 861(a), and thus gross proceeds from the sale of bonds that give rise to interest that is excluded under section 103 are not withholdable payments.

Paragraph (a)(5) provides special payment rules for flow-through entities with respect to U.S. source FDAP income allocated to partners, owners, and beneficiaries in these entities that mirror the rules under § 1.1441–5. Paragraph (a)(5) reserves on how payments of gross proceeds are to be allocated to such persons.

B. Substantial U.S. Owner

Paragraph (b) provides the definition of *substantial U.S. owner.* Generally, the term *substantial U.S. owner* means any specified U.S. person (as defined in paragraph (c)) that owns, directly or indirectly, more than ten percent of the stock of a corporation, or with respect to a partnership, more than ten percent of the profits interests or capital interests in such partnership. For trusts, a substantial U.S. owner is any specified U.S. person that holds, directly or indirectly, more than ten percent by value of the beneficial interests in such trust, or with respect to a grantor trust, any specified U.S. person that is an owner of such grantor trust.

Paragraphs (b)(2) and (3) set forth attribution rules to determine indirect ownership of stock, partnership interests, and beneficial trust interests. These rules are based on the rules provided in § 1.958–1 for determining stock ownership of controlled foreign corporations.

Paragraph (b)(3) provides the rules for determining whether a specified U.S. person will be treated as directly or indirectly holding a beneficial interest in a foreign trust. These rules are generally coordinated with the rules provided in the recently published temporary regulations under section 6038D, regarding information reporting requirements of certain U.S. persons with respect to their interests in foreign trusts. See TD 9567, 76 FR 78560 (December 19, 2011). Paragraph (b)(4) provides a special rule under which a beneficiary of a trust will not be treated as a substantial U.S. owner if the beneficiary has a right only to discretionary distributions and receives, directly or indirectly, discretionary trust distributions that do not exceed $5,000 in a calendar year or if the beneficiary has a right to mandatory distributions and the value of such beneficiary's interest does not exceed $50,000.

Paragraph (b)(5) provides a special rule for certain investment vehicles and insurance companies that issue (or are obligated to make payments with respect to) cash value insurance or annuity contracts. This rule applies the rules of paragraph (b)(1)(i) through (iii) with a threshold of zero percent, rather than ten percent.

Paragraph (b)(6) specifies that a foreign entity may determine if it has one or more substantial U.S. owners on either the last day of the foreign entity's accounting year or the date on which the foreign entity provides documentation to the withholding agent that maintains the foreign entity's account.

C. Specified U.S. Person

Paragraph (c) provides the definition of specified U.S. person. A specified U.S. person is any U.S. person except as provided in paragraph (c). Persons excluded from the definition of specified U.S. person include: corporations the stock of which is regularly traded on an established securities market; corporations that are affiliates of such corporations; organizations that are exempt from tax under section 501(a); individual retirement plans (as defined in section 7701(a)(37)); real estate investment trusts (as defined in section 856); regulated investment companies (as defined in section 851); common trust funds (as defined in section 584(a)); dealers in securities, commodities, or notional principal contracts (as defined in section 475(c) and (e)) and brokers (as defined in section 6045(c) and § 1.6045–1(a)(1)). The United States and its wholly owned agencies or instrumentalities are also excluded, as are the States, the District of Columbia, the U.S. territories, and any political subdivision or wholly owned agency or instrumentality of any of the foregoing.

D. Withholding Agent

Section 1473(4) defines a withholding agent as any person, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment. Paragraph (d) incorporates this definition and generally adopts rules similar to those provided in the regulations under chapter 3. Paragraph (d) specifically includes participating FFIs and grantor trusts in the definition of withholding agent. Paragraph (d)(6) provides an exception from withholding agent status for individuals making payments that are not in the ordinary course of the individual's trade or business.

E. Foreign Entity

Paragraph (e) defines the term *foreign entity* as any entity that is not a U.S. person, including a territory entity.

X. Section 1.1474–1—Liability for Tax Withheld

Paragraph (a) provides that a withholding agent that fails to deposit tax that it is required to withhold under chapter 4 is liable for such tax and applicable penalties and additions to tax. Paragraph (b) provides rules for a withholding agent's payment of withholding tax. Paragraph (c)(1) provides rules for the filing of income tax returns by withholding agents for years beginning with the 2014 calendar year and prescribes the payments required to be reported on such returns. These rules generally mirror the rules for returns that are filed under chapter 3. Such returns are required to be filed on Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,* the same income tax return described in § 1.1461–1(b)(1) for withholding agents to report income paid and taxes withheld under chapter 3. Paragraph (c)(2) prescribes the requirements applicable to the filing of an amended Form 1042.

Paragraph (d)(1) prescribes the requirements for the filing of information returns by withholding agents to report payments subject to reporting for chapter 4 purposes and the recipients required to be reported on those forms. The IRS anticipates that such returns will be filed on Forms 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding.* Because many FFIs have systems designed to comply with the current Forms 1042 and 1042–S requirements for purposes of payments subject to reporting under

chapter 3, the IRS intends to modify the current Form 1042–S used by withholding agents for chapter 3 purposes to meet the additional reporting requirements of chapter 4 and to coordinate reporting in cases in which withholding under both chapters applies to a payment as described in § 1.1474–6.

Paragraph (d)(2) prescribes the amounts required to be reported on Forms 1042–S and provides for a transitional rule for reporting in 2016 and 2017 requiring participating FFIs to report on a payee-specific basis FDAP income from foreign sources and ''other financial payments'' made in the 2015 and 2016 calendar years to nonparticipating FFIs. The definition of the term ''other financial payment'' is reserved, and comments are requested on the types of payments that should be included in this class of payments for purposes of this reporting requirement.

Paragraph (d)(3) prescribes the information required to be reported on Form 1042–S and paragraph (d)(4) prescribes the methods for reporting. Paragraph (e) references the requirement for filing Forms 1042–S on magnetic media with respect to reporting by financial institutions on such media even when they file under 250 returns for a year. These rules are provided in § 301.1474–1. Paragraph (f) provides for the indemnification of a withholding agent against claims for amounts withheld pursuant to chapter 4. Paragraph (g) provides for the same extensions of time to file Forms 1042 and 1042–S as provided in § 1.1461–1(g). Paragraph (h) states applicable penalties and additions to tax related to these requirements. Paragraph (i) describes the reporting requirements of a withholding agent that reports information with respect to one or more specified U.S. persons that hold an interest in an entity that the withholding agent treats as an owner-documented FFI.

XI. Section 1.1474–2—Adjustments for Overwithholding and Underwithholding of Tax

Section 1.1474–2 provides rules for adjustments for overwithholding and underwithholding of tax that are substantially similar to the rules for chapter 3 withholding under § 1.1461–2, modified to reflect the purposes of chapter 4. Specifically, the definition of overwithholding under § 1.1461–2 has been revised to clarify that for purposes of chapter 4, overwithholding refers to an amount actually withheld that is in excess of both the amount required to be withheld under chapter 4 and the actual tax liability of the beneficial owner of the payment that was subject to withholding under chapter 4. Furthermore, in order to apply the reimbursement and set-off procedure for any overwithheld amount under chapter 4, the withholding agent must obtain valid documentation from the beneficial owner or payee to identify its chapter 4 status and determine that withholding was not required. In addition, the time period for applying the reimbursement procedure under § 1.1474–2(a)(3) differs from § 1.1461–2, because a withholding agent may not reimburse itself by reducing any deposit of tax unless the reduction occurs before the earliest of the due date for filing the Form 1042–S for the calendar year of overwithholding, the date that the Form 1042–S is actually filed by the withholding agent, or the date Form 1042–S is furnished to the recipient.

XII. Section 1.1474–3—Withheld Tax as a Credit to the Beneficial Owner of Income

Section 1.1474–3 provides rules that are substantially similar to the rules under § 1.1462–1 relating to withheld tax as a credit to the beneficial owner of income. Paragraph (a) of § 1.1474–3 generally provides that the beneficial owner of the income or payment to which the withheld tax is attributable is allowed a credit against such beneficial owner's income tax liability in the amount of tax actually withheld under chapter 4. In addition, the beneficial owner shall include in gross income the entire amount of income, if any, of the payment subject to withholding under chapter 4, including amounts that are subject to withholding under the gross-up formula in § 1.1473–1(a)(2)(v). Paragraph (b) of § 1.1474–3 provides that amounts withheld under chapter 4 are deemed to have been paid by the beneficial owner of the item of income subject to withholding under chapter 4.

XIII. Section 1.1474–4—Tax Paid Only Once

Section 1.1474–4 provides that if the tax required to be withheld under chapter 4 is paid by the beneficial owner, payee, or withholding agent, the IRS may not collect from any other, regardless of the original liability for the tax. Furthermore, § 1.1471–4 provides that the person who has an obligation to withhold under chapter 4 and fails to do so is not relieved from liability from interest or penalties for the failure to withhold.

XIV. Section 1.1474–5—Refunds or Credits

Paragraph (a) of § 1.1474–5 provides the general rule that if an overpayment of tax results from the withholding of tax under chapter 4, the beneficial owner of an amount subject to withholding may claim a refund or credit for the overpayment of tax subject to the requirements and limitations described below and in accordance with the rules under chapter 65. For this purpose, a copy of Form 1042–S must be attached to the beneficial owner's income tax return consistent with the requirements described in § 301.6402–3(e), which shall be amended to conform to this requirement.

Section 1.1474–5 also provides that to the extent the overpayment of tax was paid by the withholding agent out of its own funds, such amount may be credited or refunded to the withholding agent. However, paragraph (a) does not permit a nonparticipating FFI that is a withholding agent with respect to a payment to claim a credit or refund. Paragraph (a)(2) also provides that a nonparticipating FFI that is the beneficial owner of the payment to which the withholding under chapter 4 is attributable is not entitled to a credit or refund except to the extent it is entitled to a reduced rate of withholding by reason of any income tax treaty obligation of the United States, and that no interest shall be allowed or paid with respect to such a credit or refund.

Furthermore, § 1.1474–5 implements section 1474(b)(3) by requiring a beneficial owner that is an entity, other than an entity that is entitled to a reduced rate of withholding by reason of any income tax treaty obligation of the United States, to certify to the IRS that the entity does not have any substantial U.S. owners or to identify its substantial U.S. owners or to provide documentation establishing that withholding was not required (for example, establishing an NFFE's status as an excepted NFFE).

The Treasury Department and the IRS are considering what refund procedures may be appropriate with respect to tax withheld on payments to limited FFIs or limited branches (including QIs that are limited FFIs or that have limited branches), and request comments regarding the procedural safeguards that should be put in place to prevent abuse.

XVI. Section 1.1474–6—Coordination of Chapter 4 Withholding With Other Withholding Provisions

Section 1.1474–6 coordinates withholding under chapter 4 with withholding under other provisions of the Code. With respect to a payment subject to withholding under § 1.1441–2(a), paragraph (b)(1) provides that, to the extent withholding is applied under chapter 4 on a payment, a withholding

agent may credit the amount withheld against the withholding agent's liability under section 1441 (or section 1442 or 1443) on the same payment. Paragraph (b)(2) provides rules for purposes of designating the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4.

Paragraph (c) provides that an amount subject to withholding under section 1445 is not subject to withholding under chapter 4 and coordinates withholding under chapter 4 with the rules provided in § 1.1441–3(c) for distributions by qualified investment entities and United States real property holding corporations (USRPHCs). Generally, to the extent withholding under section 1441 is applicable to a distribution or a portion of the distribution made by a qualified investment entity or USRPHC, the coordination rule described in paragraph (b)(1) apply to such amounts. Paragraph (c) also adopts the intermediary reliance rule of § 1.1441–3(c)(2)(ii)(C) with respect to determinations made by a USRPHC regarding the portion of the distribution that is estimated to be a dividend. Paragraph (d) generally provides that a withholdable payment or a foreign passthru payment subject to withholding under section 1446 is not subject to withholding under chapter 4 and reserves on the coordination of withholding on distributions of gross proceeds subject to tax under section 1446.

Paragraph (e) reserves on the coordination of withholding under chapter 4 for payments subject to backup withholding under section 3406, and the Treasury Department and the IRS seek comments on how these requirements should be coordinated in light of the objectives of chapter 4 withholding. Paragraph (f) provides an example of the application of the coordination rules.

This section does not provide coordination rules for withholding under chapters 3 and 4 on substitute payments that are part of a chain of securities lending transactions using identical securities. Notice 2010–46 outlined a proposed withholding and reporting framework to reduce instances of potential excessive or cascading taxation and to properly account for the role of financial intermediaries in securities lending transactions. Notice 2010–46 also provided transitional rules that taxpayers may rely on prior to the publication of final regulations. The proposed framework and the transitional rules of Notice 2010–46 are limited to withholding on substitute dividend payments under chapter 3 and do not address chapter 4 withholding. The Treasury Department and the IRS invite comments on issues relating to chapter 4 withholding in the context of the transactions described in Notice 2010–46.

XVII. Section 1.1474–7—Confidentiality of Information

Section 1.1474–7 provides that information obtained to comply with the requirements of chapter 4 may only be used for that purpose or for purposes permitted under section 6103. Paragraph (a) incorporates the regulation under § 1.3406(f)–1(a) for confidentiality of information. Consistent with section 1474(c)(2), paragraph (b) provides an exception to paragraph (a), permitting the disclosure of the identity of a participating FFI or deemed-compliant FFI.

XVIII. Section 301.1474–1—Required Use of Magnetic Media for Financial Institutions Filing Form 1042–S

Section 301.1474–1 provides that a financial institution must file electronically the information returns with respect to withheld taxes for which the institution is liable as a withholding agent under section 1461 or 1474(a), as the limitation for persons required to file fewer than 250 returns during the tax year does not apply.

Paragraph (b) provides that the Commissioner may grant hardship waivers from the requirement to file electronically, although it is intended that these waivers be granted only in exceptional cases. The Treasury Department and the IRS intend to issue published guidance setting forth the procedures by which a taxpayer may request a hardship waiver. Comments are requested regarding the waiver provision in this regulation.

Paragraph (c) provides that penalties may be imposed under sections 6723 and 6724 on a financial institution that fails to comply with this electronic filing requirement.

XIX. Future Guidance & Further Requests for Comments

The Treasury Department and the IRS expect to issue future guidance on topics not covered in these proposed regulations. This guidance will take a variety of forms. For example, the IRS expects to issue a draft model FFI agreement and draft forms relating to chapter 4 reporting. In addition, future regulations will provide guidance on substantive and procedural issues not addressed in these proposed regulations. The discussion below addresses certain significant aspects of future guidance.

A. Registration Process Preview

1. Registering as Participating FFIs or Deemed-Compliant Entities

The IRS will make available an online process for registering FFIs as participating FFIs or deemed-compliant FFIs no later than January 1, 2013. The online process will allow each FFI to register for participating, limited, or registered deemed-compliant FFI status, enter into an FFI agreement, complete a required certification, and obtain an FFI–EIN, if applicable. Special registration procedures must be followed by FFIs that are members of an expanded affiliated group (FFI group). As part of the registration process, an online FFI account will be created by the IRS for each FFI, and it is anticipated that FFIs will be able to manage their account information, including making annual certifications, if required, electronically. The online account will allow the IRS and FFIs to more effectively manage and update FFI information to ensure that it is current.

2. Expanded Affiliated Groups

Each member of an FFI group must designate a lead FFI (Lead FFI) to initiate and manage the online registration process for the FFI group. The Lead FFI that assumes this role must enter the system to register itself and, as part of that process, identify each FFI that is a member of the FFI group (FFI Member) that will register for participating, limited, or registered deemed-compliant FFI status. Each FFI member, including the Lead FFI, will be assigned a unique FATCA identifier (FATCA ID) to be used in completing the registration process and associating FFI group members with the FFI group. Each FFI Member must enter the online registration system to complete its registration as a participating FFI, limited FFI, or registered deemed-compliant FFI. The Lead FFI will be responsible for managing the FFI group information and will be able to add or remove members from the FFI group to reflect updated information. For the registration of any FFI member to be complete, and for its chapter 4 status as a participating, limited, or deemed-compliant FFI to be obtained, each FFI member must have completed its registration process.

More information about the online registration process will be provided in future guidance and instructions to the registration form.

B. QIs, WPs, and WTs

Apart from any period of limited FFI status, an FFI that is a QI, WP, or WT will be required to fulfill the chapter 4

reporting and withholding requirements of a participating FFI to retain its status under chapter 3. The IRS intends to amend each of these withholding agreements to incorporate the requirements of a participating FFI under chapter 4. The Treasury Department and the IRS also intend for this purpose to modify the descriptions of the QI, WP, and WT agreements under §§ 1.1441–1(e)(5), 1.1441–5(c)(2), and 1.1441–5(e)(5)(v), respectively. Additionally, the Treasury Department and the IRS are considering, as an alternative to external audits, coordinating the audit requirements for QIs, WPs, and WTs (including their chapter 3 requirements) with the verification procedures described in § 1.1471–4(a)(6) applicable to other participating FFIs. Comments are requested on these requirements, including reasonably objective standards under which such entities (and other participating FFIs) would determine whether they have found material failures in their compliance with the requirements of their respective agreements warranting disclosure to the IRS (as referenced in § 1.1471–4(a)(6)).

C. Withholding Certificates

The IRS anticipates that the Form W–8 series will be updated to request additional information from a taxpayer that would be relevant to establishing a taxpayer's chapter 4 status, for example, by including a new field for an FFI–EIN.

D. Additional Categories of Deemed-Compliant FFIs

The Treasury Department and the IRS request comments regarding whether there should be additional categories of deemed-compliant FFIs not addressed in the proposed regulations. Consideration is being given, for example, to providing a category of deemed-compliant FFIs for entities that issue certain insurance or annuity contracts that has requirements that are analogous to the requirements for local FFIs.

E. Passthru Payments

While these proposed regulations provide that withholding on passthru payments will begin no sooner than January 1, 2017, the Treasury Department and the IRS are considering ways to ease the compliance burdens associated with passthru payment withholding. Among the alternatives the Treasury Department and the IRS are considering is whether to allow certain FFIs to rely upon a safe harbor passthru percentage if the FFI does not elect to calculate its exact passthru percentage. In addition, the Treasury Department and the IRS are considering whether and to what extent to allow rounding conventions to limit the number of possible passthru percentages that could apply. Comments are requested on these and other recommendations to ease the compliance burden associated with foreign passthru payment withholding.

In addition, future guidance will prevent U.S. and territory financial institutions from serving as ''blockers'' with respect to foreign passthru payment reporting and withholding. The Treasury Department and the IRS are aware that, because a U.S. withholding agent is currently required to withhold only with respect to withholdable payments, while a participating FFI is generally required to withhold on all foreign passthru payments, this creates the potential for FFIs to use U.S. withholding agents as ''blockers'' for foreign passthru payments made to nonparticipating FFIs. The Treasury Department and the IRS are assessing various options to address this issue, including expanding the definition of withholdable payments, or requiring FFIs to perform withholding on foreign passthru payments made to U.S. withholding agents acting as intermediaries. Comments are requested regarding possible approaches to address this issue.

F. Gross Proceeds

Section 1.1473–1(a)(5)(vii) reserves on the issue of how a withholding agent that is a flow-through entity determines the amount of gross proceeds allocable to a partner, beneficiary, or owner in the entity for purposes of the withholding requirements of chapter 4. The Treasury Department and the IRS request additional comments regarding methods to determine the amount of gross proceeds in such cases that are administratively feasible and that do not inappropriately favor investment in U.S. assets through flow-through entities over direct investment with respect to the withholding requirements of chapter 4.

G. Grandfathered Obligations

Section 1.1471–2(b) provides an exemption from withholding for certain grandfathered obligations but does not include in the definition of a grandfathered obligation any interest in an entity that is treated as equity for U.S. tax purposes, regardless of whether such entity holds assets that give rise to grandfathered payments. The Treasury Department and the IRS request comments on whether it is appropriate to treat as grandfathered obligations certain equity interests in securitization vehicles that invest solely in debt and similar instruments if such vehicles will liquidate within a specified time frame given the types of investments they hold and the extent of their reinvestment in other assets, and, if so, the appropriate limitations on such treatment to prevent abuse.

Proposed Effective/Applicability Date

The proposed regulations generally are proposed to apply on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The requirements imposed by individual sections of these proposed regulations are proposed to take effect in accordance with the dates provided in those sections, as described in the preamble.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The collection of information in these proposed regulations is contained, *inter alia,* in §§ 1.1471–2, 1.1471–3, 1.1471–4, 1.1472–1, and 1.1474–1. The IRS intends that these information collection requirements will be satisfied by persons complying with either revised chapter 3 reporting forms, new reporting forms based on final chapter 4 regulatory guidance, or the terms, conditions, and requirements of an FFI agreement that satisfies the requirements of a Model FFI Agreement to be issued in an IRS Revenue Procedure. As a result, for purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these proposed regulations will be reflected in the OMB Form 83–1, *Paperwork Reduction Act Submission,* associated with a new or revised form or the Model FFI Agreement.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS anticipate that a substantial number of domestic small entities will be affected by the collection of information in this notice of proposed rulemaking, both the Treasury

Department and the IRS believe that the economic impact to these entities resulting from this notice of proposed rulemaking's information collection requirements will not be significant.

The domestic small business entities that are subject to chapter 4 and this notice of proposed rulemaking are those domestic business entities that are payors of U.S. source FDAP income that are presently subject to the information collection and reporting rules under chapter 3. These domestic small business entities must be familiar with chapter 3's information collection and reporting rules and forms so as to determine a payee's U.S. withholding status and, based on that status, withhold and remit the proper amount of tax on payments of U.S. source FDAP income. Small domestic business entities that are payors of U.S. source FDAP income have developed and implemented internal reporting and information collection systems under which the business entity satisfies its chapter 3 payee identification, withholding, and tax remittance requirements.

The Treasury Department and the IRS intend to revise the present chapter 3 reporting forms, with the revised forms being used by a payor of U.S. source FDAP income to satisfy the payor's obligations under chapters 3 and 4. As a result, this notice of proposed rulemaking's information collection requirements build on reporting and information collection systems familiar to and currently used by payors of U.S. source FDAP income that are domestic small business entities, thereby reducing the burden imposed on domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The IRS invites the public to comment on this certification.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

While taxpayers are not required to submit comments and recommendations in any particular format, it would facilitate their review if comments follow these guidelines: (1) No general summary of chapter 4's provisions or the contents of the FATCA Notices is required; (2) comments and recommendations should be ordered starting with comments requested in the preamble and then based on the order of the proposed regulations, including a reference to the regulations that pinpoints the narrowest relevant section, subsection, paragraph, or further subdivision applicable to the comment or recommendation; and (3) recommendations should be set off and numbered sequentially throughout the comment letter. It is hoped that these guidelines will ease the burden in producing comments and facilitate the assessment thereof.

A public hearing has been scheduled for May 15, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 30, 2012, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 1, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations under sections 1471 through 1474 is John Sweeney, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated significantly in their development.

The principal author of § 301.1474–1 is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1471–1 is also issued under 26 U.S.C. 1471.

Section 1.1471–2 is also issued under 26 U.S.C. 1471.

Section 1.1471–3 is also issued under 26 U.S.C. 1471.

Section 1.1471–4 is also issued under 26 U.S.C. 1471.

Section 1.1471–5 is also issued under 26 U.S.C. 1471.

Section 1.1471–6 is also issued under 26 U.S.C. 1471.

Section 1.1472–1 is also issued under 26 U.S.C. 1472.

Section 1.1473–1 is also issued under 26 U.S.C. 1473.

Section 1.1474–1 is also issued under 26 U.S.C. 1474.

Section 1.1474–2 is also issued under 26 U.S.C. 1474.

Section 1.1474–3 is also issued under 26 U.S.C. 1474.

Section 1.1474–4 is also issued under 26 U.S.C. 1474.

Section 1.1474–5 is also issued under 26 U.S.C. 1474.

Section 1.1474–6 is also issued under 26 U.S.C. 1474.

Section 1.1474–7 is also issued under 26 U.S.C. 1474.

Section 301.1474–1 is also issued under 26 U.S.C.1474 * * *

Par. 2. Section 1.1471–0 is added to read as follows.

§ 1.1471–0 Outline of regulation provisions for section 1471.

This section lists captions contained in §§ 1.1471–1 through 1.1471–4.

§ 1.1471–1 Scope of chapter 4 of the Internal Revenue Code provisions and definitions.

(a) Purpose and scope of chapter 4 of the Internal Revenue Code regulations.

(b) Definitions.

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

§ 1.1471–3 Identification of payee.

(4) Special requirements for a territory institution withholding statement.
(5) Special requirements for an exempt beneficial owner withholding statement.
(C) Failure to provide allocation information.
(D) Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.
(E) Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.
(F) Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.
(G) Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.
(iv) Certificate for exempt status (Form W–8EXP).
(v) Certificate for effectively connected income (Form W–8ECI).
(4) Requirements for written statements.
(5) Requirements for documentary evidence.
(6) Applicable rules for withholding certificates, written statements, and documentary evidence.
(i) Who may sign the certificate or written statement.
(ii) Period of validity.
(A) Withholding certificates.
(B) Written statements.
(C) Documentary evidence.
(D) Change of circumstances.
(1) Defined.
(2) Obligation to notify withholding agent of a change in circumstances.
(3) Withholding agent's obligation with respect to a change in circumstances.
(iii) Record retention.
(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence.
(v) Acceptable substitute withholding certificate.
(vi) Documentation to be furnished for each account unless exception applies.
(vii) Reliance on a prior version of a withholding certificate.
(7) Documentation received after the time of payment.
(d) Documentation requirements to establish payee's chapter 4 status.
(1) Identification of U.S. persons.
(2) Identification of foreign individuals.
(i) In general.
(ii) Transitional exceptions for payments made prior to January 1, 2017, with respect to preexisting obligations.
(iii) Exception for offshore obligations.
(3) Identification of participating FFIs.
(i) In general.
(ii) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(4) Identification of nonparticipating FFIs.
(i) In general.
(ii) Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.
(5) Identification of registered deemed-compliant FFIs.
(i) In general.
(ii) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(6) Identification of certified deemed-compliant FFIs.
(i) Identification of nonregistering local banks.
(ii) Identification of retirement plans.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of non-profit organizations.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of FFIs with only low-value accounts.
(7) Identification of owner-documented FFIs.
(i) In general.
(ii) Auditor's letter substitute.
(iii) Documentation for owners of payee.
(iv) Content of FFI owner reporting requirement.
(v) Exception for preexisting obligations.
(8) Identification of exempt beneficial owners.
(i) Identification of foreign governments and governments of U.S. possessions.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of international organizations.
(iii) Identification of foreign central banks of issue.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of retirement funds.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(v) Identification of entities wholly owned by exempt beneficial owners.
(9) Identification of excepted FFIs.
(i) Identification of nonfinancial holding companies.
(A) In general.
(B) Exceptions for offshore obligations.
(ii) Identification of start-up companies.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting obligations.
(iii) Identification of certain nonfinancial entities in liquidation or bankruptcy.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of hedging/financing centers of nonfinancial groups.
(A) In general.
(B) Exception for offshore obligations.
(v) Identification of section 501(c) organizations.
(A) In general
(B) Reason to know.
(10) Identification of territory financial institutions.
(i) Identification of territory financial institutions that are beneficial owners.
(A) In general.
(B) Exception for preexisting offshore obligations.
(ii) Identification of territory financial institutions acting as intermediaries or that are flow-through entities.
(iii) Reason to know.
(11) Identification of NFFEs.
(i) Identification of NFFEs that are publicly traded corporations.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of NFFE affiliates.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of territory NFFEs.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations of $1,000,000 or less.
(iv) Identification of active NFFEs.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(v) Identification of excepted NFFEs described in § 1.1472–1(c)(1)(iv).
(vi) Identification of passive NFFEs.

§ 1.1471–4 FFI agreement.

§ 1.1471–5 Definitions applicable to section 1471.

Par. 3. Section 1.1471–1 is revised to read as follows:

§ 1.1471–1 Scope of chapter 4 of the Internal Revenue Code provisions and definitions.

(a) *Purpose and scope of chapter 4 of the Internal Revenue Code regulations.* Sections 1.1471–1 through 1.1474–7 provide rules for withholding when a withholding agent makes a payment to an FFI or NFFE and prescribes the requirements for and definitions relevant to those FFIs and NFFEs to which withholding will not apply. Section 1.1471–1 provides definitions for terms used in chapter 4 of the Internal Revenue Code. Section 1.1471–2 provides rules for withholding under section 1471(a) on payments to FFIs and provides rules for grandfathered obligations. Section 1.1471–3 provides rules for determining the payee and the documentation requirements to establish a payee's chapter 4 status. Section 1.1471–4 describes the requirements of the FFI agreement under section 1471(b) and the application of section 1471(b) and (c) to an expanded affiliated group of FFIs. Section 1.1471–5 defines terms relevant to section 1471 and to the FFI agreement and defines categories of FFIs that will be deemed to have met the requirements of section 1471(b) pursuant to section 1471(b)(2). Section 1.1471–6 defines classes of beneficial owners of payments that are exempt from withholding under chapter 4 of the Internal Revenue Code. Section 1.1472–1 provides rules for withholding when a withholding agent makes a payment to an NFFE. Section 1.1473–1 provides definitions of the statutory terms in section 1473. Section 1.1474–1 provides rules relating to a withholding agent's liability for

withheld tax, filing of income tax and information returns, and depositing of tax withheld. Section 1.1474–2 provides rules relating to adjustments for overwithholding and underwithholding of tax. Section 1.1474–3 provides the circumstances in which a credit is allowed to a beneficial owner for a withheld tax. Section 1.1474–4 provides that a chapter 4 withholding obligation need only be collected once. Section 1.1474–5 contains rules relating to credits and refunds of tax withheld. Section 1.1474–6 provides rules coordinating withholding under sections 1471 and 1472 with withholding provisions under other sections of the Code. Section 1.1474–7 provides the confidentiality requirement for information obtained to comply with the requirements of chapter 4 of the Internal Revenue Code. Any reference in the provisions of sections 1471 through 1474 to an amount that is stated in U.S. dollars includes the foreign currency equivalent of that amount. Except as otherwise provided, the provisions of sections 1471 through 1474 and the regulations thereunder apply only for purposes of chapter 4 of the Internal Revenue Code. See § 301.1474–1 for the requirements for reporting on magnetic media that apply to financial institutions making payments pursuant to chapter 4 of the Internal Revenue Code.

(b) *Definitions.* Except as otherwise provided in this paragraph (b), the following definitions apply for purposes of sections 1471 through 1474 and the regulations under those sections.

(1) *Account*—(i) *Account.* The term *account* means a financial account as defined in § 1.1471–5(b).

(ii) *Custodial account.* The term *custodial account* has the meaning set forth in § 1.1471–5(b)(3)(ii).

(iii) *Depository account.* The term *depository account* has the meaning set forth in § 1.1471–5(b)(3)(i).

(iv) *Dormant account.* The term *dormant account* has the meaning set forth in § 1.1471–4(d)(6)(ii).

(v) *U.S. account.* The term *U.S. account* or *United States account* has the meaning set forth in § 1.1471–5(a).

(2) *Account holder.* The term *account holder* means the person who holds an account, as determined under § 1.1471–5(a)(3).

(3) *AML due diligence.* The term *AML due diligence* means the customer due diligence procedures of a financial institution pursuant to the anti-money laundering or similar requirements to which a financial institution, or branch thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.

(4) *Annuity contract.* The term *annuity contract* means a contract that would be an annuity under section 72 (without regard to subsections (s) and (u) and section 817(h)).

(5) *Beneficial owner.* Except as provided in § 1.1472–1, the term *beneficial owner* has the meaning set forth in § 1.1441–1(c)(6).

(6) *Broker.* The term *broker* means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that effects sales of securities for its members. A broker does not include an international organization that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than such transactions as are incidental to the purpose of escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

(7) *Chapter 3.* For purposes of chapter 4 of the Internal Revenue Code, any reference to chapter 3 means sections 1441 through 1464 and the regulations thereunder, but does not include sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.

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

(9) *Chapter 4 reportable amount.* The term *chapter 4 reportable amount* has the meaning set forth in § 1.1474–1(d)(2)(i).

(10) *Chapter 4 status.* The term *chapter 4 status* means, with respect to a person, the person's status as a U.S. person, a specified U.S. person, a foreign individual, a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, a QI branch of a U.S. financial institution, an excepted NFFE, or a passive NFFE.

(11) *Complex trust.* A *complex trust* is a trust that is not a simple trust or a grantor trust.

(12) *Customer master file.* A *customer master file* includes the primary files of a participating FFI or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

(13) *Documentary evidence.* The term *documentary evidence* means documents, other than a withholding certificate or written statement, that a withholding agent is permitted to rely upon to determine the chapter 4 status of a payee, an account holder, or an exempt beneficial owner in accordance with § 1.1471–3(c)(5).

(14) *Documentation.* The term *documentation* means withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining the status of a person for the purpose of a reporting or withholding requirement under chapter 4 of the Internal Revenue Code, including any document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.

(15) *EIN.* The term *EIN* means an employer identification number (also known as a Federal tax identification number) described in § 301.6109–1(a)(1)(i).

(16) *Electronically searchable information.* The term *electronically searchable information* means information that an FFI maintains in its tax reporting files, customer master files, or similar files, that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

(17) *Entity.* The term *entity* means any person other than an individual.

(18) *Excepted FFI.* The term *excepted FFI* means an entity that is excluded from the definition of an FFI, pursuant to § 1.1471–5(e)(5), and is not subject to withholding under section 1472, pursuant to § 1.1472–1(c)(1)(vi).

(19) *Exempt beneficial owner.* The term *exempt beneficial owner* means any person described in § 1.1471–6(b) through (g).

(20) *Expanded affiliated group.* The term *expanded affiliated group* has the meaning set forth in § 1.1471–5(i)(2).

(21) *FATF.* The term *FATF* means the Financial Action Task Force, which is an inter-governmental body that develops and promotes international

policies to combat money laundering and terrorist financing.

(22) *FATF-compliant.* The term *FATF-compliant* means the relevant jurisdiction—

(i) Is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction;

(ii) Is not a jurisdiction with strategic AML/CFT deficiencies that has not made sufficient progress in addressing the deficiencies; and

(iii) Is not a jurisdiction with strategic AML/CFT deficiencies irrespective of whether the jurisdiction has agreed upon an action plan with the FATF.

(23) *FFI.* The term *FFI* or *foreign financial institution* has the meaning set forth in § 1.1471–5(d).

(i) *Deemed-compliant FFI.* The term *deemed-compliant FFI* means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b).

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

(B) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI described in § 1.1471–5(f)(1).

(ii) *Limited branch.* The term *limited branch* has the meaning set forth in § 1.1471–4(e)(2)(iii).

(iii) *Limited FFI.* The term *limited FFI* has the meaning set forth in § 1.1471–4(e)(3)(ii).

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

(v) *Participating FFI.* The term *participating FFI* means an FFI with respect to which an FFI agreement is in full force and effect.

(24) *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 withholding partnership agreement, and a withholding trust agreement, that is entered into by an FFI and that has an effective date or renewal date on or after July 1, 2013.

(25) *FFI–EIN.* The term *FFI–EIN* means an EIN issued to a participating FFI or registered deemed-compliant FFI, including an EIN issued to a participating FFI that is a QI, WP, or WT.

(26) *Financial account.* The term *financial account* has the meaning set forth in § 1.1471–5(b).

(27) *Financial institution.* The term *financial institution* has the meaning set forth in § 1.1471–5(e).

(28) *Flow-through entity.* The term *flow-through entity* means a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

(29) *Foreign entity.* The term *foreign entity* has the meaning set forth in § 1.1473–1(e).

(30) *Foreign passthru payment.* The term *foreign passthru payment* has the meaning set forth in § 1.1471–5(h)(2).

(31) *Grantor trust.* A *grantor trust* is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

(32) *Gross proceeds.* The term *gross proceeds* has the meaning set forth in § 1.1473–1(a)(3).

(33) *Insurance company.* The term *insurance company* means a company more than half of the business of which during the calendar year is issuing (or being obligated to make payments with respect to) insurance or annuity contracts or the reinsuring of such contracts.

(34) *Intermediary.* The term *intermediary* has the meaning set forth in § 1.1441–1(c)(13).

(i) *NQI.* The term *NQI* or *nonqualified intermediary* has the meaning set forth in § 1.1441–1(c)(14).

(ii) *QI.* The term *QI* or *qualified intermediary* has the meaning set forth in § 1.1441–1(e)(5)(ii).

(35) *Life insurance contract.* The term *life insurance contract* means a contract that satisfies section 7702 (without regard to subsections (b), (c), and (d) and sections 101(f) and 817(h)).

(36) *NFFE.* The term *NFFE* or *non-financial foreign entity* means a foreign entity that is not a financial institution, including a territory NFFE.

(i) *Active NFFE.* The term *active NFFE* has the meaning set forth in § 1.1472–1(c)(1)(v).

(ii) *Excepted NFFE.* The term *excepted NFFE* means an NFFE that is described in § 1.1472–1(c)(1) or (2).

(iii) *Passive NFFE.* The term *passive NFFE* means an NFFE other than an excepted NFFE.

(37) *NQI withholding statement.* The term *NQI withholding statement* means the statement described in § 1.1441–1(e)(3)(iv).

(38) *NWP.* The term *NWP* or *nonwithholding foreign partnership* means a foreign partnership that is not a withholding foreign partnership.

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

(40) *Offshore obligation.* The term *offshore obligation* means any account, instrument, or contract maintained and executed at an office or branch of the withholding agent at any location outside of the United States or in any location in a possession of the United States. The term *payment with respect to an offshore obligation* means a payment made outside of the United States, within the meaning of § 1.6049–5(e), with respect to an offshore obligation.

(41) *Participating FFI group.* The term *participating FFI group* means an expanded affiliated group, within the meaning of § 1.1471–5(i)(2), that includes one or more participating FFIs.

(42) *Partnership.* The term *partnership* has the meaning set forth in § 301.7701–2(c)(1).

(43) *Passthru payment.* The term *passthru payment* has the meaning set forth in § 1.1471–5(h).

(44) *Payee.* The term *payee* has the meaning set forth in § 1.1471–3(a).

(i) *U.S. payee.* The term *U.S. payee* means any payee that is a U.S. person.

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

(45) *Payor.* The term *payor* has the meaning set forth in §§ 31.3406(a)–2 and 1.6049–(a)(2) and generally includes a withholding agent.

(46) *Person.* The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder. The term *person* does not include a wholly owned entity that is disregarded for Federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term *person* includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate indicating that it is a QI.

(i) *U.S. person.* 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).

(ii) *Foreign person.* The term *foreign person* means any person other than a U.S. person and includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes

an intermediary withholding certificate indicating that it is a QI.

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

(48) *Preexisting obligation.* The term *preexisting obligation* means any account, instrument, or contract maintained or executed by the withholding agent as of January 1, 2013. With respect to a participating FFI, the term *preexisting obligation* means any account, instrument, or contract maintained or executed by the FFI prior to the date that the participating FFI's FFI agreement becomes effective. With respect to a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract maintained or executed by the FFI prior to the earlier of the date that the FFI registers as a deemed-compliant FFI or the date the FFI implements its required account opening procedures.

(49) *Preexisting entity account.* A *preexisting entity account* is a financial account held by one or more entities that is a preexisting obligation.

(50) *Preexisting individual account.* A *preexisting individual account* is a financial account held by one or more individuals that is a preexisting obligation.

(51) *QI agreement.* The term *QI agreement* means the agreement described in § 1.1441–1(e)(5)(iii).

(52) *Recalcitrant account holder.* The term *recalcitrant account holder* has the meaning set forth in § 1.1471–5(g).

(53) *Relationship manager.* A *relationship manager* is an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of an FFI's private banking department), advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. Notwithstanding the previous sentence, a person is only a relationship manager with respect to an account that has a balance or value of more than $1,000,000, taking into account the aggregation rules described in § 1.1471–4(c)(3)(ii) and (c)(4)(iii).

(54) *Simple trust.* The term *simple trust* means a trust that meets the requirements of section 651(a)(1) and (2).

(55) *Specified U.S. person.* The term *specified U.S. person* or *specified United States person* has the meaning set forth in § 1.1473–1(c).

(56) *Standardized industry code.* The term *standardized industry code* means a code that is part of a coding system used by the withholding agent to classify account holders by business type for purposes other than U.S. tax purposes 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.

(57) *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).

(58) *Territory entity.* The term *territory entity* means any entity that is incorporated or organized under the laws of any possession of the United States.

(59) *Territory financial institution.* The term *territory financial institution* means a financial institution that is incorporated or organized under the laws of any possession of the United States, not including a territory entity that is described in § 1.1471–5(e)(1)(iii) that is not described in § 1.1471–5(e)(1)(i), (ii) or (iv).

(60) *Territory NFFE.* The term *territory NFFE* means a territory entity that is not a financial institution, including a territory entity that is described in § 1.1471–5(e)(1)(iii) and not described in § 1.1471–5(e)(1)(i), (ii) or (iv).

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

(62) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* or *United States owned foreign entity* has the meaning set forth in § 1.1471–5(c).

(63) *U.S. financial institution.* The term *U.S. financial institution* means a financial institution that is a U.S. person.

(64) *U.S. payor.* The term *U.S. payor* means a U.S. payor or U.S. middleman as defined in § 1.6049–5(c)(5).

(65) *U.S. source FDAP income.* The term *U.S. source FDAP income* has the meaning set forth in § 1.1473–1(a)(2).

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

(67) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from a payment.

(68) *Withholding agent.* The term *withholding agent* has the meaning set forth in § 1.1473–1(d).

(69) *Withholding certificate.* The term *withholding certificate* means a Form W–8, a Form W–9, or any other certificate that under the Code or regulations certifies or establishes the chapter 4 status of a payee or beneficial owner.

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

(ii) *Intermediary withholding certificate.* The term *intermediary withholding certificate* means a Form W–8IMY submitted by an intermediary.

(70) *WP.* The term *WP* or *withholding foreign partnership* means a foreign partnership that has executed the agreement described in § 1.1441–5(c)(2)(ii).

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

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 4. Section 1.1471–2 is added to read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) *Requirement to withhold on payments to FFIs*—(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 December 31, 2013, to a payee that is an FFI unless 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. Withholding under this section applies without regard to whether the FFI 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 of the Internal Revenue Code. In the case of a withholdable payment to an 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 of the Internal Revenue Code, a withholding

obligation arises on the date that a payment is made, as determined under § 1.1473–1(a).

(2) *Special withholding rules*—(i) *Requirement to withhold on payments of U.S. source FDAP to participating FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI that is an NQI, NWP, or NWT will be required to withhold 30 percent of the payment unless that withholding can be reduced under this paragraph (a)(2)(i). A withholding agent will not be 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)(3) and an FFI withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B)(*1*) and (*2*) and that establishes the portion of the payment that is allocable to a class of payees for which no withholding is required under chapter 4 of the Internal Revenue Code. 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 of a participating FFI that elects to be treated as a U.S. person.

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after December 31, 2013, will be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 4 of the Internal Revenue Code, except as otherwise provided in this paragraph (a)(2)(ii) or (a)(2)(iv) of this section. An NQI, NWP, or NWT will not be required to withhold or report with respect to a withholdable payment under chapter 4 (except to the extent such payment is required to be reported as made to a U.S. account pursuant to § 1.1471–4(d) and an FFI's FFI agreement) if it has provided a valid NQI withholding certificate or flow-through withholding certificate, it has provided 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 or failed to report the payment correctly under § 1.1474–1(d). A QI's, WP's, or WT's obligation to withhold and report will be determined in accordance with its QI withholding agreement, WP agreement, or WT agreement.

(iii) *Withholding on certain payments to QIs*—(A) *QIs making an election under section 1471(b)(3).* If a participating FFI that is acting as a QI makes the election under section 1471(b)(3) (a section 1471(b)(3) election) to be withheld upon, a withholding agent is required to withhold under this paragraph (a)(2)(iii) with respect to any withholdable payment or portion of a withholdable payment made to the participating FFI after December 31, 2013, that is U.S. source FDAP income subject to withholding. The withholding agent must withhold 30 percent of the portion of such a withholdable payment that is allocable in the pooled information provided by the payee in the withholding statement described in § 1.1471–3(c)(iii)(B) and (E) to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must presume that the entire portion of the withholdable payment that is U.S. source FDAP income is made to nonparticipating FFIs. A participating FFI that makes a section 1471(b)(3) election to be withheld upon with respect to a payment may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a participating FFI that is a QI and that does not make a section 1471(b)(3) election will be required to assume primary withholding responsibility under chapter 3. The section 1471(b)(3) election is available only with respect to a payment of U.S. source FDAP income and only in cases in which—

(*1*) The withholding agent is either a participating FFI or a U.S. withholding agent;

(*2*) The person who receives the payment acts as a QI with respect to the payment;

(*3*) The person who receives the payment provides the withholding agent with a valid intermediary withholding certificate with respect to the payment, at or before the time of the payment, on which it notifies the withholding agent that it has made the election under section 1471(b)(3) and certifies that it is not assuming primary withholding responsibility under chapter 3; and

(*4*) The person who receives the payment provides to the withholding agent the withholding statement described in § 1.1471–3(c)(3)(iii)(B).

(B) *Special rule for QIs that are not FFIs.* The withholding requirements described in paragraph (a)(iii)(A) of this section also apply to a withholding agent that makes a payment of U.S. source FDAP income subject to withholding to a foreign branch of a U.S. financial institution that is a QI that does not assume primary withholding responsibility with respect to the payment for chapter 3 purposes. For purposes of the previous sentence, the person who receives the payment must furnish the withholding statement described in § 1.1471–3(c)(iii)(B)(*2*) that indicates the portion of the payment that is attributable to payees that are subject to withholding under chapter 4 of the Internal Revenue Code.

(iv) *Withholding obligation of a territory financial institution.* A territory financial institution is a withholding agent with respect to a withholdable payment if it falls within the definition of a withholding agent under § 1.1473–1(d) with respect to such payment. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold if it agrees to be treated as a U.S. person with respect to that payment for both chapter 4 of the Internal Revenue Code purposes and under § 1.1441–1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section, however, if it has provided the withholding agent that is a U.S. person or a participating FFI with all of the documentation described in § 1.1471–3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d).

(v) *Payments of gross proceeds.* A withholding agent must withhold as required under paragraph (a)(1) of this section in the case of a withholdable payment consisting of gross proceeds (as defined under § 1.1473–1(a)(3)). When multiple withholding agents that are brokers are involved in effecting a sale, each broker must determine whether it is required to withhold on its payment of gross proceeds by reference to the chapter 4 status of its payee, unless the payment is otherwise exempt from withholding. With respect to a ''delivery versus payment'' or ''cash on delivery'' transaction or other similar account or transaction, each broker that pays the gross proceeds is a withholding agent with respect to the payment.

(3) *Coordination of withholding under section 1471(a) and (b).* A participating FFI that complies with the withholding requirements of section 1471(b), as described in § 1.1471–4(b) and its FFI agreement, is deemed to satisfy its

withholding obligations under sections 1471(a) and 1472(a), and this section.

(4) *Payments for which no withholding is required.* A withholding agent that has determined the payee of a withholdable payment to be a foreign entity in accordance with the documentation requirements and other rules provided in § 1.1471–3 must determine whether the payment is exempt from withholding and whether any special withholding requirements apply with respect to the payment. Paragraphs (a)(4)(i) through (vi) of this section describe circumstances in which a withholdable payment is not subject to withholding.

(i) *Exception to withholding if the withholding agent lacks control, custody, or knowledge*—(A) *In general.* The exceptions to withholding described in § 1.1441–2(d), applicable when an unrelated withholding agent has no control over or custody of money or property owned by a payee or beneficial owner of a payment, or lacks knowledge of the facts giving rise to such payments, also apply for purposes of chapter 4 of the Internal Revenue Code.

(B) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, that is also a participating FFI. DC pays a dividend of $1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer that $1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See § 1.1473–1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4 of the Internal Revenue Code. With respect to the wire transfer of $1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the $1,000 dividend paid to A, once Bank A credits the $1,000 dividend to A's account, the $1,000 becomes A's property. When A transfers the $1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives $1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

(ii) *Transitional exception to withholding for certain payments made prior to January 1, 2015*—(A) *In general.* For any withholdable payment made prior to January 1, 2015, 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 will not be 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, 2014, 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—

(*1*) The withholding agent has available as a part of its electronically searchable information a designation for the payee as a QI or NQI; or

(*2*) For an account maintained in the United States, the payee is presumed to be a foreign entity, or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information a standardized industry code that indicates that the payee is a financial institution. The following North American Industry Classification System codes indicate that the payee is a financial institution:

(*i*) Commercial Banking (NAICS 522110)

(*ii*) Savings Institutions (NAICS 522120)

(*iii*) Credit Unions (NAICS 522130)

(*iv*) Other Depositary Credit Intermediation (NAICS 522190)

(*v*) Investment Banking and Securities Dealing (NAICS 523110)

(*vi*) Securities Brokerage (NAICS 523120)

(*vii*) Commodity Contracts Dealing (NAICS 523130)

(*viii*) Commodity Contracts Brokerage (NAICS 523140)

(*ix*) Miscellaneous Financial Investment Activities (NAICS 523999)

(*x*) Open-End Investment Funds (NAICS 525910)

(*3*) In addition, the following Standard Industrial Classification Codes indicate that the payee is a financial institution:

(*i*) Commercial Banks, NEC (SIC 6029)

(*ii*) Branches and Agencies of Foreign Banks (branches) (SIC 6081)

(*iii*) Foreign Trade and International Banking Institutions (SIC 6082)

(*iv*) Asset-Backed Securities (SIC 6189)

(*v*) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200)

(*vi*) Security Brokers, Dealers & Flotation Companies (SIC 6211)

(*vii*) Commodity Contracts Brokers & Dealers (SIC 6221)

(*viii*) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-(*ix*) End Management Investment Offices (SIC 6726)

(iii) *Payments to a participating FFI.* Except to the extent provided in paragraph (a)(2)(i) or (iii) of this section, a withholding agent is not required to withhold under 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)(3). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

(iv) *Payments to a deemed-compliant FFI.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to a payee that the withholding agent can treat as a deemed-compliant FFI in accordance with § 1.1471–3(d)(5) through (7).

(v) *Payments to an exempt beneficial owner.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to the extent that the withholding agent can reliably associate the payment with documentation to determine the portion of the payment that is allocable to an exempt beneficial owner in accordance with § 1.1471–3(d)(8). For example, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that is the beneficial owner of such payment and is an exempt beneficial owner, to a nonparticipating FFI to the extent that the nonparticipating FFI receives the payment as an intermediary on behalf of one or more of its account holders that are exempt beneficial owners, or to a flow-through entity to the extent that the flow-through entity receives the payment with respect to one or more of its partners, beneficiaries, or owners (as applicable) that are exempt beneficial owners. See § 1.1471–3(d)(4)(ii) for special rules for a withholding agent to determine the portion of a withholdable payment that is beneficially owned by an exempt beneficial owner in the case of a payment made to a nonparticipating FFI.

(vi) *Payments to a territory financial institution.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment that the

withholding agent may treat as made to a territory financial institution that is the beneficial owner of the payment in accordance with § 1.1471–3(d)(10)(i). A withholding agent is also not required to withhold under this section on a withholdable payment that the withholding agent can treat, in accordance with § 1.1471–3(d)(10)(ii), as made to a territory financial institution payee that is a flow-through entity or that acts as an intermediary with respect to the payment and that agrees to be treated as a U.S. person for purposes of chapters 3 and 4 with respect to the payment. A territory financial institution's agreement to be treated as a U.S. person for purposes of this section must be evidenced by a withholding certificate described in § 1.1471–3(c)(3)(iii)(F) furnished by the territory financial institution to the withholding agent.

(b) *Grandfathered obligations*—(1) *Grandfathered treatment of outstanding obligations.* Notwithstanding §§ 1.1471–5(h) and 1.1473–1(a), a withholdable payment or passthru payment does include any payment made under a grandfathered obligation or any gross proceeds from the disposition of such an obligation.

(2) *Definitions.* The following definitions apply solely for purposes of this paragraph (b)—

(i) *Grandfathered obligation.* The term *grandfathered obligation* means any obligation outstanding on January 1, 2013.

(ii) *Obligation.* The term *obligation* means any legal agreement that produces or could produce a passthru payment. An obligation does not, however, include any legal agreement or instrument that is treated as equity for U.S. tax purposes or any legal agreement that lacks a stated expiration or term, such as a savings deposit or demand deposit. In addition, it does not include any brokerage agreement, custodial agreement, or other similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets. In addition, an obligation does not include a master agreement that merely sets forth general and standard terms and conditions that are intended to apply to a series of transactions between parties and that does not set forth all of the specific terms necessary to conclude a particular contract. An obligation for purposes of this paragraph (b)(2)(i) includes, for example—

(A) A debt instrument as defined in section 1275(a)(1) (for example, a bond, guaranteed investment certificate, or term deposit);

(B) A binding agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that on the agreement's issue date the agreement fixes the material terms (including a stated maturity date) under which the credit will be provided;

(C) A life insurance contract payable upon the earlier of attaining a stated age or death;

(D) A term certain annuity contract; and

(E) A derivatives transaction entered into between counterparties under an ISDA Master Agreement and evidenced by a confirmation.

(iii) *Outstanding on January 1, 2013.* An obligation that constitutes indebtedness for U.S. tax purposes is outstanding on January 1, 2013, if it has an issue date before January 1, 2013. In all other cases, an obligation is outstanding on January 1, 2013, if a legally binding agreement establishing the obligation was executed between the parties to the agreement before January 1, 2013. Any material modification of an outstanding obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification.

(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. In all other cases, whether a modification of an obligation is material will be determined based upon all relevant facts and circumstances.

(3) *Application to flow-through entities*—(i) *Partnerships.* A payment made under a grandfathered obligation includes a payment made to a partnership with respect to such obligation, including a payment made with respect to a partnership's disposition of such obligation. A payment made under a grandfathered obligation further includes the income from such obligation that is includible in the gross income of a partner with respect to a capital or profits interest in the partnership and the gross proceeds allocated to a partner from the disposition of such obligation as determined under § 1.1473–1(a)(5)(vi).

(ii) *Simple trusts.* A payment made under a grandfathered obligation includes a payment made to a simple trust with respect to such obligation, including a payment made with respect to a simple trust's disposition of such obligation. A payment made under a grandfathered obligation further includes income from such obligation that is includible in the income of a beneficiary and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under § 1.1473–1(a)(5)(vii).

(iii) *Grantor trusts.* A payment made under a grandfathered obligation includes a payment made to a grantor trust with respect to such obligation, including a payment made with respect to the trust's disposition of such obligation. A payment made under a grandfathered obligation further includes income from such obligation that is includible in the gross income of a person that is treated as an owner of the trust and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 5. Section 1.1471–3 is added to read as follows.

§ 1.1471–3 Identification of payee.

(a) *Payee defined*—(1) *In general.* Except as otherwise provided in this paragraph (a), for purposes of chapter 4 of the Internal Revenue Code a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount.

(2) *Payee with respect to a financial account.* For purposes of payments made to a financial account and except as otherwise provided in paragraph (a)(3) of this section, the payee is the holder of the financial account.

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) A foreign person that the withholding agent may treat as acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if it is—

(*1*) An NFFE; or

(*2*) In the case of a payment of U.S. source FDAP income, a participating FFI acting as an intermediary, other than a QI that has assumed primary withholding responsibility;

(B) In the case of an agent or intermediary described in paragraph (a)(3)(i)(A) of this section, the payee is the person or persons for whom the agent or intermediary collects the payment. Thus, for example, the payee of a payment of U.S. source FDAP income that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary that does not assume primary withholding responsibility with respect to the payment under chapter 3, or a payment to a participating FFI that is an NQI, is the person or persons for whom the QI or NQI acts.

(ii) *Foreign flow-through entity.* (A) A foreign entity that a withholding agent may treat as a flow-through entity is not a payee with respect to a payment unless the flow-through entity is—

(*1*) An FFI, other than a participating FFI receiving a payment of U.S. source FDAP;

(*2*) An active NFFE or excepted FFI that is not acting as an agent or intermediary with respect to the payment;

(*3*) A WP or WT that is not acting as an agent or intermediary with respect to the payment; or

(*4*) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is excluded from the definition of a withholdable payment under § 1.1473–1(a)(4).

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(*1*) through (*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 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 as the payee if the withholding agent has no reason to know that the U.S. financial institution will not comply with its obligation to withhold under sections 1471 and 1472.

(iv) *Territory financial institution.* A withholding agent that makes a withholdable payment to a territory financial institution that is a flow-through entity or is acting as an intermediary or agent with respect to the payment may treat the territory financial institution as the payee only if the territory financial institution has agreed (as evidenced by a withholding certificate described in § 1.1471–3(c)(3)(iii)(F)) to be treated as a U.S. person for purposes of withholding with respect to the payment for both chapter 3 and chapter 4 of the Internal Revenue Code purposes. In all other cases, the withholding agent must treat as the payee the partner, beneficiary, or owner (as applicable) of the territory financial institution that is a flow-through entity or the person on whose behalf the territory financial institution is acting.

(v) *Disregarded entity or branch.* Except as otherwise provided in this paragraph (a)(3)(v), 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) as an entity separate from its single owner must treat the single owner as the payee. Notwithstanding the previous sentence, a withholding agent that makes a payment to a limited branch will be required to treat the payment as made to a nonparticipating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of a participating FFI is a payment to a U.S. person if the U.S. branch and the withholding agent have agreed to treat the U.S. branch as a U.S. person for purposes of § 1.1441–1(b)(2)(iv). However, a U.S. branch that is treated as a U.S. person under § 1.1441–1(b)(2)(iv) 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 of the Internal Revenue Code. Accordingly, a U.S. branch of a participating FFI must furnish a withholding certificate on a Form W–8 to certify its chapter 4 status (and not a Form W–9). A U.S. branch of a participating FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) of the Code and § 1.1471–2(a)(2)(iii), for purposes of chapter 4. See § 1.1471–4(d) for rules requiring a U.S. branch of a participating FFI to report as a U.S. person.

(vii) *Foreign branch of a U.S. financial institution.* A payment to a foreign branch of a U.S. person is a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to a foreign payee if the foreign branch is a QI. Therefore, a foreign branch that is a QI will provide the withholding agent with an intermediary withholding certificate and the withholding agent will report the payment as made to foreign branch of the QI on a Form 1042–S.

(b) *Determination of payee's status.* Except as otherwise provided in this paragraph (b), a withholding agent must base its determination of the chapter 4 status of a payee on documentation that the withholding agent can reliably associate with such payment. Paragraph (c) of this section provides rules for when a withholding agent can reliably associate a payment with appropriate documentation. Paragraph (d) of this section provides documentation requirements applicable to each class of payees, including exceptions for payments made with respect to offshore obligations or preexisting obligations. Paragraph (e) provides standards for determining when a withholding agent will be considered to have reason to know that a claim of exemption from withholding is unreliable or incorrect. Paragraph (f) of this section provides presumptions that apply for purposes of determining a payee's chapter 4 status in the absence of documentation or when the documentation provided is unreliable or incorrect.

(1) *Determining whether a payment is received by an intermediary.* A withholding agent may treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. For this purpose, a U.S. person's foreign branch that is a QI is treated as a foreign intermediary. A withholding agent that makes a payment with respect to an offshore obligation may also treat the person who receives a payment as an intermediary if the withholding agent can reliably associate the payment with documentation that would be sufficient to treat the person as an excepted FFI under paragraph (d)(9) of this section or otherwise as an NFFE under paragraph (d)(11) of this section if the person were the payee, and the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the type of certificate furnished as determinative of whether the person who receives the payment is an intermediary, unless the withholding agent knows or has reason to know that the certificate is incorrect. For example, a withholding agent that receives a beneficial owner withholding certificate from an FFI may treat the FFI as the beneficial owner unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status

(for example, sub-account numbers or additional names). If the FFI also acts as an intermediary, the withholding agent may request that the FFI furnish two certificates, that is, a beneficial owner certificate for the amounts it receives as a beneficial owner, and an intermediary withholding certificate for the amounts it receives as an intermediary. A withholding agent that cannot reliably associate a payment with documentation sufficient to treat the person who receives the payment as an intermediary must follow the presumption rules set forth in paragraph (f)(5) of this section to determine whether it must treat the person who receives the payment as an intermediary.

(2) *Determination of entity type.* A withholding agent may rely upon a person's entity classification contained in a valid Form W–8 or Form W–9 if the withholding agent has no reason to know that the entity classification is incorrect. A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification unless the withholding agent has reason to know that the entity classification indicated by the person who receives the payment is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is a per se corporation described in § 301.7701–2(b)(8) of this chapter unless the certificate or written statement contains a statement that the person is a grandfathered per se corporation described in § 301.7701–2(b)(8) of this chapter and that its grandfathered status has not been terminated.

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, a WP, or a WT if the withholding agent can reliably associate the payment with a valid Form W–8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, and the form contains the person's FFI–EIN, in the case of a QI or a WP or WT that is an FFI, or in the case of a QI, WP, or WT that is not an FFI its QI–EIN, WP–EIN, or WT–EIN.

(4) *Determination of whether the payee is receiving effectively connected income.* A withholding agent may treat a payment as made to a payee that is receiving income that is effectively connected to a trade or business in the United States if it can reliably associate the payment with a valid Form W–8ECI described in paragraph (c)(3)(iv) of this section.

(c) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation*—(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it holds valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section (either directly or through an agent), 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 is 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.

(2) *Reliably associating a payment with documentation when a payment is made through an intermediary or flow-through entity that is not the payee*—(i) A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation only if, in addition to the documentation described in paragraph (d) of this section that is relevant to the payee, the withholding agent also has obtained a valid Form W–8IMY, described in paragraph (c)(3)(iii) of this section from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a Form W–8IMY from any other intermediary or flow-through entity in that chain).

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a withholding agent that makes a payment with respect to an offshore obligation to an intermediary or flow-through entity that is an NFFE, may rely upon a written notification from the intermediary or flow-through entity, regardless of whether such notification is signed, stating that the NFFE is a flow-through entity or is acting as an intermediary with respect to the payment, in lieu of the Form W–8 described in the previous sentence. However, in such case, the NFFE intermediary or flow-through entity will be required to provide the withholding statement that generally accompanies the Form W–8IMY, designating the payees and the appropriate amount that should be allocated to each payee. If no such withholding statement is provided, the payment will be treated as made to a nonparticipating FFI.

(3) *Requirements for validity of certificates*—(i) *Form W–9.* A valid Form W–9, or a substitute form, must meet the requirements prescribed in § 31.3406(h)–3, including the requirement that the form contain the payee's name and TIN, and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee pursuant to sections 6061 through 6063 and the regulations thereunder. A foreign person, including a U.S. branch of a foreign person that is treated as a U.S. person under § 1.1441–1(b)(2)(iv), or a foreign branch of a U.S. financial institution that is a QI, may not provide a Form W–9.

(ii) *Beneficial owner withholding certificate (Form W–8BEN)*—(A) A beneficial owner withholding certificate includes a Form W–8BEN (or a substitute form) and such other form as the IRS may prescribe. A beneficial owner withholding certificate is valid only if its validity period has not expired, it is signed under penalties of perjury by a person with authority to sign for the person whose name is on the form, and it contains—

(*1*) The person's name, permanent residence address, and TIN (if required);

(*2*) The country under the laws of which the person is created, incorporated, or governed (if a person other than an individual);

(*3*) The entity classification of the person;

(*4*) The chapter 4 status of the person; and

(*5*) Such other information as may be required by the regulations under section 1471 or 1472 or by the form or the accompanying instructions in addition to, or in lieu of, the information described in this paragraph (c)(3)(ii).

(B) For purposes of chapter 4 of the Internal Revenue Code, a person's permanent residence address is the address in the country where 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 residence address for this purpose 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. 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. See paragraph (d) of this section for additional form requirements applicable to each type of chapter 4 status.

(iii) *Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W–8IMY)*—(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch is valid for purposes of chapter 4 of the Internal Revenue Code 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—

(*1*) The name and permanent residence address of the person;

(*2*) The country under the laws of which the person is created, incorporated, or governed;

(*3*) The person's chapter 4 status;

(*4*) The person's entity tax classification;

(*5*) An FFI–EIN, in the case of a participating FFI or a registered deemed-compliant FFI, or an EIN in the case of a QI, WP, or WT that is not an FFI;

(*6*) In the case of an intermediary certificate, a certification that, with respect to accounts listed on the withholding statement, the intermediary is not acting for its own account;

(*7*) With respect to a withholding certificate of a QI, a certification that it is acting as a QI with respect to the accounts listed on the withholding statement;

(*8*) In the case of a participating FFI that is an NQI, an NWP, an NWT, a QI that makes a section 1471(b)(3) election to be withheld upon for purposes of chapter 4 of the Internal Revenue Code, or a QI that is a foreign branch of a U.S. financial institution, an FFI withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*2*) of this section;

(*9*) In the case of an NFFE that is an NQI, an NWP, or an NWT, an NFFE withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*3*) of this section; and

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

(B) *Withholding statement*—(*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 apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the FFI, NFFE, or QI submitting the form and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the FFI, NFFE, or QI submitting the withholding certificate and must also document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the FFI, NFFE, or QI. The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4 of the Internal Revenue Code. A withholding agent will be liable for tax, interest, and penalties in accordance with § 1.1474–1 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.

(*2*) *Special requirements for an FFI withholding statement.* An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to recalcitrant account holders and nonparticipating FFIs (or, in the case of a QI that is a foreign branch of a U.S. financial institution, the portion of the payment allocable to account holders subject to chapter 4 withholding) and the portion of the payment that is allocated to each class of payees that is not subject to withholding under chapter 4, or an allocation of the payment to each payee, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. A withholding agent may rely upon a withholding statement provided by the FFI for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*3*) *Special requirements for an NFFE withholding statement.* An NFFE withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status 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 in accordance with paragraph (d) of this section, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. Notwithstanding the prior sentence, an NFFE is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs. A withholding agent may rely upon a withholding statement provided by the NFFE for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*4*) *Special requirements for a territory institution withholding statement.* A territory institution withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each payee on behalf of which it is receiving the payment, the amount allocated to each payee, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each payee in accordance with paragraph (d) of this section, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements for the Forms 1042 and 1042–S, described in § 1.1474–1(d), and the instructions accompanying the forms. A withholding agent may rely upon a withholding statement provided by the territory

financial institution for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*5*) *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 of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount 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 reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. 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.

(C) *Failure to provide allocation information.* A withholding certificate provided by an NWP, NWT, or NQI that fails to provide documentation or allocation information with respect to some of the partners of the partnership, owners or beneficiaries of the trust, or persons for whom the intermediary is acting will not be treated as invalid with respect to the persons for whom documentation and allocation information is properly provided. The portion of the payment that is not reliably associated with underlying documentation or that is not properly allocated will be allocated in accordance with the presumption rules set forth in paragraph (f) of this section. For example, assume a withholding certificate that is provided by an FFI that is an NQI includes an FFI withholding statement that indicates that 50 percent of the payment is allocable to a pool of payees that are exempt for purposes of chapter 4 of the Internal Revenue Code but does not allocate the remaining 50 percent of the payment. In such a case, the withholding agent may treat 50 percent of the payment as exempt from chapter 4 and the remaining 50 percent that was not allocated will be treated, under the presumption rules set forth in paragraph (f) of this section, as made to a pool of payees that are nonparticipating FFIs.

(D) *Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code.* A QI that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code for a payment may not make the election described in § 1.1471–2(a)(2)(iii) to be withheld upon with respect to the payment. Thus, where a QI assumes primary withholding responsibility under chapter 3 with respect to a payment, in addition to the other requirements indicated in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has not indicated that it makes the section 1471(b)(3) of the Code election to be withheld upon for purposes of chapter 4 of the Internal Revenue Code.

(E) *Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.* A QI that does not assume primary withholding responsibility under chapter 3 will be required to make the section 1471(b)(3) election to be withheld upon that is described in § 1.1471–2(a)(2)(iii). Thus, in a case in which a QI does not assume primary withholding responsibility under chapter 3, a withholding agent can reliably associate the payment with a valid withholding certificate only when, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the withholding certificate indicates that the QI elects to be withheld upon for purposes of chapter 4 of the Internal Revenue Code.

(F) *Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or flow-through withholding certificate of a territory financial institution that agrees to be treated as a U.S. person if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section, the certificate contains an EIN of the territory financial institution and a certification that the territory financial institution agrees to be treated as a U.S. person with respect to the payment for both chapter 3 and chapter 4 of the Internal Revenue Code purposes.

(G) *Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person and the institution provides a territory institution withholding statement described in paragraphs (c)(3)(iii)(B)(*1*) and (*4*) of this section. If the territory financial institution does not provide valid documentation with respect to all payees on behalf of which it receives the payment, the withholding agent may still treat the withholding certificate and any other documentation received as valid but must treat any portion of the payment allocable to undocumented payees of the territory financial institution as made to a nonparticipating FFI.

(iv) *Certificate for exempt status (Form W–8EXP).* A Form W–8EXP is valid only if it contains the name, address, and chapter 4 status of the payee, the relevant certifications or documentation, and any other requirements indicated in the instructions to the form, and is signed under penalties of perjury by a person with authority to sign for the payee.

(v) *Certificate for effectively connected income (Form W–8ECI).* A Form W–8ECI is valid only if, in addition to meeting the requirements in the instructions to the form, it contains the TIN of the payee, represents that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and are includable in the payee's gross income for the taxable year, and is signed under penalties of perjury by a person with authority to sign for the payee.

(4) *Requirements for written statements.* A written statement provided by a payee with respect to an offshore obligation must contain a payee's certification that it meets the requirements relevant to the chapter 4 status claimed and must be signed by the payee under penalties of perjury. A written statement may be used in lieu of a withholding certificate only to the extent provided under this section and only when accompanied by

documentary evidence (unless provided otherwise by this section).

(5) *Requirements for documentary evidence.* Documentary evidence with respect to a payee is only reliable if it contains sufficient information to support the payee's claim of chapter 4 status. Acceptable documentary evidence includes—

(i) A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country;

(ii) With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and address and is typically used for identification purposes;

(iii) With respect to an entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the entity and either the address of its principal office in the country (or possession of the United States) in which it claims to be a resident or the country (or possession of the United States) in which the entity was incorporated or organized;

(iv) With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as referenced in § 1.1441–1(e)(5)(iii)), any of the documents other than a Form W–8 or W–9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities; and

(v) Any financial statement, third-party credit report, bankruptcy filing, SEC report, or other document identified in the specific payee documentation requirements in paragraph (d) of this section.

(6) *Applicable rules for withholding certificates, written statements, and documentary evidence.* The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates on Form W–8 (or a substitute form), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding the Form W–9 (or a substitute Form W–9), see section 3406 and the regulations thereunder.

(i) *Who may sign the certificate or written statement.* A withholding certificate (including an acceptable substitute) or written statement may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate or written statement, as provided in sections 6061 through 6063 and the regulations thereunder.

(ii) *Period of validity*—(A) *Withholding certificates.* For purposes of determining the period of validity for a withholding certificate under chapter 4 of the Internal Revenue Code, the rules prescribed in § 1.1441–1(e)(4)(ii)(A) through (C) apply, except that § 1.1441–1(e)(4)(ii)(B)(*1*) will not apply to a withholding certificate of a nonregistering local bank, an FFI with only low-value accounts, or an owner-documented FFI.

(B) *Written statements.* Except as otherwise provided, a written statement is valid until the earlier of the last day of the third calendar year following the year in which documentary evidence is provided to the withholding agent or the day on which a change in circumstance occurs that makes the information contained in the written statement incorrect. However, a written statement submitted by a foreign government or a foreign central bank will remain valid indefinitely, unless and until a change in circumstances makes the information contained in the written statement incorrect.

(C) *Documentary evidence.* As a general rule, documentary evidence is valid until the earlier of the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent or the day on which a change in circumstance occurs that makes the information on the documentary evidence incorrect. However, documentary evidence that contains an expiration date will be valid until the end of the expiration period, regardless of whether that expiration date occurs before or after the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. In addition, documentary evidence that is not generally renewed or amended, such as a certificate of incorporation, may be treated as valid indefinitely until a change in circumstance occurs that makes the information on the documentary evidence incorrect.

(D) *Change of circumstances*—(*1*) *Defined.* For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change of circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(D) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools contained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(*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. 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 of circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation whose validity 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. However, 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 unreliable due to the change in circumstances or the date that a new

certificate or new documentation is obtained. 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.

(iii) *Record Retention.* A withholding agent must retain each withholding certificate, written statement, or copy of documentary evidence for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1474(a) and § 1.1474–1. A withholding agent may retain either an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the withholding certificate, written statement, or documentary evidence. With respect to documentary evidence, the withholding agent must also note in its records the date on which and by whom the document was received and reviewed. Any documentation that is stored electronically must be made available in hard copy form to the IRS upon request during an examination.

(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 Internal Revenue Service shall prescribe, electronically in accordance with the requirements set forth in § 1.1441–1(e)(4)(iv). A withholding certificate (including a substitute form), written statement or other such form prescribed by the IRS may be accepted by facsimile if the withholding agent confirms that the person furnishing the form is the person named on the form, the faxed form contains a signature of the person whose name is on the form, and such signature is made under penalties of perjury in the manner described in § 1.1441–1(e)(4)(iv)(B)(*3*)(*i*). A withholding agent may also accept a copy of documentary evidence electronically, including by facsimile, if the withholding agent confirms that the person furnishing the documentary evidence is the person named on the documentary evidence, the copy does not appear to have been altered from its original form, and the copy is a certified copy or notarized copy (that is, must either be certified to be a true copy of the original or must contain a notarized signed statement of the person furnishing the document that the copy is a true and accurate reproduction of the original).

(v) *Acceptable substitute withholding certificate.* A withholding agent may substitute its own form for an official Form W–8 if the substitute form meets the requirements of § 1.1441–1(e)(4)(vi) and contains all of the information relevant for determining the chapter 4 status of the person named on the form.

(vi) *Documentation to be furnished for each account unless exception applies.* Except as otherwise provided in this paragraph (c)(6)(vi), a withholding agent that is a financial institution must obtain withholding certificates or other appropriate documentation on an account-by-account basis. However, the exceptions set forth in § 1.1441–1(e)(4)(ix)(A) through (C), that permit a withholding agent to rely on documentation held through coordinated account systems, families of mutual funds, and through certain U.S. brokers, apply for purposes of documenting accounts under chapter 4 of the Internal Revenue Code.

(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 for six months after the revision date shown on the updated withholding certificate, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(7) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 of the Internal Revenue Code 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 15 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) or (ii) 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 (d) of this section applicable to an offshore account that supports the chapter 4 status claimed. In a case in which 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 supporting the chapter 4 status claimed.

(d) *Documentation requirements to establish payee's chapter 4 status.* Unless the withholding agent knows or has reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) to determine the chapter 4 status of a payee. Except as otherwise provided in this paragraph (d), a withholding agent is required to obtain a valid withholding certificate or a Form W–9 from the payee in order to treat the payee as having a particular chapter 4 status. Paragraphs (d)(1) through (11) of this section prescribe any additional documentation requirements that must be met in order to treat a payee as having a specific chapter 4 status. Paragraphs (d)(1) through (11) of this section also indicate when it is appropriate to rely upon documentary evidence in lieu of a Form W–8 or W–9 and the type of documentary evidence necessary. In cases where documentary evidence alone is not sufficient to establish that a payee with respect to an offshore obligation has a particular chapter 4 status, the withholding agent may supplement the documentary evidence with a written statement signed by the payee (or a person with authority to sign for the payee) under penalties of perjury that indicates that the payee meets the requirements to qualify for a particular chapter 4 status. This paragraph (d) also provides the circumstances in which special documentation rules are permitted with respect to preexisting obligations. A withholding agent may not rely on documentation described in this paragraph (d) if it knows or has reason

to know that such documentation is incorrect or unreliable as described in paragraph (e) of this section.

(1) *Identification of U.S. persons.* A withholding agent must treat a payee as a U.S. person if it has a valid Form W–9 associated with the payee or if it can presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section.

(2) *Identification of foreign individuals*—(i) *In general.* A withholding agent may treat a payee as a foreign individual if the withholding agent has a valid withholding certificate identifying the payee as a foreign individual.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a foreign individual if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate identifying the payee as a foreign individual.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as a foreign individual if it obtains a government-issued identification that supports the payee's claim of chapter 4 status as a foreign individual and none of the documentation associated with the payee contains U.S. indicia described in paragraph (e)(4) of this section.

(3) *Identification of participating FFIs*—(i) *In general.* A withholding agent may treat a payee as a participating FFI only if the withholding agent has a valid withholding certificate identifying the payee as a participating FFI and the withholding certificate contains an FFI–EIN for the payee 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 an FFI–EIN). A withholding certificate that identifies the payee as a participating FFI but does not provide the payee's FFI–EIN or provides an FFI–EIN that does not appear on the current published IRS FFI list within 90 calendar days after the date that the claim is made, will be treated as an invalid withholding certificate for purposes of chapter 4 and the payee will be treated as an undocumented payee beginning on such date until other valid documentation or a correct FFI–EIN is provided.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For withholdable payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) that are applicable to the certificate, identifying the payee as a foreign person, the payee has provided the withholding agent, either orally or in writing, with its FFI–EIN, and the withholding agent has verified the FFI–EIN in the manner described in paragraph (e)(3) of this section.

(4) *Identification of nonparticipating FFIs*—(i) *In general.* A withholding agent is required to treat a payee as a nonparticipating FFI if the withholding agent can reliably associate the payment with a valid withholding certificate identifying the payee as a nonparticipating FFI, the withholding agent knows or has reason to know that the payee is a nonparticipating FFI, or the withholding agent is required to treat the payee as a nonparticipating FFI under the presumption rules described in paragraph (f) of this section.

(ii) *Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.* A withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner if the withholding agent can reliably associate the payment with—

(A) A valid withholding certificate that identifies the payee as a nonparticipating FFI that is either acting as an intermediary or is a flow-through entity; and

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*5*) of this section and contains the associated documentation that would be necessary to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d)(8) of this section if it were the payee.

(5) *Identification of registered deemed-compliant FFIs*—(i) *In general.* A payee will be treated as a registered deemed-compliant FFI described in § 1.1471–5(f)(1) only if the withholding agent has a valid withholding certificate identifying the payee as a registered deemed-compliant FFI and the withholding certificate contains an FFI–EIN for the payee that the withholding agent verifies against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. A withholding certificate that identifies the payee as a registered deemed-compliant FFI but does not provide an FFI–EIN or provides an FFI–EIN that does not appear on the current published IRS FFI list within 90 calendar days of the date that the claim is made will be treated as an invalid withholding certificate for purposes of chapter 4 of the Internal Revenue Code beginning on such date, and the payee will be treated as an undocumented payee from such date until a correct FFI–EIN or other valid documentation is provided.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a registered deemed-compliant FFI if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate identifying the payee as a foreign person, the payee has provided the withholding agent, either orally or in writing, its FFI–EIN, and the withholding agent has verified the FFI–EIN in the manner described in paragraph (e)(3) of this section.

(6) *Identification of certified deemed-compliant FFIs*—(i) *Identification of nonregistering local banks.* A withholding agent may treat a payee as a nonregistering local bank if the withholding agent can reliably associate the payment with a valid withholding certificate that identifies the payee as a foreign entity that is a nonregistering local bank, the withholding certificate contains a certification by the payee that it meets the requirements to qualify as a nonregistering local bank under § 1.1471–5(f)(2)(i), and the withholding agent has either a current audited financial statement, or if the payee does not have an audited financial statement, an unaudited financial statement or other similar financial document for the payee that supports the payee's claim that it is an FFI that operates solely as a bank (within the meaning of section 581, determined as if the FFI were incorporated in the United States) and does not contradict the payee's claim that it is eligible for certified deemed-compliant status as a nonregistering local bank. A withholding agent will have reason to know that a payee is not a nonregistering local bank if the withholding agent has knowledge that the payee operates in more than one country or the withholding agent can

determine that the payee has assets in excess of $175 million.

(ii) *Identification of retirement plans*—(A) *In general.* A withholding agent may treat a payee as a retirement plan described in § 1.1471–5(f)(2)(ii) if it can associate the payment with a valid withholding certificate in which the payee certifies that it is a retirement plan meeting the requirements of § 1.1471–5(f)(2)(ii) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim. An organizational document will generally support the payee's claim that it is a retirement plan if, for example, the organizational document indicates that the payee qualifies as a retirement plan under the laws of the jurisdiction in which the payee was organized, even if the organizational document does not specify whether the payee meets all of the requirements to qualify as a retirement plan under § 1.1471–5(f)(2)(ii), provided that no information in the organizational document contradicts the payee's claim that it qualifies as a retirement plan under § 1.1471–5(f)(2)(ii).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to a retirement plan described in § 1.1471–5(f)(2)(ii) if it obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, in which the payee certifies that it is a retirement plan under the laws of its local jurisdiction meeting the requirements of § 1.1471–5(f)(2)(ii) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim.

(C) *Exception 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 retirement plan described in § 1.1471–5(f)(2)(ii) if the payee is generally known to be a retirement plan in the country in which the withholding agent is located and the withholding agent has documentary evidence that establishes that the payee is a foreign entity that qualifies as a retirement plan in the country in which the payee is organized.

(iii) *Identification of non-profit organizations*—(A) *In general.* A withholding agent may treat a payee as a deemed-compliant non-profit organization described in § 1.1471–5(f)(2)(iii) if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as a non-profit organization described in § 1.1471–5(f)(2)(iii) and the payee has provided a letter from counsel concluding that the payee qualifies as a non-profit organization described in § 1.1471–5(f)(2)(iii).

(B) *Exception for offshore obligations.* A withholding agent may treat a payment with respect to an offshore obligation as made to a deemed-compliant nonprofit organization without obtaining a withholding certificate for the payee if the payee has provided a letter from counsel concluding that the payee qualifies as a non-profit organization described in § 1.1471–5(f)(2)(iii). A withholding agent may also treat the payee as a deemed-compliant nonprofit organization if the withholding agent obtains a letter from counsel indicating that the payee was organized for the purposes described in § 1.1471–5(f)(2)(iii), has an organizational document that establishes that the payee was organized in the same country in which the account is maintained by the withholding agent, is provided with a TIN for the payee issued by the tax authority of that country, and is subject to information reporting by the withholding agent as a tax-exempt charitable organization under that country's information reporting laws.

(C) *Exception 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 an deemed-compliant nonprofit organization described in § 1.1471–5(f)(2)(iii) if the payee—

(*1*) Provides a letter issued by the tax authority of the country in which the payee is organized or a letter of local counsel that certifies that the payee qualifies as a tax-exempt charity in its local jurisdiction; or

(*2*) Provides an organizational document establishing that the payee was organized as a charitable organization in the same country in which the account is maintained by the withholding agent, has provided a TIN issued by the tax authority of that country to the payee, and is reported by the withholding agent as a tax-exempt charitable organization to the tax authority of that country.

(iv) *Identification of FFIs with only low-value accounts.* A withholding agent may treat a payee as an FFI with only low-value accounts if the withholding agent can reliably associate the payment with a valid withholding certificate that identifies the payee as a foreign entity that is described in § 1.1471–5(f)(2)(iv), an organizational document that supports the payee's claim that it is an entity described in § 1.1471–5(e)(1)(i) and/or (ii), and a current audited financial statement (or if such statement is not available, an unaudited financial statement or similar financial document) for the payee and all members of its expanded affiliated group (if any) that supports the claim that the payee has no more than $50 million in assets on its balance sheet (or, in the case of a payee that is a member of an expanded affiliated group, that the group has $50 million or less in total assets on its consolidated or combined balance sheet) and that does not contradict the claim that the payee is an FFI with only low-value accounts. A withholding agent will have reason to know that a payee is not an FFI with only low-value accounts if the withholding agent has knowledge that the FFI or any member of the FFI's expanded affiliated group (if any) maintains any financial accounts with a balance or value in excess of $50,000 or the withholding agent can determine that the payee or the payee's expanded affiliated group (if any) has assets in excess of $50 million.

(*7*) *Identification of owner-documented FFIs*—(i) *In general.* A withholding agent may treat a payee as an owner-documented FFI if it meets the requirements of this paragraph (d)(7). A withholding agent may not rely upon a withholding certificate to treat a payee as an owner-documented FFI, either in whole or in part, if the withholding certificate does not contain all of the information and associated documentation required by this paragraph (d)(7).

(A) The withholding agent has a valid withholding certificate that identifies the payee as an owner-documented FFI that is not acting as an intermediary;

(B) The withholding agent agrees to treat the payee as an owner-documented FFI;

(C) The payee submits on an annual basis an FFI owner reporting statement associated with the withholding certificate that provides all of the information designated in paragraph (d)(7)(iv) of this section;

(D) The payee submits valid documentation (including any necessary waivers) associated with each individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, or NFFE that holds, directly or indirectly, an interest in the payee;

(E) The withholding agent does not know or have reason to know that the payee maintains any financial account for a nonparticipating FFI or issues debt

constituting a financial account to any person in excess of $50,000; and

(F) The withholding agent does not know or have reason to know that the payee is affiliated with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent.

(ii) *Auditor's letter substitute.* A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(7)(i)(C) and (D) of this section, provide an auditor's letter, signed within one year of the date of the payment, from an unrelated and independent accounting firm or legal representative that has a location in the United States. The auditor's letter must certify that the firm or representative has reviewed the payee's documentation with respect to all of its owners in accordance with § 1.1471–4(c), that the payee meets the requirements of § 1.1471–5(f)(3), and that no owner that owns a direct or indirect interest in the payee is a nonparticipating FFI, specified U.S. person, or passive NFFE with any substantial U.S. owners. A withholding agent may rely upon an auditor's letter if it does not know or have reason to know that any of the information contained in the letter in unreliable or incorrect.

(iii) *Documentation for owners of payee.* Acceptable documentation for an individual owning an interest in the payee means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(2) of this section. Acceptable documentation for a specified U.S. person means a valid Form W–9 (including any necessary waiver). Acceptable documentation for all other persons owning an equity interest in the payee means documentation described in this paragraph (d), applicable to the chapter 4 status claimed by the person. The rules for reliably associating a payment with a withholding certificate or documentary evidence set forth in paragraph (c) of this section, the rules for payee documentation provided in this paragraph (d), and the standards of knowledge set forth in paragraph (e) of this section will apply to documentation submitted by the owners of the payee by substituting the phrase ''owner of the payee'' for ''payee.''

(iv) *Content of FFI owner reporting statement.* The FFI owner reporting statement provided by an owner-documented FFI must contain the information required by this paragraph (d)(7)(iv) and is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section. An FFI that is a partnership, simple trust, or grantor trust may substitute the FFI owner reporting statement with an NWP withholding statement described in § 1.1441–5(c)(3)(iv) or a foreign simple trust or foreign grantor trust withholding statement described in § 1.1441–5(e)(5)(iv), provided that the NWP withholding certificate or foreign simple trust or foreign grantor trust withholding certificate contains all of the information required in this paragraph (d)(7)(iv). The owner-documented FFI will be required to provide the withholding agent with an updated owner reporting statement if the withholding certificate expires due to a change in circumstances as required under paragraph (c)(6)(ii)(D) of this section.

(A) The FFI owner reporting statement must contain the name, address, TIN (if any), entity tax classification, and the type of documentation (Form W–9, Form W–8, or other documentary evidence) provided to the owner-documented FFI for every person that owns an equity interest in the payee, and must indicate that person's chapter 4 status.

(B) The FFI owner reporting statement must indicate the percentage that each person owns of the payee.

(C) The FFI owner reporting statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4 of the Internal Revenue Code.

(v) *Exception for preexisting obligations.* A withholding agent may treat a payment made with respect to a preexisting obligation as made to an owner-documented FFI without requiring that the FFI provide documentation for every individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, and/or NFFE that owns an interest in the payee if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as an FFI and the payee submits an FFI owner reporting statement associated with the withholding certificate that provides all of the information designated in paragraph (d)(7)(iv) of this section. In such case, the owner-documented FFI must agree to maintain and make available the documentation for every person that owns an interest, other than an interest as a creditor, in the payee upon the request of the withholding agent. A withholding agent may also treat a payment made with respect to a preexisting obligation as made to an owner-documented FFI if the withholding agent has collected documentation with respect to each individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, and/or NFFE that owns a direct or indirect interest in the payee, other than an interest as a creditor, pursuant to its AML due diligence within four years of the date of payment and that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account.

(8) *Identification of exempt beneficial owners*—(i) *Identification of foreign governments and governments of U.S. possessions*—(A) *In general.* A withholding agent may treat a payee as a foreign government or government of a U.S. possession if it can reliably associate the payment with a valid withholding certificate that identifies the beneficial owner of the payment as a foreign government. For purposes of this paragraph (d)(8)(i), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as a foreign government or government of a U.S. possession, even if such withholding certificate does not identify the payee's chapter 4 status.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a foreign government or a government of a U.S. possession if the payee provides a written statement that it is a foreign government or government of a U.S possession, a political subdivision of a foreign government or government of a U.S. possession, or any wholly owned agency or instrumentality of any one or more of the foregoing, and that it does not receive the payment as an intermediary on behalf of another person.

(C) *Exception 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 foreign government or government of a U.S. possession if the payee is generally known to the withholding agent to be or the payee's name reasonably indicates that it is a foreign government or government of a U.S possession, a political subdivision of a foreign government or government of a U.S. possession, or any wholly owned agency or instrumentality of any one or more of the foregoing, and the

withholding agent does not know or have reason to know that the foreign government is receiving the payment as an intermediary on behalf of another person.

(ii) *Identification of international organizations.* A withholding agent may treat a payee as an international organization if it can associate the payment with a valid withholding certificate identifying the beneficial owner of the payment as an international organization. For purposes of this paragraph (d)(8)(ii), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as an international organization, even if such withholding certificate does not identify the payee's chapter 4 status. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the transaction reasonably indicate that the international organization is not receiving the payment as an intermediary on behalf of another person.

(iii) *Identification of foreign central banks of issue*—(A) *In general.* A withholding agent may treat a payee as a foreign central bank of issue if it can associate the payment with a valid withholding certificate that identifies the beneficial owner of the payment as a foreign central bank of issue. For purposes of this paragraph (d)(8)(iii), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as a foreign central bank, even if such withholding certificate does not identify the payee's chapter 4 status.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as a foreign central bank of issue if the withholding agent has a written statement signed by the payee in which the payee states that it is a foreign central bank of issue within the meaning of § 1.1471–6(d) and the facts and circumstances surrounding the payment reasonably indicate that the payee is a foreign central bank of issue and either the payee is not receiving the payment as an intermediary on behalf of another person or the payee would be treated as the beneficial owner of the payment for purposes of § 1.1471–6(d).

(C) *Exception 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 foreign central bank of issue if the name of the payee and other facts surrounding the payment reasonably indicate that the payee is a foreign central bank of issue or the Bank for International Settlements and either the withholding agent has no reason to know that the payee is receiving the payment as an intermediary on behalf of another person or the payee would be treated as the beneficial owner of the payment for purposes of § 1.1471–6(d).

(iv) *Identification of retirement funds*—(A) *In general.* A withholding agent may treat a payee as a retirement fund described in § 1.1471–6(f) if it can associate the payment with a valid withholding certificate in which the payee certifies that it is a retirement fund meeting the requirements of § 1.1471–6(f) and—

(*1*) The withholding certificate makes a valid claim for treaty benefits under the pension plan article of a treaty; or

(*2*) The withholding agent has an organizational document associated with the payee that generally supports the payee's claim. An organizational document will generally support the payee's claim that it is a retirement fund if, for example, the organizational document indicates that the payee qualifies as a tax-exempt retirement fund under the jurisdiction in which the payee was organized, even if the organizational documents do not specify whether the payee meets all of the requirements to qualify as a retirement fund under § 1.1471–6(f), provided that no information in the organizational document contradicts the payee's claim that it qualifies as a retirement fund under § 1.1471–6(f).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to a retirement fund described in § 1.1471–6(f) if it obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, in which the payee certifies that it is a retirement fund under the laws of its local jurisdiction meeting the requirements of § 1.1471–6(f) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim.

(C) *Exception 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 retirement fund described in § 1.1471–6(f) if the payee is generally known to be a retirement fund in the country in which the withholding agent is located and the withholding agent has documentary evidence that establishes that the payee is a foreign entity that qualifies as a retirement fund in the country in which the payee is organized.

(v) *Identification of entities wholly owned by exempt beneficial owners.* A withholding agent may treat a payee as an entity described in § 1.1471–6(g) (referring to certain entities wholly owned by exempt beneficial owners other than those described in § 1.1471–6(g)) if the withholding agent can reliably associate the payment with—

(A) A valid withholding certificate that identifies the payee as an entity described in § 1.1471–5(e)(1)(iii) that is the beneficial owner of the payment;

(B) An owner reporting statement that contains the name, address, TIN (if any), entity tax classification, chapter 4 status, and a description of the type of documentation (Form W–8 or other documentary evidence) provided to the withholding agent for every person that owns an equity interest in the payee, that indicates the percentage that each such person owns of the payee, and that is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section; and

(C) Associated documentation for every owner of the payee establishing, pursuant to the documentation requirements described in paragraph (d)(8) of this section, that every owner of the payee is an entity described in § 1.1471–6 (without regard to whether the owner of the payee is a beneficial owner of the payment).

(9) *Identification of excepted FFIs*—(i) *Identification of nonfinancial holding companies*—(A) *In general.* A withholding agent may treat a payee as a holding company described under § 1.1471–5(e)(5)(i) if the withholding agent has a valid withholding certificate identifying the payee as a foreign entity that operates as a holding company for a subsidiary or group of subsidiaries that primarily engage in a trade or business other than that of a financial institution, as set forth in § 1.1471–5(e)(5)(i), and the withholding agent does not know or have reason to know that the payee or any subsidiary of payee is a financial institution, including a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a holding company described under § 1.1471–5(e)(5)(i) if the withholding agent obtains:

(*1*) A written statement, including a statement contained in account opening documents, signed by the payee under penalties of perjury, in which the payee certifies that it is a foreign entity operating primarily as a holding company for a subsidiary or group of subsidiaries that primarily engages in a business other than that of a financial institution within the meaning of § 1.1471–5(e)(4), and that it is not a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i); or

(*2*) A copy of the payee's organizational documents (such as articles of incorporation) or consolidated financial statements that indicate that the payee is a foreign entity operating primarily as a holding company for a subsidiary or group of entities, each of which is not a financial institution, and that does not indicate that the payee is a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i).

(ii) *Identification of start-up companies*—(A) *In general.* A withholding agent may treat a payee as a start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent has a valid withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides the payee's formation date, that is less than 24 months prior to the date of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a start-up company described in § 1.1471–5(e)(5)(ii) if it obtains a written statement from the payee, including a statement contained in account opening documents, signed by the payee under penalties of perjury, in which the payee certifies that it is a foreign entity formed for the purpose of operating a business other than that of a financial institution and an organizational document associated with the payee that establishes that the payee was organized less than 24 months prior to the date of the payment.

(C) *Exception for preexisting obligations.* A withholding agent may treat a payment made with respect to a preexisting obligation as made to a start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent—

(*1*) Has recorded a standard industrial classification code for the payee that unambiguously indicates that the entity intends to be engaged in a business other than as a financial institution or has a third party credit report for the payee indicating that the payee intends to be engaged in a business other than as a financial institution; and

(*2*) Has an organizational document of the payee that establishes that the payee is a foreign entity that was organized less than 24 months prior to the date of the payment.

(iii) *Identification of certain nonfinancial entities in liquidation or bankruptcy*—(A) *In general.* A withholding agent may treat a payee as an entity described in § 1.1471–5(e)(5)(iii) (applying to certain foreign entities in liquidation or bankruptcy) if the withholding agent has a valid withholding certificate that identifies the payee as a foreign entity previously engaged in business as other than that of a financial institution that is liquidating or emerging from a reorganization or bankruptcy and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a valid withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or in bankruptcy.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an entity that satisfies the requirements of § 1.1471–5(e)(5)(iii) (applying to certain foreign entities in liquidation or bankruptcy) if the withholding agent has one or more types of documentary evidence establishing that the payee is a foreign entity in liquidation or bankruptcy, (for example, a copy of the bankruptcy filing or credit report for the payee) and indicates that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution (for example, a financial statement or credit report for the payee). A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE that is in liquidation or bankruptcy but does not unambiguously establish that the payee is such an entity may rely upon the documentary evidence to treat the payee as an entity described in § 1.1471–5(e)(5)(iii) if the withholding agent also obtains a written statement, including a statement made in account opening documents, signed by the payee under penalties of perjury stating that the payee is a foreign entity in the process of liquidating its assets or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution.

(C) *Exception 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 a payee as an entity described in § 1.1471–5(e)(5)(iii) if the withholding agent has previously recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution and has documentary evidence no more than three years old establishing that the payee is a foreign entity in liquidation or bankruptcy.

(iv) *Identification of hedging/financing centers of nonfinancial groups*—(A) *In general.* A withholding agent may treat a payee as an entity that operates as a hedging or financing center of a nonfinancial group, as described in § 1.1471–5(e)(5)(iv), if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as such an entity.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an entity described in § 1.1471–5(e)(5)(iv) if the withholding agent has documentary evidence (for example, a consolidated financial statement or company by-laws) or a third-party credit report associated with the payee that indicates that the payee is a foreign entity that operates primarily as a hedging or financing center for its affiliated group and establishes that the members of the payee's affiliated group are engaged in a business other than that of a financial institution.

(v) *Identification of section 501(c) organizations*—(A) *In general.* A withholding agent may treat a payee as an organization described in section 501(c) if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as a section 501(c) organization and the payee has provided—

(*1*) A certification that no income or assets of the payee are distributed to, or applied for the benefit of, a private person or noncharitable entity other

than pursuant to the conduct of the payee's charitable activities, as a payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the payee has purchased; and

(*2*) Either a certification that the payee has been issued a determination letter by the IRS that is currently in effect concluding that the payee is described in section 501(c) accompanied by the date of the letter, or a copy of an opinion from U.S. counsel certifying that the payee is described in section 501(c) (without regard to whether the payee is a foreign private foundation).

(B) *Reason to know.* A withholding agent must cease to treat a foreign organization's claim that it is an organization described in section 501(c) as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not an organization described in section 501(c) or the date on which the IRS gives notice to the public that such foreign organization is not an organization described in section 501(c). Further, a withholding agent will have reason to know that a payee is not an organization described in section 501(c) if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(10) *Identification of territory financial institutions*—(i) *Identification of territory financial institutions that are beneficial owners*—(A) *In general.* A withholding agent may treat a payee as a territory financial institution if the withholding agent has a valid withholding certificate identifying the payee as a territory financial institution that beneficially owns the payment. See paragraph (d)(11)(iii) of this section for rules for documenting territory NFFEs.

(B) *Exception 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 territory financial institution if the withholding agent has no reason to know that the payee is not the beneficial owner of the payment and—

(*1*) The withholding agent has organizational documents establishing that the payee was organized or incorporated under the laws of any possession of the United States and the withholding agent has recorded a standard industrial classification code for the payee that unambiguously designates the entity as a bank, broker, or other financial institution that is not primarily engaged in the business of investing, reinvesting, or trading, as defined in section § 1.1471–5(e)(4); or

(*2*) The withholding agent has a copy of a credit report from a third-party data provider that is associated with the payee and that indicates that the payee is a bank, broker, or other financial institution not primarily engaged in the business of investing, reinvesting, or trading, as defined in section § 1.1471–5(e)(4), and that the payee was incorporated or organized under the laws of a possession of the United States.

(ii) *Identification of territory financial institutions acting as intermediaries or that are flow-through entities.* A withholding agent may treat a payment as made to a territory financial institution that is acting as an intermediary or that is a flow-through entity if the withholding agent has a valid intermediary withholding certificate or flow-through withholding certificate as described in paragraph (c)(3)(iii) of this section that identifies the person who receives the payment as a territory financial institution.

(iii) *Reason to know.* A withholding agent will have reason to know that an entity is not a territory financial institution if the withholding agent has a current residence or mailing address, either in the entity's account files or on documentation provided by the payee, for the entity outside the possession in which the entity claims to be organized, a current telephone number for the payee that has a country code other than the country code for the United States or has an area code other than the area code(s) of the applicable possession, or standing instructions for the withholding agent to pay amounts from its account to an address or account outside the applicable possession. A withholding agent that has knowledge of a current address, current telephone number, or standing payment instructions for the entity outside of the applicable possession, may nevertheless treat the entity as a territory financial institution if it obtains documentary evidence that establishes that the entity was organized in the applicable possession or obtains a reasonable explanation from the entity, in writing, establishing the entity's residence in the possession.

(11) *Identification of NFFEs*—(i) *Identification of NFFEs that are publicly traded corporations.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) (applying to an entity the stock of which is regularly traded on an established securities market) if it has a beneficial owner withholding certificate that identifies the payee as an NFFE, certifies that the payee's stock is regularly traded on one or more established securities markets, as defined in § 1.1472–1(c)(1)(i), and provides the name of an exchange upon which the payee's stock is traded.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) if the withholding agent—

(*1*) Has a beneficial owner withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign corporation;

(*2*) Has documentation or other information that indicates that the payee is listed on a public securities exchange or on a stock market index; and

(*3*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is not a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) if the withholding agent obtains—

(*1*) A written statement, including a statement made in account documents, signed by the payee under penalty of perjury, that states that the payee is a foreign corporation not engaged in business as a financial institution whose stock is regularly traded on an established securities market;

(*2*) The name of one of the exchanges upon which the payee's stock is traded; and

(*3*) An organizational document, financial statement, or credit report for the payee that generally supports the classification of the payee as an NFFE.

(C) *Exception 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 entity described in § 1.1472–1(c)(1)(i) if the withholding agent has documentation or other information confirming that the payee is listed on a public securities exchange or on a stock market index and has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a

financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is a foreign corporation that is not a financial institution.

(ii) *Identification of NFFE affiliates.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(ii) (applying to an affiliate of an entity the stock of which is regularly traded on an established exchange) if it has a beneficial owner withholding certificate that identifies the payee as a foreign corporation that is an affiliate of an entity whose stock is regularly traded on an established exchange and provides the name of the entity that is regularly traded and one of the exchanges upon which the entity's stock is listed.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent:

(*1*) Has a beneficial owner withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign corporation;

(*2*) Has a consolidated financial statement or a similar financial document confirming that the payee is an affiliate of an entity whose stock is listed on a public securities exchange or a stock market index; and

(*3*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report associated with the payee providing sufficient information to determine that the payee is not a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent obtains:

(*1*) A written statement, including a statement made in account documents, signed by the payee under penalty of perjury, that states that the payee is a foreign corporation not engaged in business as a financial institution that is an affiliate of another nonfinancial entity whose stock is regularly traded on an established securities exchange;

(*2*) The name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded; and

(*3*) An organizational document, financial statement, or credit report associated with the payee that generally supports the classification of the payee as an NFFE. Documentation will be considered to generally support the payee's status as an NFFE, for example, if it indicates that the payee was organized in a country other than the United States and provides some indication that the payee is engaged in a business other than that of a financial institution.

(C) *Exception 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 an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent:

(*1*) Has a financial statement or other documentation indicating that the payee is a foreign corporation affiliated with an entity whose stock is listed on a public securities exchange or on a stock market index;

(*2*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is a foreign entity that is not a financial institution;

(*3*) Either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section; and

(*4*) Has no knowledge that the payee is not the beneficial owner of the payment.

(iii) *Identification of territory NFFEs.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(iii) (applying to an entity organized in a possession of the United States) if it has a valid beneficial owner withholding certificate that identifies the payee as an NFFE that was organized in a possession of the United States and includes a certification for chapter 4 purposes that all of the owners of the payee are bona fide residents of that possession.

(A) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an NFFE described in § 1.1472–1(c)(1)(iii) (that is, an entity organized in a possession of the United States) if it—

(*1*) Has an organizational document associated with the payee establishing that the payee was organized in a possession of the United States;

(*2*) Has documentary evidence establishing that the payee is wholly owned by one or more bona fide residents of the possession of the United States in which the payee is organized or a written statement from the payee stating that it is wholly owned by one or more bona fide residents of the possession of the United States in which it was organized; and

(3) Has no reason to know that the payee is not the beneficial owner of the payment.

(B) *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 of $1,000,000 or less at the close of the taxable year preceding the payment, 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 possession of the United States in which the payee is organized in lieu of obtaining a written statement or documentary evidence. The withholding agent relying upon this paragraph (d)(11)(iii)(B) must still obtain a withholding certificate or documentary evidence, as provided in this paragraph (d)(11)(iii), to establish that the payee was organized in a possession of the United States.

(iv) *Identification of active NFFEs.* A withholding agent may treat a payee as an active NFFE described in § 1.1472–1(c)(1)(v) if it has a valid withholding certificate identifying the payee as an active NFFE within the meaning of § 1.1472–1(c)(1)(v).

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payment as made to an active NFFE if the withholding agent has a withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign person, and the withholding agent has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is engaged in an active trade or business other than that of a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee

is engaged in an active trade or business other than that of a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an active NFFE if the withholding agent has an organizational document, financial statement, or credit report associated with the payee providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution and either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section. A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE engaged in an active business but does not unambiguously establish that payee is such an entity, may rely upon the documentary evidence to treat the payee as an active NFFE if the withholding agent also obtains a written statement, which may include a statement made in account opening documents, signed by the payee under penalty of perjury, stating that the payee is a foreign entity engaged in an active business other than that of a financial institution.

(C) *Exception 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 an active NFFE if the withholding agent—

(*1*) Either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section; and

(*2*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is engaged in a trade or business other than that of a financial institution or has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is a engaged in an active business other than that of a financial institution.

(v) *Identification of excepted NFFEs described in § 1.1472–1(c)(1)(iv).* For rules regarding the documentation required to identify an excepted NFFE described in § 1.1472–1(c)(1)(iv), see paragraphs (d)(11)(v) of this section, as applicable.

(vi) *Identification of passive NFFEs.* A withholding agent may treat a payment as made to a passive NFFE if it has a valid withholding certificate that identifies the payee as a passive NFFE.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payment as made to a passive NFFE if the withholding agent has a withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign person, and the withholding agent has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is not a financial institution.

(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 an NFFE if the withholding agent has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution. A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE but does not unambiguously establish that payee is such an entity, may rely upon the documentary evidence to treat the payee as an NFFE if the withholding agent also obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, stating that the payee is a foreign entity that is not a financial institution.

(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 an NFFE if the withholding agent either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section and has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is not a financial institution.

(D) *Required owner certification for passive NFFEs*—(*1*) *In general.* Unless it is a WP or WT, a passive NFFE will be required to provide either a written certification 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. A territory NFFE that is a passive NFFE and is not a WP or WT will be required to provide the certification or information described in the previous sentence but only with respect to substantial U.S. owners of the NFFE that are not bona fide residents of the possession in which the NFFE was organized.

(*2*) *Exception for preexisting obligations of $1,000,000 or less.* A withholding agent that makes a payment with respect to a preexisting obligation with a balance or value of $1,000,000 or less at the close of the taxable year preceding the payment, may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of the certification or information required in paragraph (d)(11)(vi)(D)(*1*) of this section if the withholding agent is subject, with respect to such account, to the laws of a jurisdiction that is FATF-compliant.

(e) *Standards of knowledge*—(1) *In general.* The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, and persons who own an interest in an owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section may also be liable for tax, interest, and penalties. See paragraph (e)(4) in this section for the specific standards of knowledge applicable to a payee's or beneficial owner's specific claims of chapter 4 status.

(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 calendar days after the date the notice is received.

(3) *FFI–EIN*—(i) *In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI has reason to know that such payee is not such a financial institution if the payee's name and FFI–EIN do not appear on the most recent published IRS FFI list within 90 calendar days of the date that the claim is made. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received an FFI–EIN 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 FFI–EIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its FFI–EIN and the withholding agent will have 90 calendar days from the date it receives the FFI–EIN to verify the accuracy of the FFI–EIN 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 list of participating FFIs and registered deemed-compliant FFIs published on the IRS database, 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 name was actually removed from the list.

(ii) *Special requirements applicable prior to January 1, 2016.* Prior to January 1, 2016, a withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI has reason to know that such payee is not such a financial institution even if the payee's name and FFI–EIN appear on the most recent published IRS FFI list, if the current published IRS FFI list indicates that branches of the payee located in the same country as the branch that submitted the withholding certificate, are limited branches. Prior to January 1, 2016, a withholding agent will also have reason to know that the branch submitting the withholding certificate is a limited branch if the withholding certificate or other documentation for the branch contains an address in a country for which the FFI is shown, on the current IRS FFI list, to have limited branches. For purposes of withholding under chapter 4 of the Internal Revenue Code, a withholding agent is required to treat a limited branch as a nonparticipating FFI.

(4) *Reason to know.* A withholding agent shall be considered to have 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 certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. For accounts opened on or after January 1, 2013, a withholding agent will also be considered to have reason to know that a 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 payee's claim of chapter 4 status.

(i) *Standards of knowledge applicable to withholding certificates*—(A) *In general.* A withholding agent has reason to know that a withholding certificate provided by a payee or beneficial owner 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 payee, the withholding certificate contains any information that is inconsistent with the payee's claim, the withholding agent has other account information that is inconsistent with the payee's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. 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. Paragraphs (e)(4)(i)(B) through (D) of this section do not apply to a withholding certificate provided by a participating FFI or a registered deemed-compliant FFI if the certificate contains an FFI–EIN for the FFI that the withholding agent verifies on the current published IRS FFI list as provided in paragraph (e)(3) of this section.

(B) *U.S. address or telephone number.* A withholding agent has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if the withholding certificate has a current permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the payee notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if the withholding agent knows that the payee has a current telephone number in the United States. Notwithstanding the foregoing, a withholding agent may rely upon a withholding certificate to establish the payee's status as a foreign person despite knowing that the payee has any of the U.S. indicia described in this paragraph (e)(4)(i)(B) if it may do so under the provisions of paragraphs (e)(4)(i)(B)(*1*) through (*2*) of this section.

(*1*) *Presumption of individual's foreign status.* A withholding agent other than an FFI may treat a payee or beneficial owner that is an individual as a foreign person if—

(*i*) The withholding agent has in its possession or obtains documentary evidence (that does not contain a U.S. address) that has been provided within the last three years, was valid at the time it was provided, and supports the claim of foreign status, and the payee provides the withholding agent with a reasonable explanation, in writing, supporting the account holder's foreign status; or

(*ii*) The withholding agent maintains an account for the individual at an office of the withholding agent outside the United States, the withholding agent classifies the individual as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(*2*) *Presumption of entity's foreign status.* A withholding agent may treat a payee or beneficial owner as a foreign person if the withholding certificate has been provided by an entity and—

(*i*) The withholding agent has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(*ii*) The withholding agent maintains an account for the entity at an office of the withholding agent outside the United States, the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the

entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2013.* For accounts opened on or after January 1, 2013, a withholding agent has reason to know that a withholding certificate provided by an individual payee or beneficial owner is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, a place of birth for the payee in the United States. A withholding agent may treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in this paragraph (e) and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, *Abandonment of Lawful Permanent Residence Status.* A withholding agent may also treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent obtains a non-U.S. passport or other government-issued identification evidence of citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*2*) *Accounts opened prior to January 1, 2013.* For accounts opened prior to January 1, 2013, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with a payee. However, if the withholding agent, on or after January 1, 2013, does review documentation that contains a U.S. birth place for a payee that is treated as a foreign person, then the account will be considered to have a experienced a change of circumstance as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that a payee is a U.S. person. See paragraph (c)(6)(ii)(D) of this section for rules regarding the time period allowed to cure a change in circumstance.

(D) *Standing instructions with respect to offshore obligations.* A withholding agent has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if it is provided with respect to an offshore obligation and the payee or beneficial owner has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may rely upon the withholding certificate to establish the payee's or beneficial owner's chapter 4 status, however, if the payee or beneficial owner provides documentary evidence that supports its foreign status.

(ii) *Standard of knowledge applicable to documentary evidence*—(A) *In general.* A withholding agent shall not treat documentary evidence provided by a payee as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a payee that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent may not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules in paragraph (f) of this section if the documentary evidence contains information that is inconsistent with the payee's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the payee's claim, or the documentary evidence lacks information necessary to establish the payee's chapter 4 status. For example, if a payee provides a financial statement to support its claim of status as an NFFE whose stock is regularly traded on an established exchange but the financial statement only indicates that the payee is registered on an exchange but does not provide information regarding whether its stock is regularly traded, the withholding agent may not rely upon the financial statement to establish the payee's chapter 4 status unless it obtains additional documentation that supports the claim.

(B) *Establishment of foreign status.* A withholding agent may not treat documentary evidence provided by a payee as valid for purposes of establishing the account holder's foreign status if the only mailing address or residence address that is available to the withholding agent is an address at a financial institution (unless the financial institution is the payee), an in-care-of address, or a P.O. box. In this case, the withholding agent must obtain additional documentation that is sufficient to establish the payee's status as a foreign person. Documentary evidence is unreliable or incorrect to establish a payee's status as a foreign person if the withholding agent has a current residence or mailing address (whether or not on the documentation) for the payee in the United States, if the payee notifies the withholding agent of a new address in the United States, or if the withholding agent has a current telephone number for the payee in the United States. A withholding agent may, however, rely on documentary evidence as establishing the payee's foreign status if it may do so under the provisions of this paragraph (e)(4)(ii)(B).

(*1*) A withholding agent may treat a payee or other person that is an individual as a foreign person even if it has a mailing address, residence address, or telephone number for the payee in the United States if the withholding agent—

(*i*) Has in its possession or obtains additional documentary evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the payee's foreign status;

(*ii*) Has in its possession or obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or if a mailing address is inside the United States the direct account holder provides a reasonable explanation in writing supporting the payee's claim of foreign status); or

(*iii*) The withholding agent maintains an account for the payee at an office of the withholding agent outside the United States, the withholding agent classifies the payee as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the payee annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

(*2*) A withholding agent may treat a payee or beneficial owner that is an entity as a foreign person even if it has a mailing address, residence address, or telephone number for the payee or beneficial owner in the United States if the withholding agent—

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

(*ii*) Obtains a valid withholding certificate on a Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address, if any, outside the United States; or

(*iii*) The withholding agent maintains an account for the payee at an office of the withholding agent outside the United States, the withholding agent classifies the payee as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the payee annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2013.* For accounts opened on or after January 1, 2013, a withholding agent has reason to know that documentary evidence provided by an individual payee or beneficial owner to demonstrate the individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the payee or the withholding agent has, as part of its account information, a place of birth for the payee in the United States. A withholding agent may treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the payee has any other U.S. indicia described in paragraph (e) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407. A withholding agent may also treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent obtains a valid withholding certificate from the payee that establishes the payee's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*2*) *Accounts opened prior to January 1, 2013.* For accounts opened prior to January 1, 2013, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with a payee. However, if the withholding agent, on or after January 1, 2013, does review documentation that contains a U.S. birth place for a payee that is treated as a foreign person, then the account will be considered to have a experienced a change of circumstance as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that a payee is a U.S. person. See paragraph (c)(6)(ii)(D) of this section for rules regarding the time period allowed to cure a change in circumstance.

(D) *Standing Instructions.* Documentary evidence is unreliable or incorrect as an indication of a payee's status as a foreign person if the payee has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides a valid withholding certificate from the payee and either documentary evidence that supports the payee's claim of foreign status or a reasonable explanation in writing that supports its claim of foreign status.

(iii) *Information conflicting with payee's claim of chapter 4 status.* A withholding certificate, written statement, or documentary evidence 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 payee's claim regarding its chapter 4 status. For example, a withholding agent will have reason to know that a payee's claim that it is an NFFE is unreliable or incorrect if the withholding agent has a financial statement or credit report that indicates that the payee is engaged in business as a financial institution. Further, a withholding agent that has classified the payee as a particular business type in its own records, such as through a standard industrial classification code, will have reason to know that that the payee's claim of chapter 4 status is unreliable or incorrect if the claim conflicts with the withholding agent's internal classification. A withholding agent may, however, rely upon a payee's claim regarding its chapter 4 status if it obtains both a valid withholding certificate (or written statement for a payment with respect to an offshore obligation) and documentary evidence that support the payee's claim.

(iv) *Conduit financing arrangements.* The rules set forth in § 1.1441–7(f), regarding a withholding agent's liability for failing to withhold in the case where the financing arrangement is a conduit financing arrangement, apply for purposes determining a withholding agent's liability for any withholding required under chapter 4 of the Internal Revenue Code.

(v) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (e) of this section to establish a payee's chapter 4 status.

(f) *Presumptions regarding payee's status in the absence of documentation*—(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) a payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee as a U.S. or foreign person and the payee's other relevant characteristics (for example, as a participating FFI or a nonparticipating FFI). See paragraph (f)(8) of this section for 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.* 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 presume that the payee is an individual if the payee appears to be an individual (for example, based on the payee's name or other indications). If the payee does not appear to be an individual, then the payee shall be presumed to be an entity.

(3) *Presumptions of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with a valid withholding certificate or documentary evidence is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (f)(3).

(i) *Payments to entities with indicia of foreign status.* If a withholding agent cannot reliably associate a payment to a payee that is treated as an entity with documentation from the payee, the payee is presumed to be a foreign person and not a U.S. person—

(A) If the withholding agent has actual knowledge of the payee's EIN and that number begins with the two digits ''98'';

(B) If the withholding agent's communications with the payee are

mailed to an address in a foreign country;

(C) If the withholding agent has a telephone number for the payee outside of the United States; or

(D) If the name of the payee indicates that the entity is of a type that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i).

(ii) *Payments to certain exempt recipients.* If the payment is made to an entity that is treated as an exempt recipient under the provisions of § 1.6049–4(c)(1)(ii)(A)(1), (F), (G), (H), (I), (M), (O), (P), or (Q) in the case of interest, or under similar provisions under chapter 61 applicable to the type of payment involved, the payee shall be presumed to be a foreign person.

(iii) *Payments with respect to offshore obligations.* Except as otherwise provided in this paragraph (f)(3)(iii), a payment to an individual or an entity is presumed to be made to a foreign payee if the payment is made outside of the United States with respect to an offshore obligation and the withholding agent does not know or have reason to know that the payee is a U.S. person.

(4) *Presumption of chapter 4 status for a foreign entity.* A withholding agent that makes a payment to a foreign entity that it cannot reliably associate with a valid withholding certificate or documentary evidence sufficient to determine the status of that entity for purposes of chapter 4 of the Internal Revenue Code (for example, as a participating FFI, nonparticipating FFI, or NFFE) must presume that the payee is a nonparticipating FFI.

(5) *Presumption of status as an intermediary.* If a withholding agent cannot reliably associate a payment with documentation to treat the payment as made to an intermediary, then the withholding agent must treat the payment as made to an intermediary if the withholding agent has documentary evidence or other documentation that indicates, or the facts and circumstances of the transaction, including the name of the person who receives the payment or the presence of sub-account numbers, indicate that the person who receives the payment is a bank, broker, custodian, intermediary, or other agent and the withholding agent has no knowledge that the person receives the payment for its own account. Any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a QI or an NQI) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (c) of this section, is presumed to be made to a nonparticipating FFI. A person that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (f)(5) is presumed to be a payee other than an intermediary.

(6) *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 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the payment shall be treated as made to that payee.

(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 withholding agent has no reason to know that any of the payees are U.S. persons, including knowledge of any U.S. indicia associated with any of the payees. If the withholding agent has reason to know that any payee is a U.S. person, then the payment must be treated as made to an unidentified U.S. person.

(7) *Rebuttal of presumptions.* A payee may rebut the presumptions described in this paragraph (f) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(8) *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)(8), 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 this paragraph (f) with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section. See § 1.1474–1 for provisions regarding such liability if the withholding agent fails 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)(8)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the payee or of the beneficial owner 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 payee or beneficial owner 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 provided under section 1474.

(g) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 6. Section 1.1471–4 is added to read as follows:

§ 1.1471–4 FFI agreement.

(a) *In general.* The IRS may enter into an FFI agreement with an FFI in accordance with section 1471(b), pursuant to such procedures as the IRS may prescribe. The FFI agreement, the model for which will be set forth in a Revenue Procedure, will set forth the FFI's requirements under section 1471(b) and (c). Except as otherwise provided, the FFI agreement and this section will incorporate the definitions and requirements relevant to participating FFIs as set forth in §§ 1.1471–1 through 1.1474–7. Thus, for example, the FFI agreement will incorporate the definitions of U.S. account and financial account set forth in § 1.1471–5(a) and (b), respectively. The FFI agreement will include the provisions outlined in paragraphs (1) through (8) of this paragraph (a).

(1) *Withholding.* The FFI agreement will specify the participating FFI's obligation to deduct and withhold tax with respect to passthru payments made to recalcitrant account holders and

nonparticipating FFIs. Except as otherwise provided in the FFI agreement, a participating FFI will be required to withhold in accordance with paragraph (b) of this section.

(2) *Identification and documentation of account holders.* The FFI agreement will specify a participating FFI's obligation to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which of such accounts are U.S. accounts, recalcitrant account holders, or accounts held by nonparticipating FFIs. Except as otherwise provided in the FFI agreement, a participating FFI will be required to perform the due diligence procedures for identifying and documenting account holders described in paragraph (c) of this section, and such procedures will satisfy the participating FFI's obligation to determine which of its accounts are U.S. accounts.

(3) *Reporting.* The FFI agreement will specify the participating FFI's obligation to report on an annual basis with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. Except as otherwise provided in the FFI agreement, a participating FFI will be required to report the information described in paragraph (d) of this section with respect to its U.S. accounts and recalcitrant account holders, and to comply with filing requirements described in § 1.1474–1(c) and (d) with respect to passthru payments.

(4) *Expanded affiliated group.* The FFI agreement will specify how the requirements of section 1471(b) and (c) will apply to members of the expanded group of which the participating FFI is a member, as described in paragraph (e) of this section. The agreement will also provide, as described in paragraph (e), that if certain conditions are met, the IRS may enter into a transitional FFI agreement with an FFI or members of an expanded affiliated group of FFIs even though a branch of the FFI or a member of the expanded affiliated group is unable under local law to satisfy the requirements of the FFI agreement.

(5) *Waiver.* The FFI agreement will specify the participating FFI's obligation, in any case in which foreign law would (but for a waiver) prevent the reporting required of the FFI pursuant to the FFI agreement with respect to a U.S. account, to obtain a valid and effective waiver of such law and, if a valid and effective waiver is not obtained within a reasonable period of time, to close the account.

(6) *Verification.* The FFI agreement will specify a participating FFI's obligation to comply with specified verification procedures. The agreement will require that the participating FFI adopt written policies and procedures governing its due diligence procedures for identifying and documenting account holders and its withholding and reporting requirements under the FFI agreement. The FFI agreement will further require that the participating FFI conduct periodic reviews of its compliance with these policies and procedures and its chapter 4 obligations. Based on the results of such reviews, a responsible officer of the participating FFI will periodically certify to the IRS the participating FFI's compliance with its obligations under the FFI agreement and may be required to provide certain factual information and to disclose material failures with respect to the participating FFI's compliance with any of the requirements of the FFI agreement. If the IRS identifies concerns about the compliance of the FFI based on the reporting and certifications provided by the FFI, including cases of suspected patterns of compliance failures, the IRS may verify the participating FFI's compliance with the FFI agreement through an audit, performed by an external auditor (external audit) approved by the IRS, of one or more issues selected by the IRS. The FFI agreement will not, however, require that the participating FFI arrange for periodic external audits on a predetermined basis and will not require external audits of a participating FFI on a random basis.

(7) *Event of default.* The FFI agreement will specify the compliance failures and other conditions under which a participating FFI would be in default of the FFI agreement. The agreement will provide that a compliance failure will not constitute an event of default unless such failure occurs in more than limited circumstances when a participating FFI has not substantially complied with its obligations under the FFI agreement.

(8) *Requests for additional information.* The FFI agreement will specify the participating FFI's obligation to comply with requests by the Secretary for additional information with respect to any U.S. account maintained by such institution. The FFI agreement will require that the FFI provide responses to written requests from the IRS for information relevant to the participating FFI's obligations under the FFI agreement.

(b) *Withholding requirements under the FFI agreement*—(1) *In general.* A participating FFI is required to deduct and withhold a tax equal to 30 percent of any passthru payment that is a withholdable payment made by such participating FFI to a recalcitrant account holder or a nonparticipating FFI after December 31, 2013. A participating FFI must also deduct and withhold a tax equal to 30 percent of any passthru payment that is a withholdable payment made after December 31, 2013, to a participating FFI that has made an election under section 1471(b)(3) in accordance with § 1.1471–2(a)(2)(iii)(A). Notwithstanding the foregoing, a participating FFI will not be required to withhold pursuant to this section with respect to a payment made to a recalcitrant account holder if so provided under an agreement between the IRS and a foreign government. See paragraph (b)(3) of this section for rules regarding when a participating FFI is required to withhold on any foreign passthru payment made by such participating FFI to a recalcitrant account holder or a nonparticipating FFI. See paragraph (c) of this section for the procedures for participating FFIs to identify the status of their account holders and payees in order to determine when withholding is required under this paragraph (b)(1). See § 1.1474–1(d) for the amounts subject to reporting on Form 1042–S for chapter 4 purposes and the reporting requirements for passthru payments, including the special requirement for the 2015 and 2016 calendar years for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs.

(2) *Withholdable payment requirements.* A participating FFI is a withholding agent for purposes of chapter 4 and thus is subject to the requirements of sections 1471(a) and 1472(a) with respect to withholdable payments. A participating FFI that complies with the withholding obligations of this paragraph (b) and its FFI agreement shall be deemed to satisfy its withholding obligations with respect to withholdable payments under sections 1471(a) and 1472. See §§ 1.1471–2(a)(3) and 1.1472–1(b)(2).

(3) *Foreign passthru payments.* [Reserved].

(4) *Dormant accounts.* A participating FFI that makes a passthru payment (including any withholdable payment) to a recalcitrant account holder of a dormant account and that withholds on such payment as described in paragraph (b)(1) of this section may, in lieu of depositing the tax withheld under § 1.6302–2, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such a 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. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(5) *Special withholding rules for U.S. branches.* A U.S. branch of a participating FFI that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are treated as U.S. non-exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs.

(6) *Special withholding rules for participating FFIs with limited branches and affiliates that are limited FFIs.* For the withholding requirements with respect to payments made to limited branches and affiliates that are limited FFIs, see paragraphs (e)(2)(v) and (e)(3)(iv) of this section.

(c) *Due diligence for the identification of account holders under the FFI agreement*—(1) *Scope of paragraph.* This paragraph (c) describes the procedures that participating FFIs are to follow in determining the chapter 4 status of an account holder as well as identifying and documenting U.S. accounts (as defined in § 1.1471–5(a)) and accounts other than U.S. accounts. Paragraph (c)(2) of this section provides the general rules for identification of account holders. Paragraph (c)(3) of this section provides the rules for documenting accounts held by entities. Paragraph (c)(4) of this section provides the general rules for documenting individual accounts and a special rule for documenting individual accounts that are offshore obligations. Paragraph (c)(4) also provides exceptions from the documentation requirements of this paragraph (c) for certain preexisting accounts of individual account holders and the account aggregation requirements relevant in applying these exceptions. Paragraph (c)(5) of this section provides the currency translation for determining the account balance and value for purposes of the documentation exceptions in paragraphs (c)(3) and (4). Paragraph (c)(6) of this section has examples regarding the application of the aggregation rules. Paragraph (c)(7) of this section provides an alternative procedure for documenting preexisting individual accounts that are offshore obligations. Paragraph (c)(8) of this section provides the identification and documentation procedure for preexisting accounts of individual account holders with a balance or value that exceeds $1,000,000. Paragraph (c)(9) of this section provides an exception from the electronic search and enhanced review requirements for accounts that a participating FFI has already documented as held by foreign individuals for the purpose of meeting its obligations under a QI, WP, or WT agreement. Paragraph (c)(10) of this section provides the requirement for a responsible officer of the participating FFI to certify as to the completion of the identification and documentation procedures of this paragraph (c) within the specified period of time.

(2) *Requirements with respect to the identification of account holders*—(i) *In general.* For purposes of this section, to determine the chapter 4 status of an account holder, the principles of § 1.1471–3(b) shall apply as though the participating FFI were a withholding agent making a withholdable payment and the account holder were the payee. To determine whether documentation is valid, the principles of § 1.1471–3(c) shall apply as though the participating FFI were a withholding agent making a withholdable payment and the account holder were the payee.

(ii) *Standards of knowledge.* A participating FFI may rely on documentation that is collected pursuant to the procedures set forth in this paragraph (c) or that is otherwise maintained in the participating FFI's files, unless the participating FFI knows or has reason to know that such documentation is unreliable or incorrect. Except as otherwise provided in paragraph (c)(4) of this section, to determine whether a participating FFI knows or has reason to know that the documentation collected or otherwise maintained with respect to the account holder is unreliable or incorrect, the standards of knowledge provided in § 1.1471–3(e) shall apply as though the participating FFI were a withholding agent making a withholdable payment (except that § 1.1471–3(e)(4)(i)(B)(*1*) and (ii)(B) will not apply in the case of an individual account holder) and the account holder were the payee.

(iii) *Change in circumstances.* With respect to an account that meets the documentation exceptions described in paragraphs (c)(3)(ii), (c)(4)(ii), and (c)(4)(iii) of this section, if an account no longer meets the exception in a subsequent year, this will be treated as a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(D)) and the participating FFI must obtain the appropriate documentation within the time period provided by § 1.1471–5(g)(3)(iii), or will be required to treat such account as held by a recalcitrant account holder or nonparticipating FFI. For purposes of this section, a change in circumstances also includes any change or addition of information to the account holder's account or any account associated with such account, applying the aggregation rules, if such change or addition of information affects the chapter 4 status of the account holder. For example, if a holder of a preexisting account opens another account and as part of the participating FFI's account opening procedures the account holder provides a U.S. telephone number, the participating FFI has actual knowledge that the account holder has U.S. indicia, and this will be treated as a change in circumstance with respect to the preexisting account. The participating FFI must obtain the appropriate documentation described in paragraph (c)(4)(i)(B)(*3*) of this section within the time period provided by § 1.1471–5(g)(3)(iii), or will be required to treat such account as held by a recalcitrant account holder.

(iv) *Record retention.* A participating FFI must retain either an original, certified copy, or photocopy (including a microfiche, scan, or similar means of record retention) of the documentation collected to determine the chapter 4 status of its account holders. With respect to preexisting accounts, a participating FFI must retain the documentation collected, including requests made and responses to relationship manager inquiries, and all results from electronic searches, for six calendar years following the year in which the account identification procedures of this paragraph (c) were performed. Upon the request of the IRS, a participating FFI may be required to extend the six year retention period when such request is made by the IRS prior to the end of the six year retention period.

(3) *Identification procedure and documentation for entity accounts*— (i) *In general.* To determine the documentation requirements and presumption rules applicable to an account held by an entity, a participating FFI shall apply the principles of § 1.1471–3(d) and (f) (as applicable to entities) as though the participating FFI were a withholding agent making a withholdable payment, and the account holder were the payee. For preexisting entity accounts, a participating FFI must perform the requisite identification procedures and

obtain the appropriate documentation within one year of the effective date of its 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 its FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(ii) of this section.

(ii) *Documentation exception for certain preexisting entity accounts.* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting entity account that is an offshore obligation as a U.S. account or an account held by a nonparticipating FFI if the conditions of paragraphs (c)(3)(ii)(A) and (B) are met. A participating FFI is also not required to treat such account as undocumented for withholding and reporting purposes. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year, applying the aggregations rules of paragraph (c)(3)(ii)(B)(*2*).

(A) *Previously identified accounts.* The condition of this paragraph (c)(3)(ii)(A) is met if no holder of the account that has previously been documented by the FFI as a U.S. person for purposes of chapters 3 or 61 is a specified U.S. person for purposes of this chapter.

(B) *Account threshold*—(*1*) *In general.* The condition of this paragraph (c)(3)(ii)(B) is met if, with respect to the preexisting entity account and, to the extent required under paragraph (c)(3)(ii)(B)(*2*) or (*3*) of this section, all accounts held (in whole or in part) by the holder of the account, the aggregate balance or value of the account as of the effective date of the participating FFI's FFI agreement or at the end of any subsequent calendar year is $250,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the balance or value of accounts that apply for purposes of this paragraph (c)(3)(ii)(B), see paragraph (d)(4)(iii) of this section.

(*2*) *Aggregation of entity accounts.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(ii), an FFI will be required to take into account all accounts held by entities that are maintained by the FFI, or members of its expanded affiliated group, to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number (including an EIN) and allow account balances to be aggregated.

(*3*) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(ii), an FFI shall also be required to aggregate all accounts (including any accounts held by individuals) that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person.

(*4*) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraphs (c)(3)(ii) of this section by documenting an account pursuant to the rules provided in this paragraph (c) and by treating any undocumented account as an account held by a nonparticipating FFI.

(4) *Identification procedure and documentation for individual accounts*—(i) *In general.* Except as otherwise provided in this paragraph (c), a participating FFI is required to collect a Form W–9 or W–8 from each individual account holder in order to identify its U.S. accounts (as defined in § 1.1471–5(a)) and accounts other than U.S. accounts. For an individual account that is an offshore obligation, however, the requirement of the preceding sentence to obtain a Form W–8 to establish each individual account holder's foreign status shall not apply if the participating FFI obtains documentary evidence that meets the requirements of § 1.1471–3(c)(5) (as applicable to individuals). Except as otherwise provided in this paragraph (c), a participating FFI is also required to review all information collected with respect to the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes to determine if an account holder has U.S. indicia. For example, if an account holder provides a passport as part of the participating FFI's account opening procedures, the participating FFI is required to review the passport to check for a U.S. place of birth. However, a participating FFI is not required to treat a passport as containing a U.S. place of birth unless the passport unambiguously indicates the country or state in which the individual was born. See § 1.1471–5(g)(3) to determine the period of time by which a participating FFI must perform the account identification procedures and obtain the appropriate documentation described in this paragraph (c) before it must treat the account holder as a recalcitrant account holder.

(A) *U.S. Indicia.* For purposes of the account identification procedures described in this paragraph (c), an account holder is treated as having U.S. indicia if the information required to be reviewed by the FFI with respect to the account includes any of the following:

(*1*) Identification of an account holder as a U.S. resident or citizen;

(*2*) U.S. place of birth;

(*3*) U.S. resident address or U.S. mailing address (including a U.S. post office box);

(*4*) U.S. telephone number;

(*5*) Standing instructions to transfer funds to an account maintained in the United States;

(*6*) Power of attorney or signatory authority granted to a person with a U.S. address; or

(*7*) An ''in-care-of'' address or ''hold mail'' address that is the sole address the FFI has identified for the account holder.

(B) *Documentation required for U.S. indicia.* For all accounts holders having one or more of the U.S. indicia described in paragraph (c)(4)(i)(A) of this section, a participating FFI is required to obtain the documentation described in paragraphs (c)(4)(i)(B)(*1*) through (*5*), applicable to the type of U.S. indicia, to establish whether the account is a U.S. account.

(*1*) If the account holder is identified as a U.S. resident or citizen, the participating FFI must request a Form W–9 and a valid and effective waiver as described in section 1471(b)(1)(F)(i), if necessary, from the account holder.

(*2*) If the account holder information unambiguously indicates a U.S. place of birth, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, or a Form W–8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the United States. In addition, to establish the foreign status of any account holder with a U.S. place of birth, the participating FFI must obtain a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*3*) If the account holder information contains a U.S. address, U.S. mailing address, or telephone number in the United States, the participating FFI must request either a Form W–9 (and a

valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary), or a Form W–8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the United States.

(*4*) If the account holder information contains standing instructions to transfer funds to an account maintained in the United States, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, or a Form W–8BEN and documentary evidence, as described in § 1.1471–3(c)(5), establishing foreign status.

(*5*) If the account holder information contains a power of attorney or signatory authority granted to a person with a U.S. address or has an ''in care of'' address or ''hold mail'' address that is the sole address identified for the account holder, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, a Form W–8, or documentary evidence, as described in § 1.1471–3(c)(5), establishing foreign status.

(ii) *Preexisting accounts of individual account holders documented as U.S. accounts.* If a participating FFI has documented an individual account holder as a U.S. person for purposes of chapter 3 or 61 and such account holder is a specified U.S. person, the account holder's account will be treated as a U.S. account for chapter 4 purposes. Notwithstanding the previous sentence, a participating FFI is not required to treat a preexisting account or account other than a preexisting account held by an individual account holder as a U.S. account if such account is a depository account that meets the exception to U.S. account status described in § 1.1471–5(a)(4)(i) (applying to depository accounts with a value or balance of $50,000 or less), unless the participating FFI elects otherwise. An account that no longer meets the exception from U.S. account status described in § 1.1471–5(a)(4)(i) because the balance or value of the account exceeds $50,000 may qualify for the documentation exception described in paragraph (c)(4)(iii) of this section.

(iii) *Exception for certain preexisting accounts of individual account holders other than accounts described in § 1.1471–4(c)(4)(iv).* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting individual account as a U.S. account or an account held by a recalcitrant account holder if the account is not an account described in paragraph (c)(4)(iv) of this section, the account threshold in paragraph (c)(4)(iii)(A) is met, and no holder of the account has been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 that is a specified U.S. person. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(A) *Account threshold.* The conditions of this paragraph (c)(4)(iii)(A) are met if, with respect to the account (including for this purpose accounts aggregated under paragraphs (c)(4)(iii)(B) and (C) of this section), the aggregate balance or value of the account as of the effective date of the participating FFI's FFI agreement is $50,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the balance or value of financial accounts that apply for purposes of this paragraph (c)(4)(iii), see paragraph (d)(4)(iii)(A) of this section. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(B) *Aggregation of individual accounts.* For purposes of determining the aggregate balance or value of accounts held by a person, other than accounts described in paragraph (c)(4)(iv), in applying the exception in this paragraph (c)(4)(iii), an FFI will be required to aggregate all accounts maintained by the FFI, or members of its expanded affiliated group, but only to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account will be attributed the entire balance of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

(C) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate balance or value of accounts held by a person in applying the exception in this paragraph (c)(4)(iii), an FFI shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

(iv) *Exception for certain cash value insurance or annuity contracts of individual account holders that are preexisting obligations.* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting individual account that is an account described in § 1.1471–5(b)(1)(iv) as a U.S. account or an account held by a recalcitrant account holder if the conditions of paragraphs (c)(4)(iv)(A) and (B) of this section are met. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(A) *Individuals.* The condition of this paragraph (A) is met if each holder of such account is an individual.

(B) *Account threshold*—(*1*) *In general.* The condition of this paragraph (c)(4)(iv)(B) is met if, with respect the account (including for this purpose accounts aggregated under paragraphs (c)(4)(iv)(B)(*2*) and (*3*) of this section), the aggregate value of the account as of the effective date of the participating FFI's FFI agreement is $250,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the value of an account that apply for purposes of this paragraph (c)(4)(iv) see paragraph (d)(4)(iii)(A) of this section.

(*2*) *Aggregation of accounts.* For purposes of determining the aggregate value of accounts described in § 1.1471–5(b)(1)(iv) held by an individual in applying the exception in this paragraph (c)(4)(iv), an FFI will be required to aggregate all accounts described in paragraph § 1.1471–5(b)(1)(iv) maintained by the FFI, or members of its expanded affiliated group, but only to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account values to be aggregated. Each holder of a jointly held account will be attributed the entire balance of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

(*3*) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate value of accounts described in § 1.1471–5(b)(1)(iv) held by a person in applying the exception in this paragraph (c)(4)(iv), an FFI shall also be required to aggregate all accounts described in § 1.1471–5(b)(1)(iv) held by such person that a relationship manager, has the ability to aggregate.

(v) *Election to forgo exception.* A participating FFI may elect to disregard the exceptions described in paragraphs

(c)(4)(iii) and (iv) of this section by documenting an account pursuant to the rules provided in this paragraph (c) and by treating any undocumented account as an account held by a recalcitrant account holder pursuant to the rules provided in § 1.1471–5(g).

(5) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraphs (c)(3)(ii)(B), (c)(4)(iii)(A), and (c)(4)(iv)(B) into such currency using a spot rate determined under § 1.988–1(d). The spot rate must be determined as of the last day of the calendar year preceding the year in which the FFI is determining the threshold amounts.

(6) *Examples.*

Example 1. Aggregation rules applicable to preexisting equity interests that are accounts held by an individual account holder. U, a U.S. resident individual, holds 100 shares of common stock of FFI1, an FFI described in section 1471(d)(5)(C). On the effective date of FFI1's FFI agreement, the common stock held by U is worth $45,000. U also holds shares of preferred stock of FFI1. Neither FFI1's common stock nor FFI1's preferred stock is regularly traded on an established securities market. On the effective date of FFI1's FFI agreement, the preferred stock shares are worth $35,000. U also holds debt instruments issued by FFI1 that are not regularly traded on an established securities market. On the effective date of CB's FFI agreement, the FFI1 debt instruments are worth $15,000. U's common and preferred equity interests are associated with U and with one another by reference to U's taxpayer identification number in FFI1's computerized information management system. However, U's debt instruments are not associated with U's equity interests in FFI1's computerized information management system. None of these accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's FFI1 debt interests are eligible for the paragraph (c)(4)(iii) documentation exception because that account does not exceed the $50,000 threshold described in paragraph (c)(4)(iii)(A) of this section, taking into account the aggregation rule described in paragraph (c)(4)(iii)(B). However, U's common and preferred equity interests are not eligible for the paragraph (c)(4)(iii) documentation exception because the accounts exceed the $50,000 threshold described in paragraph (c)(4)(iii)(A) of this section, taking into account the aggregation rules described in paragraph (c)(4)(iii)(B).

Example 2. Aggregation rules for owners of entity accounts. In Year 1, U, a U.S. resident individual, maintains a depository account that is a preexisting account in CB, a commercial bank. The balance in U's depository account on the effective date of CB's FFI agreement is $20,000. U also owns 100% of Entity X which maintains a depository account that is a preexisting account in CB and 50% of Entity Y which maintains a depository account that is a preexisting account in CB. The balance in Entity X's account on the effective date of CB's FFI agreement is $130,000 and the balance in Entity Y's account on the effective date of CB's FFI agreement is $110,000. All three accounts are associated with one another in CB's computerized information management system by reference to U's tax identification number. None of the accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's depository account would qualify for the paragraph (c)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(i)(B)(*2*). Entity X's account and Entity Y's account qualify for the paragraph (c)(3)(ii) documentation exception because the accounts do not exceed the $250,000 threshold described in paragraph (c)(3)(ii)(B)(*1*) taking into account the aggregation rule described in paragraph (c)(3)(ii)(B)(*2*).

(7) *Alternative identification procedure for preexisting individual accounts that are offshore obligations*—(i) *In general.* Except as otherwise provided under paragraph (c)(8) of this section and in lieu of reviewing all information collected with respect to an account holder, a participating FFI may instead rely on the procedures described in this paragraph (c)(7) with respect to a preexisting individual account that is an offshore obligation. A participating FFI that follows the procedures described in this paragraph (c)(7) with respect to its preexisting individual accounts will not be attributed knowledge with respect to information contained in any account files that the participating FFI did not review and was not required to review under this paragraph (c)(7). Thus, for example, if a participating FFI was only required to perform an electronic search with respect to a preexisting individual account and no U.S. indicia was located in the results of the electronic search, the participating FFI would not have reason to know that the individual was a U.S. person, even if the participating FFI had on file (but was not required to and did not review) a copy of the individual's passport which indicates that the individual was born in the United States. Additionally, solely for purposes of this paragraph (c)(7), a participating FFI will be treated as having obtained the documentary evidence set forth in paragraphs (c)(4)(i)(B)(*2*) through (*5*) of this section if the participating FFI retains a record in its files noting that the documentary evidence has been examined, including the type of document and the name of the employee that reviewed the document.

(ii) *Electronic search.* Among the preexisting individual accounts described in paragraph (c)(7)(i) of this section that were not previously documented as U.S. accounts, a participating FFI must determine whether the electronically searchable information, as defined in § 1.1471–1(b)(15), associated with an account and maintained by the participating FFI includes U.S. indicia, as defined in paragraph (c)(4)(i)(A) of this section, and if so, the FFI must obtain the appropriate documentation relevant to the type of U.S. indicia as set forth in paragraphs (c)(4)(i)(B)(*1*) through (*5*) of this section. For purposes of this paragraph (c)(7)(ii), an FFI will not be required to treat an account holder as having U.S. indicia solely because the only address it has for the account holder in its electronically searchable information is an in-care-of address outside of the United States. Except as otherwise provided in this paragraph (c)(7)(ii), a participating FFI must complete the electronic search described in this paragraph (c)(7)(ii) with respect to its preexisting individual accounts not previously identified as U.S. accounts and obtain the appropriate documentation within two years of the effective date of its FFI agreement, or will be required to treat such accounts as held by recalcitrant account holders under § 1.1471–5(g)(3)(i)(A). For all preexisting individual accounts that are treated as high-value accounts, as described in paragraph (c)(8)(i) of this section, a participating FFI must complete the electronic search described in this paragraph (c)(7)(ii), in addition to the enhanced review for high-value accounts described in paragraph (c)(8)(i) of this section, and obtain the appropriate documentation within the applicable time period provided in § 1.1471–5(g)(3)(i)(B) or (C), or will be required to treat such accounts as held by recalcitrant account holders.

(8) *Additional enhanced review for high-value accounts*—(i) *In general.* All preexisting individual accounts not identified as U.S. accounts under paragraph (c)(4)(ii) or (c)(7)(ii) of this section and that have a balance or value that exceeds $1,000,000 at the end of the calendar year preceding the effective date of the participating FFI's FFI agreement, or at the end of any subsequent calendar year, will be treated as a high-value account subject to the additional enhanced review requirements described in this paragraph (c)(8). For purposes of determining the balance or value of an

account, a participating FFI must apply the aggregation rules of paragraphs (c)(4)(iii)(B) and (C) of this section. If a participating FFI applied the enhanced review procedures of paragraphs (c)(8)(iii)(A) and (B) of this section to an account in a previous year, the participating FFI will not be required to re-apply such procedures to such account in a subsequent year.

(ii) *Relationship manager inquiry.* With respect to all high-value accounts described in paragraph (c)(8)(i) of this section, a participating FFI must identify all accounts to which a relationship manager is assigned (including any accounts aggregated with such account) and for which the relationship manager has actual knowledge that the account holder is a U.S. person. In such case, the participating FFI must obtain from the account holder a Form W–9, and a valid and effective waiver as described in section 1471(b)(1)(F)(i), if necessary. A participating FFI must identify such accounts and obtain the appropriate documentation within one year of the effective date of its FFI agreement, or will be required to treat the holder of such account as a recalcitrant account holder as provided in § 1.1471–5(g)(3)(i)(B). In order to meet its obligations under the FFI agreement, a participating FFI is also required to implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the United States, the participating FFI will be required to treat the new address as a change in circumstances and will be required to obtain the appropriate documentation from the account holder as described in paragraph (c)(4)(i)(B)(*3*) of this section.

(iii) *Enhanced review*—(A) *In general.* For all high-value accounts described in paragraph (c)(8)(i) that were not identified as U.S. accounts in paragraph (c)(8)(ii) of this section, a participating FFI must perform a review of the current customer master file and the documents described in paragraphs (c)(8)(iii)(B)(*1*) through (*5*) that are associated with the account and were obtained by the participating FFI within the last five years. If a participating FFI discovers that an account holder has U.S. indicia as described in paragraph (c)(4)(i)(A) with respect to the account, the participating FFI is to obtain the appropriate documentation described in paragraphs (c)(4)(i)(B)(*1*) through (*5*) of this section to establish whether the account is a U.S. account within the period of time provided under § 1.1471–5(g)(3)(i)(C). The documents to be reviewed by the participating FFI are the records contained in the current customer master file and to the extent not contained in the current customer master file—

(*1*) The most recent documentary evidence that satisfies the requirements of § 1.1471–3(c)(5);

(*2*) The most recent account opening contract or documentation;

(*3*) The most recent documentation obtained by the participating FFI for purposes of AML due diligence or for other regulatory purposes;

(*4*) Any power of attorney or signature authority forms currently in effect; and

(*5*) Any standing instructions to transfer funds currently in effect.

(B) *Limitations on the enhanced review.* A participating FFI is required to perform an enhanced review of its files only to the extent the information described in paragraphs (c)(8)(iii)(B)(*1*) through (*6*) is not available in the FFI's electronically searchable information. The information described in the preceding sentence is—

(*1*) The account holder's nationality and/or residence status;

(*2*) The account holder's current residence address and mailing address;

(*3*) The account holder's current telephone number(s);

(*4*) Whether there are standing instructions to transfer funds in the account to an account at another branch of the participating FFI or another financial institution;

(*5*) Whether there is a current ''in care of'' address or ''hold mail'' address for the account holder if no other residence or mailing address is found for the account; and

(*6*) Whether there is any power of attorney or signatory authority for the account.

(iv) *Exception for certain documented accounts of individual account holders.* A participating FFI is not required to perform the enhanced review provided in paragraph (c)(8)(iii) of this section with respect to any account with respect to which the participating FFI has obtained a Form W–8BEN and documentary evidence that satisfies the requirements of § 1.1471–3(c)(5) and establishes the foreign status of the account holder. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(8)(ii) of this section if the account is a high-value account described in paragraph (c)(8)(i) of this section.

(9) *Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement.* 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 of the Code, is not required to perform the electronic search described in paragraph (c)(7)(ii) of this section or the enhanced review described in paragraph (c)(8)(iii) of this section for such account. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(8)(ii) of this section if the account is a high-value account described in paragraph (c)(8)(i) of this section.

(10) *Certifications of responsible officer.* In order for a participating FFI to meet its obligations under the FFI agreement with respect to its identification procedures for financial accounts that are preexisting obligations, a responsible officer of the participating FFI must certify to the IRS within one year of the effective date of its FFI agreement that the participating FFI has completed the review of all high-value accounts to the extent described in paragraphs (c)(8)(ii) and (iii) of this section and to the best of the responsible officer's knowledge, after conducting a reasonable inquiry, the participating 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 of the Internal Revenue Code. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, instructing account holders to split up accounts to avoid classification as a high-value account. Additionally, a responsible officer of the participating FFI must certify to the IRS within two years of the effective date of its FFI agreement that it has completed the account identification procedures and documentation requirements of this paragraph (c) for all financial accounts that are preexisting obligations or, if it has not obtained the documentation required to be obtained under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of its FFI agreement.

(d) *Account reporting under FFI agreement*—(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts (as

defined in § 1.1471–5(a)(2)) and recalcitrant account holders (as defined in § 1.1471–5(g)). 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. 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 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 reporting rules applicable to reports due in 2014, 2015, and 2016. Paragraph (d)(8) of this section prescribes the reporting requirements of a qualified intermediary that is a participating FFI with respect to U.S. accounts. Paragraphs (d)(9) and (10) of this section prescribe, respectively, the reporting requirements of a withholding foreign partnership and a withholding foreign trust that is a participating FFI with respect to its U.S. accounts.

(2) *Reporting requirements in general*—(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) with respect to accounts that it is required under its FFI agreement and this section to treat as U.S. accounts maintained at any time during each calendar year that it is responsible for reporting under paragraph (d)(2)(ii) of this section, including accounts which are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances occurring by the end of such year as described under 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 passthru payments and for transitional rules for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs, see § 1.1474–1(d)(2)(i) and (ii).

(ii) *Financial institution required to report an account*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(ii)(B) or (C) of this section, the participating FFI that maintains an account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(i) of this section for each calendar year. A participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to any account it maintains for another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of an account holder of such other FFI.

(B) *Special reporting of account holders of territory financial institutions.* In the case of an account held by a territory financial institution acting as an intermediary with respect to a withholdable payment—

(*1*) If the territory financial institution agrees to be treated as a U.S. person with respect to the payment under § 1.1471–3(c)(3)(iii)(F), a participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to the account holders of the territory financial institution; or

(*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 a foreign entity that is a passive NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under § 1.1471–3(c)(2)(iii)(G).

(C) *Election for branch reporting.* A participating FFI may elect to comply with its obligation to report under paragraph (d)(3) or (d)(5) of this section by reporting its accounts on a branch-by-branch basis with respect to one or more of its branches. A participating FFI that makes this election shall identify each branch that will report its accounts separately. A branch that reports under this election 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 purposes of this election. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(iii) *Special rules for U.S. payors*—(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) that report the information required under chapter 61 with respect to account holders of accounts that the participating FFI is required to treat as U.S. accounts and that report the information described in paragraph (d)(5)(ii) of this section with respect to each U.S. account shall be treated as having satisfied the 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.

(B) *Special reporting rules for U.S. branches.* A U.S. branch of a participating FFI shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

(*1*) Chapter 61 with respect to account holders that are U.S. non-exempt recipients;

(*2*) Chapter 61 with respect to persons subject to withholding under section 3406;

(*3*) Section 1.1472–1(e) with respect to substantial U.S. owners of foreign entities that are NFFEs, and;

(*4*) Section 1.1474–1(i) with respect to specified U.S. persons that are direct or indirect owners of owner-documented FFIs.

(iv) *Accounts maintained for owner-documented FFIs.* A participating FFI that maintains an account held by an FFI that it has identified as an owner-documented FFI under § 1.1471–3(d)(7) shall report the information described in paragraph (d)(3)(iii) or (d)(5)(ii) of this section with respect to each direct or indirect owner of the owner-documented FFI that is a specified U.S. person.

(3) *Reporting of accounts under section 1471(c)(1)*—(i) *In general.* The participating FFI that is responsible for reporting an account that it is required to treat as a U.S. account under paragraph (d)(2)(ii) of this section shall be required to report such account under this paragraph (d)(3) for each calendar year unless it elects to report its U.S. accounts under paragraph (d)(5) of this section.

(ii) *Accounts held by specified U.S. persons.* In the case of an account described in paragraph (d)(3)(i) of this section that is held by one or more specified U.S. persons, a participating FFI is required to report the following information under this paragraph (d)(3)—

(A) The name, address, and TIN of each account holder that is a specified U.S. person;

(B) The account number;

(C) The account balance or value of the account;

(D) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(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.* In the case of an account described in paragraph (d)(3)(i) that is held by an NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

(A) The name, address, and TIN (if any) of the U.S. owned foreign entity;

(B) The name, address and TIN of each substantial U.S. owner of such entity;

(C) The account number;

(D) The account balance or value; and

(E) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year.

(iv) *Branch reporting.* Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(C) of this section, a participating FFI that reports the information described in paragraphs (d)(3)(ii) and (iii) of this section shall also report the jurisdiction of the branch that maintains the U.S. account being reported.

(v) *Form for reporting U.S. accounts under section 1471(c)(1).* The information described in paragraphs (d)(3)(ii) and (iii) of this section shall be reported with respect to each account subject to reporting under paragraph (d)(3)(i) of this section maintained at any time during a calendar year on the form provided by the IRS for such purposes. This form shall be filed in accordance with its requirements and its accompanying instructions.

(vi) *Time and manner of filing.* Except as provided in paragraph (d)(7)(v)(B) of this section, the form described in paragraph (d)(3)(v) of this section 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. See the accompanying instructions to this form for electronic filing instructions.

(vii) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file the form described in paragraph (d)(3)(v) of this section. Form 8809, *Request for Extension of Time to File Information Returns,* (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 the form described in paragraph (d)(3)(v) of this section. 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) *Descriptions applicable to reporting requirements of § 1.1471–4(d)(3)*—(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 U.S. owned foreign entity, the addresses to be reported are the addresses of both the U.S. owned foreign entity and each substantial U.S. owner of such entity.

(ii) *Account number.* The account number to be reported with respect to an account is the identifying number assigned by the participating FFI for purposes other than to satisfy the reporting requirements of this paragraph (d), or, if no such number is assigned to the account, a unique serial number or other number such participating FFI assigns to the financial account for purposes of reporting under paragraph (d)(3) of this section that distinguishes the account from other accounts maintained by such institution.

(iii) *Account balance or value*—(A) *In general.* Except as otherwise provided in this paragraph (d)(4)(iii)(A) and subject to the reporting rules described in paragraph (d)(7) of this section, the participating FFI shall report the balance or value of the account as of the end of the calendar year, as determined for purposes of reporting to the account holder or, in the case of a U.S. account that is an interest in an entity described in § 1.1471–5(e)(1)(iii), as determined for the purpose that requires the most frequent determination of value. Notwithstanding the previous sentence, the balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges to which the account holder is liable for terminating, transferring, surrendering, liquidating, or withdrawing cash from the account. See § 1.1473–1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (d)(4)(iii)(A) for reporting certain interests in trusts that are U.S. accounts.

(B) *Currency translation of account balance or value.* The account balance or value of an account may be reported in U.S. dollars or in the currency in which the account is denominated. In the case of an account denominated in a foreign currency, if the participating FFI elects to report account balances or values in the currency in which the account is denominated, it is required to identify the currency in which the account is reported. If the participating FFI elects to report such an account in U.S. dollars, the participating FFI must calculate the account balance or value of the account by applying a spot rate determined under § 1.988–1(d) to translate such balance or value into the U.S. dollar. The spot rate must be determined as of the last day of the calendar year or, if the account was closed during such calendar year, the closure date of the account.

(iv) *Payments made with respect to account*—(A) *Depository accounts.* The payments made during a calendar year with respect to an account described in § 1.1471–5(b)(1)(i) consist of the aggregate gross amount of interest paid or credited to the account during the year.

(B) *Custodial accounts.* The payments made during a calendar year with respect to an account described in § 1.1471–5(b)(1)(ii) consist of—

(*1*) The aggregate gross amount of dividends paid or credited to the account during the calendar year;

(*2*) The aggregate gross amount of interest paid or credited to the account during the calendar year;

(*3*) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and

(*4*) The aggregate gross amount of all other income paid or credited to the account during the calendar year.

(C) *Other accounts.* In the case of an account described in § 1.1471–5(b)(1)(iii) or (iv) that is a U.S. account, 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 the aggregate amount of redemption payments made to the account holder during the calendar year.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity*

financial accounts. In the case of an account closed or transferred in its entirety by an account holder during a calendar year that is a financial account described in § 1.1471–5(b)(1)(i), (ii), or (iv) and that the participating FFI is required to treat as a U.S. account, the participating FFI shall report the account as closed or transferred and the payments made with respect to the account shall be—

(1) the payments and income paid or credited to the account that are described in paragraph (d)(4)(iv)(A) or (B) of this section for the calendar year until the date of transfer or closure, and

(2) the amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

(E) *Amount and characterization of payments subject to reporting.* For purposes of reporting under paragraph (d)(3) of this section, the amount and characterization of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and characterization of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. Federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. Federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. Federal income tax principles to determine such amounts.

(F) *Currency translation.* Payments described in this paragraph (d)(4)(iv) may be reported in the currency in which the payment is denominated or in U.S. dollars. In the case of a payment denominated in a foreign currency, if the participating FFI elects to report the payments in the currency in which the payment is denominated, it is required to identify the currency in which the account is reported. If such a payment is reported in U.S. dollars, the participating FFI must calculate the amount by applying a spot rate determined under § 1.988–1(d) to translate such payment into the U.S. dollar equivalent amount. The spot rate must be determined as of the last day of the calendar year for which the account is being reported.

(v) *Record retention requirements.* If a participating FFI retains copies of account statements with respect to holders of U.S. accounts in the ordinary course of its business, such statements must be provided to the IRS within 30 days of a request for such statement to the extent they have been retained under such business procedures at the time of the request. A participating FFI is required to retain for six years copies of account statements that summarize the activity in the account for each calendar year for which the account is required to be reported under paragraph (d)(3) of this section and is required to provide such copies to the IRS within 30 days of a request for such statements.

(5) *Election to perform reporting under section 1471(c)(2)*—(i) *In general.* 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 with respect to payments to accounts that it is required to treat as U.S. accounts under sections 6041, 6042, 6045, and 6049 as if such participating FFI were a U.S. person and each holder of a U.S. account that is a specified U.S. person or a U.S. owned foreign entity were a payee who is an individual and citizen of the United States. This election does not apply to cash value insurance or annuity contracts that are financial accounts described in § 1.1471–5(b)(1)(iv) and that would otherwise be subject to the reporting requirements of section 6047. 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 U.S. account, 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 U.S. account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report a U.S. account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) with respect to the account.

(ii) *Information and accounts to be reported.* In addition to the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049, including the reporting of payments made to such U.S. account subject to reporting under the applicable section, a participating FFI that elects to report under this paragraph (d)(5) must report with respect to each account that it is required to treat as a U.S. account—

(A) In the case of an account holder that is a specified U.S. person:

(*1*) The name, address, and TIN of the account holder; and

(*2*) The account number; and

(B) In the case of an account holder that is a U.S. owned foreign entity that is an NFFE—

(*1*) The name, address, and TIN (if any) of such entity;

(*2*) The name, address, and TIN of each substantial U.S. owner of such entity; and

(*3*) The account number.

(iii) *Branch reporting.* Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(B) of this section, a participating FFI that reports the information described in paragraph (d)(5)(ii) of this section shall also report the jurisdiction of the branch that maintains the U.S. account being reported.

(iv) *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) in accordance with procedures established by the IRS for such election.

(v) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) (as a whole or with regard to any of its branches or affiliates) by reporting the information described in paragraph (d)(3) on the next reporting date following the calendar year on which the election is revoked.

(vi) *Filing of information under election.* 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 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.

(6) *Reporting on recalcitrant account holders*—(i) *In general.* Except as otherwise provided under paragraph (d)(7) of this section, a participating FFI, as part of its reporting responsibilities under its FFI agreement, shall report to the IRS, for each calendar year, the following groups of account holders separately—

(A) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(C), that have U.S. indicia as described in paragraph (c)(4)(i)(A) of this section;

(B) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(C), that do not have U.S. indicia as described in paragraph (c)(4)(i)(A) of this section; and

(C) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year that are dormant accounts.

(ii) *Definition of dormant account.* A dormant account is an account treated as a dormant or inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be treated as a dormant account if the account holder:

(A) Has not executed a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and

(B) Has not replied to queries from the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI in the past six years.

(iii) *End of dormancy.* An account treated as a dormant account under paragraph (d)(6)(ii) of this section ceases to be a dormant account when the account holder—

(A) Executes a transaction in the account or any other account held by the account holder with the FFI; or

(B) Replies to any query from the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI; or

(C) Ceases to be treated as a dormant account under applicable laws or regulations or the participating FFI's normal operating procedures.

(iv) *Forms.* Reporting under paragraph (d)(6)(i) of this section shall be required to be made in accordance with the information reporting form provided by the IRS for this purpose and its instructions.

(v) *Time and manner of filing.* The form described in paragraph (d)(6)(iv) of this section 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. See the accompanying instructions to this form for electronic filing instructions.

(7) *Special reporting rules with respect to the 2013 through 2015 calendar years*—(i) *In general.* A participating FFI may satisfy its reporting obligations with regard to accounts that it is required to treat as U.S. accounts maintained during 2013, 2014, and 2015 by reporting in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) *Information to be reported.* With respect to accounts that a participating FFI is required to report in accordance with paragraph (d)(2) of this section, the participating FFI may, instead of the information described in paragraph (d)(3)(ii) of this section, report only the following information—

(A) *Reporting with respect to the 2013 and 2014 calendar years.* With respect to accounts maintained during the 2013 and 2014 calendar years, the participating FFI may report only—

(*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 an NFFE that is a U.S. owned foreign entity, the name, address, and TIN (if any) of such entity and each substantial U.S. owner of such entity;

(*2*) The account balance or value as of the end of the relevant calendar year, or, if the account was closed after the effective date of the FFI agreement, the balance or value of such account immediately before closure; and

(*3*) The account number of the account.

(B) *Reporting with respect to the 2015 calendar year.* With respect to the 2015 calendar year, the participating FFI may report only—

(*1*) The information described in paragraph (d)(7)(ii)(A) of this section; and

(*2*) The payments made with respect to the account except for those payments described in paragraph (d)(4)(iv)(B)(3) of this section.

(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 2013 and 2014 calendar years. 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) and (ii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) *Recalcitrant accounts.* For each account that the participating FFI is required to treat as a recalcitrant account, the participating FFI will report such account in the manner described in paragraph (d)(6) of this section, except to the extent provided in paragraph (d)(7)(v)(B) of this section.

(v) *Forms for reporting*—(A) *In general.* Except as provided in paragraph (d)(7)(v)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on the forms described in paragraphs (d)(3)(v) and (d)(6)(iv) of this section, in the manner described in paragraphs (d)(3)(vi) and (d)(6)(v). Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vi) of this section.

(B) *Special determination date and timing for reporting with respect to the 2013 calendar year.* A participating FFI reporting with respect to the 2013 calendar year shall report all accounts that it is required to treat as U.S. accounts or as held by a recalcitrant account holder as of June 30, 2014. Such reporting shall be made on the forms described in paragraphs (d)(3)(v) and (d)(6)(iv) of this section, and shall be filed with the IRS on or before September 30, 2014. However, a U.S. payor (including a U.S. branch) that reports in accordance with paragraph (d)(2)(iii) of this section may report its U.S. accounts in accordance with the dates otherwise applicable to reporting under chapter 61.

(8) *Reporting requirements of QIs with respect to U.S. accounts.* [Reserved].

(9) *Reporting requirements of WPs with respect to U.S. accounts.* [Reserved].

(10) *Reporting requirements of WTs with respect to U.S. accounts.* [Reserved].

(11) *Examples.* The following examples illustrate the provisions of this paragraph (d):

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)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 2. Financial institution required to report U.S. account. U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under § 1.1471–5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under § 1.1471–5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI2, if PFFI2 may treat PFFI1 as a participating FFI under § 1.1471–3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 3. U.S. owned foreign entity. FC, an NFFE that is 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 4. Owner-documented FFI. DC, an FFI that is identified as 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 treated as interest holders that are specified U.S. persons (see § 1.1471–3(d)(6)) and DC identifies such owners to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC's owners that are specified U.S. persons. PFF1 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 5. Election to perform Form 1099 reporting with regard to a non-financial foreign entity. Same facts as in *Example 3,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vi) for FC, treating FC as if it were an individual and citizen of the United States and shall identify Q as a substantial U.S. owner of FC on such form. See paragraph (d)(5)(ii) of this section. PFFI1 shall not complete the forms described in paragraph (d)(5)(vi) with regard to U and Q.

Example 6. Election to perform Form 1099 reporting with regard to an owner-documented FFI. Same facts as in *Example 4,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vi) for U and Q.

(e) *Expanded affiliated group requirements*—(1) *In general.* Except as otherwise provided in paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must obtain the status of either a participating FFI or registered deemed-compliant FFI as a condition for any member of such group to obtain the status of either a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI 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 or registered deemed-compliant status as a condition for any member to become either a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI 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 including, with respect to a participating FFI, the reporting of accounts that it is required to treat as U.S. accounts under paragraph (d) of this section, withholding on passthru payments under paragraph (b) of this section, and the closing of a U.S. account when the account holder does not provide within a reasonable period of time a valid and effective waiver of restrictions on reporting of such account.

(2) *Limited branches*—(i) *In general.* An FFI that otherwise satisfies the requirements for participating FFI status as described in this section and the FFI agreement will be allowed to become a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of the FFI agreement if—

(A) All branches (as defined in paragraph (e)(2)(ii) of this section) that cannot satisfy all of the requirements of the FFI agreement are limited branches as described in paragraph (e)(2)(iii) of this section;

(B) The FFI maintains at least one branch that can comply with all of the requirements of a participating FFI, even if the only branch that can comply is a U.S. branch; and

(C) The FFI agrees to and complies with the conditions in paragraph (e)(2)(iv) of this section.

(ii) *Branch defined.* For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI and that maintains books and records separate from the books and records of other branches of the FFI. All units, businesses, or offices of a participating FFI in a single country shall be treated as a single branch for purposes of this paragraph (e)(2). An account will be treated as maintained by a branch for purposes of this paragraph (e)(2) 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. For purposes of this section, a branch includes units, businesses, and offices of an FFI located in the country in which the FFI is created or organized.

(iii) *Limited branch defined.* A limited branch is a branch of an FFI that, under the laws of the jurisdiction as of February 15, 2012 and that apply with respect to the accounts maintained by the branch, cannot either—

(A) With respect to accounts that pursuant to this section and the FFI agreement it is required to treat as U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a branch of the FFI, a participating FFI member of the expanded affiliated group of the FFI, or another participating FFI that may so report; or

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account (as defined in the next sentence), close each such account within a reasonable period of time, or transfer each such account to another branch of the FFI or a participating FFI member of the expanded affiliated group of the FFI that is not subject to the restrictions described in this paragraph (e)(2)(iii)(B) with respect to such account holders. For purposes of this paragraph (e)(2)(iii)(B), an account is considered blocked when the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account is closed, transferred, or the account holder provides the documentation described in paragraph (c) of this section for the FFI to determine the U.S. or non-U.S. status of the account.

(iv) *Conditions for limited branch status.* An FFI with one or more limited branches must satisfy the following requirements when applying for participating FFI status with the IRS—

(A) Identify the relevant jurisdiction of each branch for which it seeks limited branch status;

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its FFI agreement, and report to the IRS with respect to accounts it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

(C) Agree to treat each such branch as an entity separate from its other branches for purposes of the withholding requirements described in paragraph (e)(2)(v) of this section;

(D) 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 that is not a limited branch or from any member of its expanded affiliated group; and

(E) Agree that each limited branch will identify itself to withholding agents as a nonparticipating FFI (including affiliates of the FFI in the same expanded affiliated group that are withholding agents).

(v) *Withholding requirements applicable to limited branches.* A participating FFI will be required to withhold on a withholdable payment when a branch of the FFI other than the limited branch receives the payment on behalf of a limited branch of the FFI. A branch of the FFI other than a limited branch will be considered to have received a withholdable payment on behalf of a limited branch when such other branch receives a withholdable payment with respect to a security or instrument it holds on behalf of a limited branch (or its account holders). A branch of an FFI other than a limited branch will also be considered to hold a security or instrument on behalf of a limited branch when it executes a transaction with a limited branch that hedges or otherwise provides total return exposure to another transaction between such other branch and a third party that gives rise to a withholdable payment.

(vi) *Term of limited branch status.* An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2015. 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 the FFI agreement. 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 FFI agreement with respect to such branch.

(3) *Limited FFI affiliates*—(i) *In general.* An FFI will be allowed to become either a participating FFI or a registered deemed-compliant FFI notwithstanding that one or more of the FFIs in the expanded affiliated group of which the FFI is a member cannot comply with all of the provisions of an FFI agreement if each such FFI is a limited FFI under paragraph (e)(3)(ii) of this section.

(ii) *Limited FFI.* A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions described in paragraph (e)(3)(iii) of this section to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, the affiliate cannot either—

(A) With respect to accounts that pursuant to this section it is required to treat as U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to an affiliate or other participating FFI that may so report; or

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account, close each such account within a reasonable period of time, or transfer each such account to an affiliate of the FFI that is a participating FFI. See paragraph (e)(2)(ii)(B) of this section for when an account is considered blocked.

(iii) *Conditions for limited FFI status.* An FFI that seeks to become a limited FFI must—

(A) Register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its registration as a limited FFI, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

(C) 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

(D) Agree as part of such registration that it will identify itself to withholding agents as a nonparticipating FFI.

(iv) *Group member requirements.* Participating and deemed-compliant FFIs that are members of an expanded affiliated group that includes one or more limited affiliates will be required to treat such limited FFIs as nonparticipating FFIs with respect to withholdable payments made to these affiliates. A participating FFI or deemed-compliant FFI will be considered to have made a withholdable payment to a limited FFI when the limited FFI receives a payment with respect to a transaction between the limited FFI and such FFI that is in the same expanded affiliated group and such transaction hedges or otherwise provides total return exposure to another transaction between such FFI and a third party that gives rise to a withholdable payment. A participating FFI or deemed-compliant FFI will also be considered to have made a withholdable payment to an affiliate that is a limited FFI if such FFI receives a withholdable payment with respect to a security or instrument held on behalf of a limited FFI.

(v) *Period for limited FFI status.* A limited FFI will cease to be a limited FFI after December 31, 2015. An FFI will 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 the FFI agreement. In such case, participating and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by the date that the FFI ceases to be a limited FFI, the FFI notifies the IRS that the FFI will comply with the FFI agreement.

(4) *Special rule for QIs.* An FFI that has in effect a qualified intermediary 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 provisions of an FFI agreement if the FFI that is a qualified intermediary meets the conditions of a limited FFI under paragraph (e)(3)(ii) of this section.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 7. Section 1.1471–5 is added to read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

(a) *U.S. accounts*—(1) *In general.* This paragraph (a) defines the term *U.S. account* and describes when a person is treated as the holder of a financial account. This paragraph also provides rules for determining when an exception to U.S. account status applies for certain depositary accounts and the account aggregation requirements relevant in applying that exception.

(2) *Definition of U.S. account.* Subject to the exception described in paragraph (a)(4) of this section, a U.S. account is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities. For a definition of the term financial account, see paragraph (b) of this section. For a definition of the term specified U.S. person, see § 1.1473–1(c). For a definition of the term U.S. owned foreign entity, see paragraph (c) of this section. For reporting requirements of participating FFIs with respect to U.S. accounts, see § 1.1471–4(d).

(3) *Account held by*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), an account is held by the person listed or identified as the holder of such account with the FFI that maintains the account. An entity is treated as holding an account regardless of whether the entity is a flow-through entity. Thus, except as otherwise provided in paragraphs (a)(3)(ii) and (iii), if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the financial account shall be treated as held by the trust or estate itself rather than by 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 financial account shall be treated as held by the partnership itself, rather than the partners in the partnership.

(ii) *Grantor trust.* A trust shall not be treated as holding an account if a person is treated as the owner of the entire trust under sections 671 through 679. In that case, the account will be treated as held by the person who is treated as the owner of the trust under such sections. In the case of a person that is treated as the owner of a portion of the trust under sections 671 through 679—

(A) If such person is treated as owning all the assets in the account under sections 671 through 679, the account will be treated as held by such person;

(B) If such person is treated as owning a portion of the account or the assets in the account under sections 671 through 679, the account will be treated as held by both such person and the trust; and

(C) If such person is not treated as owning any portion of the account or any of the assets in the account under sections 671 through 679, the account will be treated as held by the trust.

(iii) *Financial accounts held by agents.* A person, other than a financial institution, holding a financial account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this section, and such other person is treated as holding the account.

(iv) *Jointly held accounts.* With respect to a jointly held account, each joint holder will be treated as holding the account for purposes of determining whether the account is a U.S. account. Thus, an account is a U.S. account if any of the holders is a specified U.S. person or a U.S. owned foreign entity and the account is not otherwise excepted from U.S. account status under paragraph (a)(4) of this section. In a case in which more than one U.S. person is a joint holder, each U.S. person will be treated as a holder of the account. See paragraph (a)(4)(ii) of this section for account aggregation rules applicable to jointly held accounts for purposes of determining the exception to U.S. account status under paragraph (a)(4)(i).

(v) *Holder of account for certain insurance contracts.* For purposes of this section, an insurance or annuity contract that is a financial account as defined in paragraph (b) of this section is treated as held by the contract holder (that is, owner) if such person can access the cash value of the contract (for example, through a loan, withdrawal, or surrender) or change a beneficiary under the contract. However, if the contract holder cannot access the cash value or change a beneficiary, then the contract is treated as held by each beneficiary under the contract. Upon the maturity of the insurance or annuity contract, when the obligation to pay the benefit under the contract becomes fixed, the beneficiary is treated as the contract holder.

(vi) *Examples.* The following examples illustrate the provisions of paragraph (a)(3) of this section:

Example 1. Account held by agent. F, a nonresident alien, holds a power of attorney from U, a specified U.S. person, that authorizes F to open, hold, and make deposits and withdrawals with respect to a depository account on behalf of U. F is listed as the holder of a depository account at a participating FFI. However, F holds the account as an agent for the benefit of U. F is not ultimately entitled to the funds in the account. Therefore, the depository account is treated as held by U and such account is a U.S. account because it is held by a specified U.S. person.

Example 2. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance in the account at the end of the calendar year is $100,000. The account is jointly held with A, an individual who is a nonresident alien. Because one of the joint holders is a specified U.S person, the account is a U.S. account.

Example 3. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance in the account at the end of the calendar year is $100,000. The account is jointly held with Q, a specified U.S. person. The account is a U.S. account, and both U and Q are treated as holding a U.S. account.

(4) *Exceptions to U.S. account status*—(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(iv) of this section not to have this paragraph (a)(4)(i) apply, the term U.S. account shall not include any account maintained by such financial institution during a calendar year if the conditions of paragraphs (a)(4)(i)(A), (B), and (C) of this section are met.

(A) *Depository accounts.* The condition of this paragraph (a)(4)(i)(A) is met if the account is a depository account.

(B) *$50,000 threshold.* The conditions of this paragraph (a)(4)(i)(B) are met if, with respect to each holder of such financial account, the aggregate balance or value of the financial account, and, to the extent required under paragraph (a)(4)(ii) of this section, all depository accounts held (in whole or in part) by the holder of the account 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 balance or value of financial accounts that apply for purposes of this paragraph (a)(4)(i), see § 1.1471–4(d)(4)(iii).

(C) *Individual account holders.* The condition of this paragraph (a)(4)(i)(C) is met if the account is held solely by one or more individuals.

(ii) *Aggregation requirements for exception.* For purposes of determining whether the aggregate balance of depository accounts held by an individual exceeds $50,000 for purposes of applying the exception in this paragraph (a)(4)(i), an FFI will be required to take into account all depository accounts maintained by the FFI, or members of its expanded affiliated group, that are held (in whole or in part) by such individual, but only to the extent that the FFI's computerized

systems link the accounts by reference to a data element such as client number or a taxpayer identification number (including a TIN), and allow account balances of such accounts to be aggregated. Each holder of a jointly held depository account will be attributed the entire balance of the joint account for purposes of applying the aggregation requirements described in this paragraph (a)(4)(ii).

(iii) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraph (a)(4)(i)(B) of this section into such currency using a spot rate determined under § 1.988–1(d). The spot rate must be determined as of the last day of the calendar year with respect to which the FFI is determining the threshold amounts.

(iv) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraph (a)(4)(i) of this section by reporting all U.S. accounts, including those accounts that would otherwise meet the exception described in paragraph (a)(4)(i) of this section.

(v) *Examples.* The following examples illustrate the account aggregation requirements of paragraph (a)(4)(ii) of this section:

Example 1. Aggregation rules for individual accounts. In Year 1, a U.S. resident individual, U, holds a depository account with CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also holds a custodial account with CB's brokerage business. The custodial account has a $45,000 balance as of the end of Year 1. CB's retail banking and brokerage businesses share computerized information management systems that associate U's depository account and U's custodial account with U and with one another by reference to CB's internal identification number. The account balances of the accounts are automatically aggregated under such system. For purposes of applying the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section, a depository account is aggregated only with other depository accounts. U's depository account is eligible for the paragraph (a)(4)(i) exception to U.S. account status, because its balance does not exceed $50,000.

Example 2. Aggregation rules for individual accounts. In Year 1, a U.S. resident individual, U, holds a depository account with Branch 1 of CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also holds a depository account with Branch 2 of CB. The Branch 2 account has a $45,000 balance at the end of Year 1. CB's retail banking businesses share computerized information management systems across its branches; however, U's accounts are not associated with one another in the shared computerized information system. Because the accounts are not associated in CB's system, both accounts are eligible for the paragraph (a)(4)(i) exception to U.S. account status as neither account exceeds the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

Example 3. Aggregation rules for individual accounts. Same facts as *Example 2,* except that both of U's depository accounts are associated with U and with one another by reference to CB's internal identification number. The system shows the account balances for both accounts, and such balances may be electronically aggregated; however, the system does not show a combined balance for the accounts. Because the balances can be aggregated under paragraph (a)(4)(ii) of this section, U is treated as holding financial accounts with CB with an aggregate balance of $80,000 for purposes of applying the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section. Neither account is eligible for the paragraph (a)(4)(i) exception to U.S. account status, because they exceed, when aggregated, the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

Example 4. Aggregation rules for preexisting joint accounts. In Year 1, a U.S. resident individual, U, holds a depository account in commercial bank CB. The balance in U's CB depository account at the end of Year 1 is $35,000. U also holds a joint depository account with her sister, A, a nonresident alien for U.S. Federal income tax purposes, with another commercial bank, CB2. The balance in the joint account at the end of Year 1 is $35,000. CB and CB2 form part of the same expanded affiliated group and both share computerized information management systems. Both U's depository account in CB and U and A's depository account in CB2 are associated with U and with one another by reference to CB's internal identification number. Under paragraph (a)(4)(ii) U is treated as having financial accounts in the CB/CB2 financial institution with an aggregate balance of $70,000, and neither account is eligible for the paragraph (a)(4)(i) exception to U.S. account status because they exceed the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

(b) *Financial accounts*—(1) *In general.* Solely for purposes of chapter 4 of the Internal Revenue Code, the term *financial account* means—

(i) Any depository account (as defined in paragraph (b)(3)(i) of this section) maintained by a financial institution (as defined in paragraph (e)(1) of this section);

(ii) Any custodial account (as defined in paragraph (b)(3)(ii) of this section) maintained by a financial institution (as defined in paragraph (e)(1) of this section);

(iii) Any equity or debt interest (other than interests that are regularly traded on an established securities market) in a financial institution that is described in paragraph (e)(1)(iii) of this section (and is not described in paragraph (e)(1)(i), (ii), or (iv) of this section). The term also includes any equity or debt interest (other than interests that are regularly traded on an established securities market) in a financial institution that is described in paragraphs (e)(1)(i), (ii), and (iv) of this section, but only if the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments. Any equity or debt interest that constitutes a financial account under this paragraph (b)(1)(iii) with respect to any financial institution shall be treated for purposes of section 1471 as maintained by such financial institution; or

(iv) Any cash value insurance contract (as defined in paragraph (b)(3)(v) of this section) and any annuity contract issued or maintained by a financial institution (as defined in paragraph (e)(1) of this section).

(2) *Exceptions*—(i) *Certain savings accounts*—(A) *Retirement and pension accounts.* A financial account does not include an account that satisfies the conditions of paragraph (b)(2)(i)(A)(*1*) or (*2*) of this section.

(*1*) The account is held by a retirement or pension fund that meets the requirements of paragraph (f)(2)(ii) of this section.

(*2*) The account is subject to government regulation as a personal retirement account or is registered or regulated as an account for the provision of retirement or pension benefits under the laws of the country in which the FFI that maintains the account is established or in which it operates, and meets the following requirements—

(*i*) The account is tax-favored with regard to the jurisdiction in which the account is maintained;

(*ii*) All of the contributions to the account are employer, government, or employee contributions that are limited by reference to earned income under the law of the jurisdiction in which the account is maintained; and

(*iii*) Annual contributions (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or § 1.1471–6(f)) are limited to $50,000 or less, and limits or penalties apply by law of the jurisdiction in which the account is maintained to withdrawals made before reaching a specified retirement age and to annual contributions exceeding $50,000 (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or § 1.1471–6(f)).

(*B*) *Non-retirement savings accounts.* A financial account does not include an account that is tax-favored with regard to the jurisdiction in which the account is maintained, subject to government regulation as a savings vehicle for purposes other than for retirement, and the following conditions are also satisfied—

(*1*) Contributions to such account are limited by reference to earned income;

(*2*) Annual contributions are limited to $50,000 or less under the law of the jurisdiction in which the account is maintained;

(*3*) Limits or penalties apply on withdrawals made before specific criteria are met under the law of the jurisdiction in which the account is maintained; and

(*4*) Limits or penalties apply by law of the jurisdiction in which the account is maintained to contributions exceeding the limit described in paragraph (b)(2)(i)(B)(*2*) of this section.

(C) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraphs (b)(2)(i)(A)(*3*)(*i*) and (b)(2)(i)(B)(*2*) of this section into such currency using a spot rate determined under § 1.988–2(d). The spot rate must be determined as of the last day of the calendar year preceding the year in which the FFI is determining whether an account meets such threshold amount.

(D) *Rollovers.* A financial account that otherwise satisfies any of the requirements of this paragraph (b)(2)(i) will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of any of paragraph (b)(2)(i)(A) or (B) of this section or from one or more retirement or pension funds that meet the requirements of paragraph (f)(2)(ii) of this section or § 1.1471–6(f).

(E) *Coordination with section 6038D.* The exclusions provided under paragraph (b)(2)(i) of this section shall not apply for purposes of determining whether an account or other arrangement is a financial account for purposes of section 6038D.

(F) *Account that is tax-favored.* For purposes of this paragraph (b)(2), an account is tax-favored if contributions to the account that would otherwise be subject to tax under the laws of the jurisdiction where the account is maintained are deductible or excluded from gross income of the account holder or if the taxation of investment income from the account is deferred under the laws of such jurisdiction, or both.

(ii) *Term life insurance contracts.* The term *financial account* does not include a life insurance contract, other than a contract held by a transferee for value under section 101(a)(2) (determined without regard to section 101(a)(2)(A) or (B)), if equal periodic premiums are payable annually or more frequently during the period the contract is in existence, and the amount payable upon termination of the contract prior to the death of the insured cannot exceed the aggregate premiums paid for the contract, less mortality, morbidity, and expense charges (whether actually imposed or not) for the period or periods of the contract's existence.

(iii) *Account held by exempt beneficial owner.* The term *financial account* does not include any financial account described in paragraph (b)(1) of this section that is held solely by one or more exempt beneficial owners described in § 1.1471–6 or by nonparticipating FFIs holding the account as intermediaries solely on behalf of one or more such owners.

(3) *Definitions.* The following definitions apply for purposes of chapter 4 of the Internal Revenue Code—

(i) *Depository account.* The term *depository account* means—

(A) A commercial, checking, savings, time, or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument; and

(B) Any amount held by an insurance company under an agreement to pay or credit interest thereon.

(ii) *Custodial account.* The term *custodial account* means an account for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a depository account, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract as defined in § 1.446–3(c), an insurance or annuity contract, and any option or other derivative instrument).

(iii) *Equity interest in certain entities.* In the case of a partnership that is a financial institution, the term *equity interest* means either a capital or profits interest in the partnership. In the case of a trust that is a financial institution, an *equity interest* means either an interest held by a person treated as an owner of all or a portion of the trust under sections 671 through 679 or a person holding a beneficial interest in the trust that is described in § 1.1473–1(b)(3).

(iv) *Regularly traded on an established securities market.* Debt or equity interests described in paragraph (b)(1)(iii) are regularly traded on an established securities market (as defined in § 1.1472–1(c)(1)(i)(C)) if—

(A) Trades in such interests are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior calendar year; and

(B) The aggregate number of such interests that were traded on such market or markets during the prior calendar year was at least ten percent of the average number of such interests outstanding during the prior calendar year.

(v) *Cash value insurance contracts*—(A) *In general.* Except as otherwise provided in paragraph (b)(3)(v)(B) or (C) of this section, the term *cash value insurance contract* means an insurance contract that has a ''cash value'' (as defined in paragraphs (b)(3)(v)(B) and (C) of this section) greater than zero. A term life insurance contract described in paragraph (b)(2)(ii) is not a cash value insurance contract.

(B) *Cash value.* Except as otherwise provided in paragraph (b)(3)(v)(C), the term *cash value* means the greater of—

(*1*) The amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and

(*2*) The amount the policyholder can borrow under or with regard to the contract.

(C) *Amounts excluded from cash value.* Cash value does not include an amount payable under an insurance contract as—

(*1*) A personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(*2*) A refund to the policyholder of a previously paid premium under an insurance contract (other than under a life insurance or annuity contract) due to policy cancellation, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or

(*3*) A policyholder dividend (as defined in section 808 but without regard to paragraph (b)(2) of that section) provided such dividend is not a termination dividend, and relates to either a term life insurance contract described in paragraph (b)(2)(ii) of this

section or an insurance contract under which the only benefit payable is described in paragraph (b)(3)(v)(C)(*1*).

(c) *U.S. owned foreign entity*—(1) *In general.* The term *United States owned foreign entity* (or *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 of the Internal Revenue Code.

(2) *Owner-documented FFI treated as U.S. owned foreign entity.* An FFI that is treated as an owner-documented FFI under § 1.1471–3(d)(7) and that has one or more direct or indirect owners that are specified U.S. persons (as defined in § 1.1473–1(c)) shall be treated as a U.S. owned foreign entity by a participating FFI maintaining an account for such documented FFI for purposes of reporting with respect to its U.S. accounts as described in § 1.1471–4(d). 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 any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. A territory financial institution is not an FFI under this paragraph (d).

(e) *Definition of a financial institution*—(1) *In general.* Except as otherwise provided in paragraph (e)(5), the term *financial institution* means any entity that—

(i) Accepts deposits in the ordinary course of a banking or similar business (as defined in paragraph (e)(2) of this section);

(ii) Holds, as a substantial portion of its business (as defined in paragraph (e)(3) of this section), financial assets for the account of others;

(iii) Is engaged (or holding itself out as being engaged) primarily (as defined in paragraph (e)(4) of this section) in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), notional principal contracts (as defined in § 1.446–3(c)), insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract; or

(iv) Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account under paragraph (b)(1) of this section.

(2) *Banking or similar business*—(i) *In general.* An entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity engages in one or more of the following activities—

(A) Accepts deposits of funds;

(B) Makes personal, mortgage, industrial, or other loans;

(C) Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(D) Issues letters of credit and negotiates drafts drawn thereunder;

(E) Provides trust or fiduciary services;

(F) Finances foreign exchange transactions;

(G) Enters into, purchases, or disposes of finance leases or leased assets; or

(H) Provides charge and credit card services.

(ii) *Application of section 581.* Entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks as defined in section 581 and any corporation to which section 581 would apply except for the fact that it is a foreign corporation).

(iii) *Effect of local regulation.* Whether an entity is subject to the banking and credit laws of a foreign country, the United States, a State, a possession of the United States, or a subdivision thereof, or is subject to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to but not necessarily determinative of whether that entity qualifies as a financial institution under section 1471(d)(5)(A). Whether an entity conducts a banking or similar business is determined based upon the character of the actual activities of such entity.

(3) *Holding financial assets as a substantial portion of its business*—(i) *Substantial portion.* An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of—

(A) The three-year period ending on December 31 of the year in which the determination is made; or

(B) The period during which the entity has been in existence.

(ii) *Effect of local regulation.* Whether an entity is subject to the banking and credit, broker-dealer, fiduciary or other similar laws and regulations of the United States, a State, a possession of the United States, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banking or other financial institutions, is relevant to but not necessarily determinative of whether that entity holds financial assets for the account of others as a substantial portion of its business.

(4) *In the business of investing, reinvesting, and trading.* An entity is engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income attributable to such activities equals or exceeds 50 percent of the entity's gross income during the shorter of—

(A) The three-year period ending on December 31 of the year in which the determination is made, or

(B) The period during which the entity has been in existence.

(5) *Exclusions.* Entities described in any of paragraphs (e)(5)(i) through (v) of this section are excluded from the definition of a financial institution under paragraph (e)(1) of this section and are excepted NFFEs under § 1.1472–1(c)(1)(v).

(i) *Certain nonfinancial holding companies.* An entity is described in this paragraph (e)(5)(i) if it is a foreign entity substantially all of the activities of which is to own (in whole or in part) the outstanding stock of one or more subsidiaries that engage in trades or businesses, provided that no such subsidiary is a financial institution (as defined in this paragraph (e)). An entity is not described in this paragraph (e)(5)(i) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

(ii) *Certain start-up companies.* An entity is described in this paragraph (e)(5)(ii) if it is a foreign entity that is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution. This exclusion expires 24 months after the initial organization of such entity, and after such time, the foreign entity will no longer qualify for this exception for start-up companies. An entity is not described in this paragraph (e)(5)(ii) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then

hold interests in those companies as capital assets for investment purposes.

(iii) *Nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy.* An entity is described in this paragraph (e)(5)(iii) if it is a foreign entity that was not a financial institution under this paragraph (e) in the past five years and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations as a nonfinancial entity.

(iv) *Hedging/financing centers of a nonfinancial group.* An entity is described in this paragraph (e)(5)(iv) if it is a foreign entity that primarily engages in financing and hedging transactions with or for members of its expanded affiliated group that are not financial institutions and that does not provide financing or hedging services to non-affiliates, provided that the expanded affiliated group is primarily engaged in a business other than that of a financial institution under this paragraph (e).

(v) *Section 501(c) entities.* An entity is described in this paragraph (e)(5)(v) if it is a foreign entity that is described in section 501(c).

(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), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI (as defined in paragraph (f)(3) of this section). The term also includes any FFI that is described in guidance published in the **Federal Register** or the Internal Revenue Bulletin. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b).

(1) *Registered deemed-compliant FFIs.* A registered deemed-compliant FFI means an FFI described in any of paragraphs (f)(1)(i)(A) through (E) of this section that has met the procedural requirements described in paragraph (f)(1)(ii) of this section. A registered deemed-compliant FFI also includes any FFI that is deemed to comply with the requirements of section 1471(b) pursuant to an agreement between the government of the United States and a foreign government.

(i) *Registered deemed-compliant FFI categories*—(A) *Local FFIs.* An FFI is described in this paragraph (f)(1)(i)(A) if the FFI meets the requirements of paragraphs (f)(1)(i)(A)(*1*) through (*8*).

(*1*) The FFI must be licensed and regulated under the laws of its country of organization (which must be FATF-compliant at the time the FFI registers for deemed-compliant status) as a bank or similar organization authorized to accept deposits in the ordinary course of its business, a securities broker or dealer, or a financial planner or investment adviser, but must not qualify as an FFI solely because it is an entity described in paragraph (e)(1)(iii) of this section.

(*2*) The FFI must have no fixed place of business outside its country of incorporation or organization.

(*3*) The FFI must not solicit account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may hold deposit accounts with the FFI, does not advertise the availability of U.S. dollar denominated deposit accounts or other U.S. dollar denominated investments, and does not target U.S. customers.

(*4*) The FFI must be required under the tax laws of the country in which the FFI is incorporated or organized to perform either information reporting or withholding of tax with respect to accounts held by residents.

(*5*) At least 98 percent of the accounts maintained by the FFI must be held by residents (including residents that are entities) of the country in which the FFI is organized. An FFI which is organized in an EU member state may treat account holders that are residents (including corporate residents) of other EU member states as residents of the country in which the FFI is incorporated or organized for purposes of this calculation.

(*6*) On or before the date it registers as a deemed-compliant FFI, the FFI must implement policies and procedures to ensure that it does not open or maintain accounts for any specified U.S. person who is not a resident of the country in which the FFI is organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), a nonparticipating FFI, or any entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by a specified U.S. person.

(*7*) With respect to each account that is held by an individual who is not a resident of the country in which the FFI is organized or by an entity, and that is opened after December 31, 2011, and prior to the date that the FFI implements the policies and procedures described in paragraph (f)(1)(i)(A)(*6*), the FFI must review 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 must certify 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 that it agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) or (d) if it were a participating FFI.

(*8*) In the case of an FFI that is a member of an expanded affiliated group, each member of the expanded affiliated group must be incorporated or organized in the same country, must meet the requirements set forth in this paragraph (f)(1)(i)(A), and must meet the procedural requirements of paragraph (f)(1)(ii) of this section.

(B) *Nonreporting members of participating FFI groups.* An FFI that is a member of a participating FFI group is described in this paragraph (f)(1)(i)(B) if it meets the requirements of paragraphs (f)(1)(i)(B)(*1*) through (*4*) of this section.

(*1*) The FFI must review its accounts that were opened prior to the date it implements the policies and procedures described in paragraph (f)(1)(i)(B)(*3*) of this section, 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.

(*2*) If any account described in paragraph (f)(1)(i)(B)(*1*) of this section is identified, the FFI must, within 90 days after identification of the account, enter into an FFI agreement, transfer the account to an affiliate that is a participating FFI or U.S. financial institution, or close the account.

(*3*) On or before the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI must implement policies and procedures to ensure that if it opens any of the accounts described in paragraph (f)(1)(i)(B)(*1*) of this section, it either transfers any such accounts to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days of having opened the account.

(*4*) The FFI must implement policies and procedures to ensure that it identifies any account which becomes an account described in paragraph (f)(1)(i)(B)(*1*) of this section due to a change in circumstances and it either transfers such account to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days

after the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status.

(C) *Qualified collective investment vehicles.* An FFI is described in this paragraph (f)(1)(i)(C) if it meets the requirements of paragraphs (f)(1)(i)(C)(*1*) through (*3*).

(*1*) The FFI must be an FFI solely because it is described in paragraph (e)(1)(iii) of this section, and must be regulated in its country of incorporation or organization as an investment fund.

(*2*) Each holder of record of direct debt interests in excess of $50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must a be participating FFI, registered deemed-compliant FFI, U.S. person described in any of § 1.1473–1(c)(1) through (12), or exempt beneficial owner.

(*3*) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.

(D) *Restricted Funds.* An FFI is described in this paragraph (D) if it meets the requirements of paragraphs (f)(1)(i)(D)(*1*) through (*7*) of this section.

(*1*) The FFI must be an FFI solely because it is described in paragraph (e)(1)(iii) of this section, and must be regulated as an investment fund under the laws of its country of incorporation or organization (which must be FATF-compliant at the time the FFI registers for deemed-compliant status). In addition, interests in the FFI may only be sold through distributors described in paragraph (f)(1)(i)(D)(*2*) of this section or redeemed directly by the restricted fund.

(*2*) Each distributor of the FFI's interests must be a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank described in paragraph (f)(2)(i) of this section, or a restricted distributor described in paragraph (f)(4) of this section. For purposes of this paragraph (f)(1)(i)(D) and paragraph (f)(4) of this section, a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of securities.

(*3*) The FFI must ensure that each agreement that governs the distribution of its debt or equity interests prohibits sales of debt or equity interests in the FFI to U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI), and the FFI's prospectus and all marketing materials must indicate that sales of interests in the FFI to U.S. persons, nonparticipating FFIs, or NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI) are prohibited.

(*4*) The FFI must ensure that each agreement 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 certify to the IRS that, with respect to any distributor that ceases to qualify as a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank described in paragraph (f)(2)(i) of this section, or a restricted distributor described in paragraph (f)(4) of this section, the FFI will terminate its distribution agreement with the distributor within 90 days of notification of the distributor's change in status and will acquire or redeem all debt and equity interests of the FFI issued through that distributor within six months of the distributor's change in status.

(*5*) With respect to any of the FFI's preexisting direct accounts (that is, accounts that are held directly by the ultimate investors), the FFI must review 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. 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 of shares to U.S. entities and U.S. resident individuals. The FFI will be required to certify to the IRS either that it did not identify any such account as a result of its review or, if any such accounts were identified, that the FFI will either redeem any such account, or will withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*6*) On or before the date that it registers as a deemed-compliant FFI, the FFI must implement the policies and procedures described in § 1.1471–4(c) for identifying account holders with respect to direct account holders to ensure that it either—

(*i*) Does not open or maintain an account for any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners; or

(*ii*) Closes any account for any person described in paragraph (f)(1)(i)(D)(*6*)(*i*) within 90 days of the date that the account was opened or the date that the FFI had reason to know the account holder became a person described in paragraph (f)(1)(i)(D)(*6*)(*i*) of this section, or withholds and reports on such account as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*7*) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.

(ii) *Procedural requirements for registered deemed-compliant FFIs.* A registered deemed-compliant FFI may use one or more agents to perform the necessary due diligence with respect to identifying its account holders and to take any required action associated with obtaining and maintaining its deemed-compliant status. However, the FFI remains responsible for ensuring that the requirements for its deemed-compliant status are met. Unless otherwise provided in this section, a registered deemed-compliant FFI will be required to—

(A) Have its chief compliance officer or an individual of equivalent standing with the FFI certify to the IRS in such a manner as the IRS specifies that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied as of the date the FFI registers as a deemed-compliant FFI;

(B) Obtain from the IRS a confirmation of its registration as a deemed-compliant FFI and an FFI–EIN;

(C) Agree that if it chooses to publish a passthru payment percentage, it will do so in accordance with the procedures set forth in § 1.1471–5(h);

(D) Renew its certification every three years; and

(E) Agree to notify the IRS if there is a change in circumstances which would make the FFI ineligible for the deemed-compliant status for which it has registered.

(iii) *Deemed-compliant FFI that is merged or acquired.* An FFI which has registered as a deemed-compliant FFI under paragraph (f)(1) of this section but subsequently ceases to qualify for deemed-compliant status under its existing category because it is merged into or is acquired by another participating FFI or participating FFI group, will be required to notify the IRS and must complete a new registration with the IRS as a participating FFI or a deemed-compliant FFI. A deemed-compliant FFI that becomes a participating FFI or a member of a participating FFI group as a result of a

merger or acquisition will not be required to redetermine the chapter 4 status of any account maintained by the FFI prior to the date of the merger or acquisition unless that account has a subsequent change in circumstances.

(2) *Certified deemed-compliant FFIs.* A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) 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)(6) or (7) applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI is not required to register with the IRS.

(i) *Nonregistering local bank.* An FFI is described in this paragraph (f)(2)(i) if the FFI meets the requirements of paragraphs (f)(2)(i)(A) through (F).

(A) The FFI must operate and be licensed solely as a bank (within the meaning of section 581, determined as if the FFI were incorporated in the United States) in its country of incorporation or organization and engage primarily in the business of making loans and taking deposits from unrelated retail customers.

(B) The FFI must be licensed to conduct business in its country of incorporation or organization and must have no fixed place of business outside such country.

(C) The FFI must not solicit account holders outside its country of organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may hold deposit accounts with the FFI, advertise the availability of U.S. dollar denominated deposit accounts or other investments, or target U.S. customers.

(D) The FFI must have no more than $175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group may have no more than $500 million in total assets on its consolidated or combined balance sheets.

(E) The FFI must be required under the tax laws of the country in which the FFI is organized to perform either information reporting or withholding of tax with respect to resident accounts. An FFI that is not subject to such information reporting or withholding requirements will be considered to meet this requirement if all of the accounts maintained by the FFI have a value or account balance of $50,000 or less, taking into account the account aggregation rules set forth in § 1.1471–4(c)(4).

(F) With respect to an FFI that is part of an expanded affiliated group, each FFI in the expanded affiliated group must be incorporated or organized in the same country and must meet the requirements set forth in this paragraph (f)(2)(i).

(ii) *Retirement funds*—(A) *Requirements.* An FFI is described in this paragraph (f)(2)(ii) if the FFI is organized for the provision of retirement or pension benefits under the law of the country in which it is established or in which it operates and meets the requirements described in paragraph (f)(2)(ii)(A)(*1*) or (*2*).

(*1*) An FFI meets the requirements of this paragraph (f)(2)(ii)(A)(*1*) if—

(*i*) All contributions to the FFI (other than transfers of assets from accounts described in paragraph (b)(2)(i)(A) of this section or other plans described in this paragraph (f)(2)(ii) or § 1.1471–6(f)) are employer, government, or employee contributions that are limited by reference to earned income;

(*ii*) No single beneficiary has a right to more than five percent of the FFI's assets; and

(*iii*) Contributions to the FFI that would otherwise be subject to tax under the laws of the jurisdiction where the FFI is established or operates are deductible or excluded from gross income of the beneficiary, the taxation of investment income attributable to the beneficiary is deferred under the laws of such jurisdiction, or 50 percent or more of the total contributions to the FFI (other than transfers of assets from other plans described in this paragraph (f)(2)(ii) or § 1.1471–6(f)) are from the government and the employer;

(*2*) An FFI meets the requirements of this paragraph (f)(2)(ii)(A)(*2*) if—

(*i*) The FFI has fewer than 20 participants;

(*ii*) The FFI is sponsored by an employer that is not an FFI described in paragraph (e)(1)(iii) of this section or passive NFFE;

(*iii*) Contributions to the FFI (other than transfers of assets from other plans described in paragraph (f)(2)(ii) of this section, or § 1.1471–6(f)) are limited by reference to earned income;

(*iv*) Participants that are not residents of the country in which the FFI is organized are not entitled to more than 20 percent of the FFI's assets; and

(*v*) No participant that is not a resident of the country in which the FFI is organized is entitled to more than $250,000 of the FFI's assets.

(B) *Example.*

Example 1. FC, a State F foreign corporation, instituted a retirement plan for its current and former employees. The plan is organized under State F law for the provision of retirement or pension benefits and contributions to the plan are excluded from beneficiaries' income under State F law. The only contributions allowed to be made to the plan are contributions that FC's employees make based on a percentage of their compensation income, and such contributions (as well as earnings on such contributions) are credited to the employee's account. FC does not make contributions to the plan. Retirement benefits will reflect the amounts credited to the individual accounts. No single beneficiary is entitled to more than 5% of the trust's assets. The plan meets the requirements of paragraph (f)(2)(ii)(A)(*1*) of this section because contributions are limited by reference to earned income, all contributions to the plan are employee contributions, no single beneficiary has a right to more than 5% of the plan's assets, and contributions to the plan are excluded from the gross income of the beneficiaries.

(iii) *Non-profit organizations.* An FFI is described in this paragraph (f)(2)(iii) if the FFI meets the following requirements:

(*1*) The FFI is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;

(*2*) The FFI is exempt from income tax in its country of residence;

(*3*) The FFI has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(*4*) The applicable laws of the FFI's country of residence or the FFI's formation documents do not permit any income or assets of the FFI to be distributed to, or applied for the benefit of, a private person or noncharitable FFI other than pursuant to the conduct of the FFI's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the FFI has purchased; and

(*5*) The applicable laws of the FFI's country of residence or the FFI's formation documents require that, upon the FFI's liquidation or dissolution, all of its assets be distributed to an entity that meets the requirements of § 1.1471–6(b) or another organization that meets the requirements of this paragraph (f)(2)(iii), or escheat to the government of the FFI's country of residence or any political subdivision thereof.

(iv) *FFIs with only low-value accounts.* An FFI is described in this paragraph (f)(2)(iv) if the FFI meets the requirements of paragraphs (f)(2)(iv)(A) through (C) of this section.

(A) The FFI must be an FFI only because it is described in paragraphs (e)(1)(i) and/or (ii) of this section.

(B) No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (a)(4)(i) of this section, substituting the term *financial account* for the term *depository account* and the term *person* for the term *individual.*

(C) The FFI must have no more than $50,000,000 in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group must have no more than $50,000,000 in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

(3) *Owner-documented FFIs*—(i) *In general.* An FFI that meets the requirements of this paragraph (f)(3) is treated as a deemed-compliant FFI only with respect to payments received by and accounts held with a designated withholding agent. A designated withholding agent is a withholding agent that agrees to undertake the additional due diligence and reporting required under paragraphs (f)(3)(ii)(D) and (E) of this section in order to treat the FFI as an owner-documented FFI. An FFI meeting the requirements of this paragraph (f)(3) will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary.

(ii) *Requirements of owner-documented FFI status.* An FFI will be treated as meeting the requirements of this paragraph (f)(3) only if it meets all of the following requirements—

(A) The FFI is not described in paragraph (e)(1)(i), (ii), or (iv) of this section;

(B) The FFI must not be affiliated with any other FFI described in paragraph (e)(1)(i), (ii), or (iv) of this section;

(C) The FFI must not maintain a financial account for any nonparticipating FFI or issue debt which constitutes a financial account to any person in excess of $50,000;

(D) The FFI must provide the designated withholding agent (that is either a U.S. financial institution or a participating FFI) with all of the documentation described in § 1.1471–3(d)(7); and

(E) The withholding agent must agree to report to the IRS all of the information described in § 1.1474–1(i) with respect to any of the owner-documented FFI's direct or indirect owners that are specified U.S. persons.

(4) *Definition of a restricted distributor.* An entity is a restricted distributor for purposes of paragraph (f)(1)(D) of this section if it operates as a distributor with respect to debt or equity interests in an FFI and satisfies paragraphs (f)(4)(i) through (viii) of this section.

(i) The distributor must provide investment services to at least 30 unrelated customers and no more than half of the distributor's customers can be related persons.

(ii) The distributor must be required to perform AML due diligence procedures under the anti-money laundering laws of its country of organization (which must be FATF-compliant).

(iii) The distributor must operate solely in its country of incorporation or organization, must not have a fixed place of business outside that country, and, if such distributor belongs to an affiliated group, must have the same country of incorporation or organization as all other members of its affiliated group.

(iv) The distributor must not solicit customers outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may acquire securities from the FFI or target U.S. customers.

(v) The distributor must have no more than $175 million in total assets under management and no more than $7,000,000 in gross revenue on its income statement for the most recent accounting year and, if the distributor belongs to an affiliated group, the entire group must have no more than $500 million in total assets under management and no more than $20 million in gross revenue for its most recent accounting year on a combined or consolidated income statement.

(vi) The distributor must provide the FFI with a valid Form W–8 indicating that the distributor satisfies the requirements to be a restricted distributor.

(vii) The agreement governing the distributor's distribution of debt or equity interests of the FFI must prohibit the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs, and must require that if the distributor does distribute securities to any of the persons described in this paragraph (f)(4)(vii), that it will redeem or cancel those interests within six months and the commission paid to the distributor will be forfeited to the FFI.

(viii) With respect to sales made on or after December 31, 2011, and prior to the time the restrictions described in paragraphs (f)(1)(i)(D)(*8*)(*vii*) and (*viii*) of this section were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI must have contained a prohibition of the sale of securities to U.S. entities or U.S. resident individuals, or the distributor must review all accounts relating to such sales in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts and certify that it has redeemed all securities sold to any of the persons described in paragraph (f)(4)(vii) of this section.

(g) *Recalcitrant account holders*—(1) *Scope.* This paragraph (g) provides rules for determining when an account holder of a participating 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 § 1.1471–5(a)(3). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see § 1.1471–4(d)(6). For the reporting requirements of an FFI with respect to passthru payments made to recalcitrant account holders, see § 1.1474–1(d).

(2) *Recalcitrant account holder.* The term *recalcitrant account holder* means any account holder of an account maintained by a participating FFI if such account holder is not an FFI (or presumed to be an FFI), the account does not meet the exception to U.S. account status described in paragraph (a)(4) of this section (applying to depository accounts with a balance of $50,000 or less) or does not qualify for any of the exceptions from the documentation requirements described in § 1.1471–4(c)(4)(ii), (iii), or (iv) (including if the participating FFI elects not to apply such exceptions), (c)(7), or (c)(9), and—

(i) The account holder fails to comply with requests by the participating FFI for the documentation or information that is required under § 1.1471–4(c) for determining the status of such account

as a U.S. account or other than a U.S. account;

(ii) The account holder fails to provide a valid Form W–9 upon request from the participating FFI or fails to provide a correct name and TIN combination upon request from the participating FFI when the participating FFI has received notice from the IRS indicating that the name and TIN combination reported by the participating FFI (or a branch thereof in the case in which the branch reports the account separately under § 1.1471–4(d)(2)(ii)(C)) for the account holder is incorrect; or

(iii) If foreign law would prevent reporting by the participating FFI (or branch or division thereof) of the information described in § 1.1471–4(d)(3) or (5) with respect to such account, the account holder (or substantial U.S. owner of an account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver of such law to permit such reporting.

(3) *Start of recalcitrant account holder status*—(i) *Preexisting accounts identified during the procedures described in § 1.1471–4(c) for identifying U.S. accounts*—(A) *Accounts other than high-value accounts.* Account holders of preexisting accounts that are not high-value accounts (as described in § 1.1471–4(c)(8)(i)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is two years after the date on which the participating FFI's FFI agreement first entered into effect.

(B) *High-value accounts.* Account holders of preexisting accounts that are high-value accounts (as described in § 1.1471–4(c)(8)(i)) and paragraph (g)(2) of this section) will be treated as recalcitrant account holders beginning on the date that is one year after the date on which the participating FFI's FFI agreement first entered into effect.

(C) *Preexisting accounts subject to enhanced review.* An account holder that holds a preexisting account that is identified when the participating FFI applies the enhanced review described in § 1.1471–4(c)(8)(iii) with respect to a calendar year other than the year preceding the date on which the FFI's FFI agreement is first effective, and that is described in paragraph (g)(2) of this section shall be treated as a recalcitrant account holder beginning on July 1 of the year following the year at the end of which the account had a balance or value of $1,000,000 or more.

(ii) *Accounts that are not preexisting accounts and accounts requiring name/TIN correction.* An account holder of an account that is not a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning 90 days after the date the account is opened by the FFI or 90 days after the participating FFI requests a correct name and TIN combination from an account holder as described in paragraph (g)(2)(ii) of this section or, in a case where the account holder is subject to backup withholding under section 3406(a)(1)(B), within the time prescribed in § 31.3406(d)–5(a).

(iii) *Accounts with changes in circumstances.* An account holder holding an account that is described in paragraph (g)(2) of this section (including a preexisting account) following a change in circumstances (including an event treated as a change in circumstances under § 1.1471–4(c)(2)(iii)) with respect to such account will be treated as a recalcitrant account holder beginning on the date that is 90 days after the date on which the participating FFI requests documentation described in § 1.1471–4(c)(3)(i) or (c)(4)(i)(B), or a valid and effective waiver described in paragraph (g)(2)(iii) of this section following such change in circumstances. For the definition of a change in circumstances with respect to an account, see § 1.1471–3(c)(6)(ii)(C).

(4) *End of recalcitrant account holder status.* An account holder that is treated as a recalcitrant account holder under paragraphs (g)(2) and (3) of this section will cease to be so treated as of the date on which the account holder is no longer described in paragraph (g)(2) of this section.

(h) *Passthru payment*—(1) *Defined.* The term *passthru payment* means any withholdable payment and any foreign passthru payment.

(2) *Foreign passthru payment.* [Reserved].

(i) *Expanded affiliated group*—(1) *Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4 of the Internal Revenue Code. For the responsibilities of a participating FFI with respect to its expanded affiliated group, see § 1.1471–4(e).

(2) *Expanded affiliated group defined*—(i) *In general.* An expanded affiliated group means an affiliated group as defined in section 1504(a), determined—

(A) By substituting ''more than 50 percent'' for ''at least 80 percent each place it appears; and

(B) Without regard to paragraphs (2) and (3) of section 1504(b).

(ii) *Partnerships and other entities.* A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(j) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 8. Section 1.1471–6 is added to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

(a) *Purpose and scope of paragraph.* This section describes classes of beneficial owners that are described in section 1471(f) (exempt beneficial owners). The classes of persons treated as exempt beneficial owners under this section are: Foreign governments, political subdivisions of a foreign government, and wholly owned instrumentalities and agencies of a foreign government; international organizations and wholly owned agencies or instrumentalities of an international organization; foreign central banks of issue; governments of United States possessions; certain foreign retirement plans; and certain entities wholly owned by one or more other exempt beneficial owners. Paragraph (b) of this section defines which foreign entities are treated as foreign governments, political subdivisions of foreign governments, and wholly owned agencies and instrumentalities of foreign governments for purposes of this section. Paragraph (c) of this section defines which entities are treated as international organizations and wholly owned agencies or instrumentalities of international organizations for purposes of this section. Paragraph (d) of this section defines which entities are treated as foreign central banks of issue for purposes of this section. Paragraph (e) defines which entities are governments of United States possessions for purposes of this section. Paragraph (f) of this section describes a class of foreign retirement plans that are treated as exempt beneficial owners. Paragraph (g) of this section describes a class of exempt beneficial owners that are wholly owned by other classes of exempt beneficial owners. See §§ 1.1471–2(a)(3)(v) and 1.1472–1(c)(1)(iv) for descriptions of the withholding exemptions provided to a withholding agent that makes a withholdable payment beneficially owned by an exempt beneficial owner. See also § 1.1471–3(d)(8) for the documentation requirements applicable to a withholding agent in determining

when a withholdable payment is beneficially owned by an exempt beneficial owner.

(b) *Foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.* A person is described in this paragraph (b) if it is a foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(1) *Definition.* Solely for purposes of this section, the term *foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing* means only the integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* Solely for purposes of paragraph (b) of this section, an *integral part* of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. All the facts and circumstances will be taken into account in determining whether an individual is acting in a private or personal capacity.

(3) *Controlled entity.* (i) Solely for purposes of paragraph (b) of this section, a *controlled entity* means an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, but satisfies the following requirements—

(A) It is wholly owned and controlled by a foreign sovereign directly or indirectly through one or more controlled entities;

(B) Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person as defined in paragraph (b)(4) of this section; and

(C) Its assets vest in the foreign sovereign upon dissolution. (ii) A controlled entity also includes a partnership or any other entity owned and controlled by more than one foreign sovereign, so long as it otherwise satisfies paragraphs (b)(3)(i)(A) through (C) of this section, after replacing ''foreign sovereign'' with ''one or more foreign sovereigns'' in each place it appears therein.

(4) *Inurement to the benefit of private persons.* Solely for purposes of this paragraph (b)—

(i) Income will be presumed not to inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program that is carried on by the foreign sovereign and the activities of which constitute governmental functions (within the meaning of the regulations under section 892).

(ii) Income will be considered to inure to the benefit of private persons if such income benefits—

(A) Private persons through the use of a governmental entity as a conduit for personal investment, including the operation of a commercial banking business providing services to private persons; or

(B) Private persons who divert such income from its intended use by the exertion of influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(5) *Commercial activities.* Solely for purposes of paragraph (b) of this section, the definition of a foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing provided in this paragraph (b) applies regardless of whether income is derived from the conduct of a commercial activity as defined in the regulations under section 892, except to the extent that such activity is conducted by a controlled entity that is a financial institution within the meaning of § 1.1471–5(e)(1)(i) or (ii).

(c) *International organization and any wholly owned agency or instrumentality thereof.* A person is described in this paragraph (c) if it is an international organization and any wholly owned agency or instrumentality thereof, as defined in section 7701(a)(18).

(d) *Foreign central bank of issue.* (1) A person is described in this paragraph (d) if it is a foreign central bank of issue. Solely for purposes of this section, the term *foreign central bank of issue* means a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) A foreign central bank of issue may include an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section.

(3) The Bank for International Settlements shall be treated as though it were a foreign central bank of issue for purposes of chapter 4 of the Internal Revenue Code.

(4) Solely for purposes of determining whether an entity is an exempt beneficial owner under section 1471(f), a foreign central bank is a beneficial owner with respect to income earned on collateral held by the foreign central bank in the normal course of its operations.

(e) *Governments of U.S. possessions.* A person is described in this paragraph (f) if it is a government of a United States possession. Whether a person or entity constitutes a government of a United States possession for purposes of this chapter 4 of the Internal Revenue Code will be determined by applying principles analogous to those set forth in paragraph (b) of this section.

(f) *Certain retirement funds*—(1) *Requirements.* A fund is described in this paragraph (f) if it is the beneficial owner of the payment and the fund meets the requirements described in paragraph (f)(1)(i) or (ii) of this section.

(i) A fund meets the requirements of this paragraph (f)(1)(i) if the fund—

(A) Is established in a country with which the United States has an income tax treaty in force and is generally exempt from income taxation in that country;

(B) Is operated principally to administer or provide pension or retirement benefits; and

(C) Is entitled to benefits under the treaty on income that the fund derives from U.S. sources as a resident of the other country that satisfies any applicable limitation on benefits requirement.

(ii) A fund meets the requirements of this paragraph (f)(1)(ii) if the fund—

(A) Is formed for the provision of retirement or pension benefits under the law of the country in which is established;

(B) Receives all of its contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) or other plans described in § 1.1471–5(f)(2)(ii) or this paragraph (f)) from government, employer, or employee contributions that are limited by reference to earned income;

(C) Does not have a single beneficiary with a right to more than five percent of the entity's assets; and

(D) Is exempt from tax on investment income under the laws of the country in which it is established or in which it operates due to its status as a retirement or pension plan, or receives 50 percent or more of its total contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) or other plans described in § 1.1471–5(f)(2)(ii) or this paragraph (f)) from the government and the employer.

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

Example 1. FP, a foreign pension fund established in Country X, is generally exempt from income taxation in Country X, and is operated principally to provide retirement benefits in such country. The U.S.-Country X income tax treaty is identical in all material respects to the 2006 U.S. model income tax convention. FP is a resident of Country X under Article 4(2)(a) and a qualified person under Article 22(2)(d) of the U.S.-Country X income tax treaty. Therefore, FP is a pension fund described in paragraph (f)(1)(i) of this section.

Example 2. FC, a State F foreign corporation formed a pension trust to provide pension benefits under the law of State and pursuant to a retirement plan for its employees and former employees. Retirement benefits under the plan are based on a percentage of the final year's salary paid to an individual, times the number of years of service. Pursuant to the plan, all contributions (calculated as a percentage of the employee's salary) are made by FC to the pension trust. The income of the trust is credited to the trust's account and subsequently used to satisfy the pension plan's obligations to retired employees. No single beneficiary is entitled to more than 5% of the trust's assets. State F does not have an income tax treaty with the United States. The trust is a foreign employer sponsored retirement plan that meets the requirements of paragraph (f)(1)(ii) of this section.

Example 3. The facts are the same as in *Example 1,* except that Country X does not have a treaty with the United States and employees are allowed to make contributions to the trust based on a percentage of compensation income, and such contributions are credited to the employee's account as well as interest accrued on such contributions. Retirement benefits will reflect the amounts credited to the individual accounts. No single beneficiary is entitled to more than 5% of the trust's assets. The pension plan is acting as an investment conduit and is not the beneficial owner of the amounts credited to the individual accounts. As a result, such plan is not a foreign employer sponsored retirement plan that meets the requirements of paragraph (f)(1) of this section. See § 1.1471–5(b)(2) for an exception for certain accounts that are part of a retirement plan that acts as an investment conduit.

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI that is described in § 1.1471–5(e)(1)(iii), as long as such FFI is wholly owned by one or more entities described in paragraph (b), (c), (d), (e), or (f) of this section.

(h) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 9. Section 1.1472–1 is added to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) *Overview.* This section provides rules for withholding under section 1472. This paragraph (a) provides a general overview. Paragraph (b) of this section provides the general rule for withholding on withholdable payments made to an NFFE, including a coordinating rule for withholdable payments made by participating FFIs. Paragraph (c) of this section provides exceptions from withholding on withholdable payments made to certain NFFEs. Paragraph (d) of this section provides rules for establishing the status of a payee and when a withholding agent may treat a payee as the beneficial owner of the payment for purposes of this section. Paragraph (e) of this section provides a cross-reference to § 1.1474–1 for information reporting requirements on withholdable payments made to a payee and the income tax filing requirement of a withholding agent that withholds under this section. Paragraph (e) of this section also sets forth information reporting rules with respect to substantial U.S. owners of certain NFFEs. Paragraph (f) of this section provides the effective date of this section.

(b) *Withholdable payments made to an NFFE*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) or (c) of this section, a withholding agent must withhold 30 percent of any withholdable payment made to a payee that is an NFFE unless—

(i) The beneficial owner of such payment is the NFFE or any other NFFE;

(ii) The withholding agent can, pursuant to paragraph (d) of this section, treat the beneficial owner of the payment as an NFFE that does not have any substantial U.S. owners, or as an NFFE that has identified its substantial U.S. owners; and

(iii) The withholding agent reports the information described in paragraph (e) of this section relating to any substantial U.S. owners of the beneficial owner of such payment.

(2) *Coordination of withholding requirements under section 1472 applicable to participating FFIs.* A participating FFI must comply with the provisions set forth in § 1.1471–4(b) and its FFI agreement to determine its withholding obligations under section 1472 and paragraph (b) of this section with respect to any withholding payment made to a payee that is an NFFE. See also § 1.1471–2(a)(3) for coordination of withholding requirements applicable to participating FFIs under section 1471(a) and (b).

(c) *Exceptions*—(1) *Beneficial owner that is 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 may treat the payment as beneficially owned by an excepted NFFE. For purposes of this paragraph (c)(1), an *excepted NFFE* means an NFFE that is one of the following—

(i) *Publicly traded corporation.* A corporation the stock of which is regularly traded on one or more established securities markets.

(A) *Regularly traded.* For purposes of this section, stock of a corporation is *regularly traded* on one or more established securities markets for a calendar year if—

(*1*) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and

(*2*) With respect to each class relied on to meet the more than 50 percent listing requirement of paragraph (c)(1)(i)(A)(*1*) of this section—

(*i*) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior calendar year; and

(*ii*) The aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least ten percent of the average number of shares outstanding in that class during the prior calendar year.

(B) *Entities treated as meeting the regularly traded requirement.* A class of stock shall be considered to meet the trading requirements of paragraph (c)(1)(i) of this section for a calendar year if the stock is traded during such year on an established securities market located in the United States and is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in

the ordinary course of a trade or business.

(C) *Established securities market*—(*1*) *In general.* For purposes of paragraph (c)(1)(i) of this section, the term *established securities market* means, for any calendar year—

(*i*) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the foreign country in which the market is located, and has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the calendar year in which the determination is being made;

(*ii*) A national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f) or the Securities and Exchange Commission;

(*iii*) Any exchange designated under a Limitation on Benefits article of an income tax treaty with the United States that is currently in force; and

(*iv*) Any other exchange that the Secretary may designate in published guidance.

(*2*) *Foreign exchange with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(*3*) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may provide in published guidance that a securities exchange that otherwise meets the requirements of paragraph (c)(1)(i)(C) of this section does not qualify as an established securities market, if—

(*i*) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(*ii*) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(*4*) *Computation of dollar value of stock traded.* For purposes of paragraph (c)(1)(i)(C)(*1*)(*i*) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(ii) *Certain affiliated entities related to a publicly traded corporation.* Any 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.

(iii) *Certain territory entities.* Any territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the same U.S. possession under the laws of which the entity is organized. The term *bona fide resident of a U.S. possession* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937–1.

(iv) *Exempt beneficial owner described in § 1.1471–6(b) through (g).* An entity that is an exempt beneficial owner described in any of § 1.1471–6(b) through (g).

(v) *Active NFFEs.* Any entity that is an active NFFE. The term *active NFFE* means an NFFE if less than 50 percent of its gross income for the preceding calendar year is passive income or less than 50 percent of the assets held by the NFFE at any time during the preceding calendar year are assets that produce or are held for the production of passive income. For purposes of this paragraph (c)(1)(v), the term *passive income* means the portion of gross income that consists of—

(A) Dividends;

(B) Interest;

(C) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted by employees of the NFFE;

(D) Annuities;

(E) Death benefits from life insurance contracts (under U.S. or applicable law);

(F) Amounts received from or with respect to a pool of insurance contracts if the amounts received depend upon the performance of the pool;

(G) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in paragraphs (c)(1)(v)(A) through (G) of this section;

(H) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the corporation or partnership as a controlled foreign corporation;

(I) The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction; and

(J) Net income from notional principal contracts as defined in § 1.446–3(c)(1).

(vi) *Excepted FFIs.* Any entity described in § 1.1471–5(e)(5).

(2) *Payments made to a WP or WT.* 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 payee as an NFFE that is a WP or WT.

(d) *Rules for determining payee and beneficial owner*—(1) *In general.* For purposes of this section, except in the case of a payee that is a 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 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 an NFFE that is a WP or WT.* A withholding agent may treat the payee of a withholdable payment as an NFFE that is a WP or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status under the rules of § 1.1471–3(b)(3) and (d).

(3) *Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT.* A withholding agent may treat a partner or beneficiary of an NFFE that is an NWP or NWT, respectively, as the payee of a withholdable payment under this section if the withholding agent can reliably associate the payment with a valid Form W–8 or written notification that the NFFE is a flow-through entity as described in § 1.1471–3(c)(2), including valid documentation sufficient to establish the chapter 4 status of each payee of the payment that is a partner or beneficiary, respectively, by applying the rules described in § 1.1471–3(d).

(4) *Payments made to a beneficial owner that is an NFFE.* A withholding agent may treat the beneficial owner of a withholdable payment as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners if it can reliably associate the payment with valid documentation identifying the beneficial owner as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners by applying the rules described in § 1.1471–3(d).

(5) *Absence of valid documentation.* A withholding agent that cannot reliably associate the payment with documentation as described in any of paragraphs (d)(2) through (4) of this

section must treat the payment as made to a payee in accordance with the presumption rules under § 1.1471–3(f).

(e) *Information reporting requirements*—(1) *Reporting on withholdable payments.* A withholding agent that treats a withholdable payment as made to any payee described in paragraph (d) of this section must provide information about such payee on Form 1042–S and file a withholding income tax return on Form 1042 to the extent required under § 1.1474–1(d) and (c), respectively.

(2) *Reporting on substantial U.S. owners.* A withholding agent that receives information about any substantial U.S. owners of an NFFE that is not excepted under paragraph (c) of this section must report to the IRS on a designated form, on or before March 15 of the calendar year following the year in which the withholdable payment was made, the following information—

(i) Name of the NFFE that is owned by a substantial U.S. owner;

(ii) Name of each such owner;

(iii) Each such owner's TIN;

(iv) The mailing address for each such owner; and

(v) Any other information as required by the designated form and its accompanying instructions.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 10. Section 1.1473–1 is added to read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) *Definition of withholdable payment*—(1) *In general.* Except as otherwise provided in this paragraph (a), the term *withholdable payment* means—

(i) Any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section); and

(ii) For any sales or other dispositions occurring after December 31, 2014, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i)) of any property of a type which can produce interest or dividends that are U.S. source FDAP income.

(2) *U.S. source FDAP income defined*—(i) *In general*—(A) *FDAP income defined.* Except as provided in paragraph (a)(2)(i)(B) of this section, for purposes of chapter 4 of the Internal Revenue Code the term *FDAP income* means fixed or determinable annual or periodic income that is described in § 1.1441–2(b)(1) or 1.1441–2(c).

(B) *U.S. source.* The term *U.S. source FDAP income* means FDAP income, as defined in paragraph (a)(2)(i)(A) of this section, that is derived from sources within the United States as described in paragraph (a)(2)(ii) of this section, including (but not limited to) the types of income enumerated in paragraphs (a)(2)(iii) through (vi) of this section. Except as provided in paragraph (a)(4) of this section, no exception to withholding on U.S. source FDAP income applies for purposes of determining whether a payment of such income is a withholdable payment. Thus, an exclusion from an amount subject to withholding under § 1.1441–2(a) for purposes of chapter 3 or an exclusion from taxation under section 881 shall not apply for purposes of determining whether income is U.S. source FDAP income under this paragraph (a)(2)(i)(B).

(ii) *Determination of source of income*—(A) *In general.* Except as provided in paragraph (a)(2)(ii)(B) of this section, a payment is derived from sources within the United States if it is income treated as derived from sources within the United States under sections 861 through 865 and other relevant provisions of the Code. In the case of a payment of FDAP income for which the source of the payment cannot be determined at the time the payment is made, the payment shall be treated by a withholding agent as being from sources within the United States for purposes of paragraph (a)(2)(i)(B) of this section.

(B) *Special source rule for certain interest.* Interest that is described in section 861(a)(1)(A)(i) or (ii) shall be treated as U.S. source FDAP income under this paragraph (a)(2).

(iii) *Original issue discount.* For purposes of chapter 4 of the Internal Revenue Code, the rules described in § 1.1441–2(b)(3)(ii) for determining when an amount representing original issue discount is subject to withholding for chapter 3 purposes will apply to determine when original issue discount from sources within the United States is U.S. source FDAP income under this paragraph (a)(2).

(iv) *REMIC residual interests.* U.S. source FDAP income includes an amount described in § 1.1441–2(b)(5).

(v) *Withholding liability of payee that is satisfied by withholding agent.* If a withholding agent satisfies a withholding liability arising under chapter 4 of the Internal Revenue Code with respect to a withholdable payment from the withholding agent's own funds, the satisfaction of such liability shall be treated as an additional payment of U.S. source FDAP income made to the payee to the extent that the withholding agent's satisfaction of such withholding also satisfies a tax liability of the payee under section 881 or 871 with respect to the same payment, and the satisfaction of the tax liability constitutes additional income to the payee under § 1.1441–3(f) that is U.S. source FDAP income. In such a case, the amount of any additional payment treated as made by the withholding agent for purposes of this paragraph (a)(2)(v) and any tax liability resulting from such payment shall be determined under § 1.1441–3(f). See § 1.1474–6 regarding the coordination of the withholding requirements under chapters 3 and 4 in the case of a withholdable payment that is also subject to withholding under chapter 3.

(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 when the sale occurs between two interest payment dates.

(vii) *Payment of U.S. source FDAP income*—(A) *Amount of payment of U.S. source FDAP income.* The amount of U.S. source FDAP income is the gross amount of the payment of such income, unreduced by any deductions or offsets. The rules described in § 1.1441–3(b)(1) shall apply to determine the amount of an interest payment on an interest-bearing obligation. In the case of a corporate distribution, the distributing corporation or intermediary shall determine the portion of the distribution that is treated as U.S. source FDAP income under this paragraph (a)(2) in the same manner as the distributing corporation or intermediary determines the portion of the distribution subject to withholding under § 1.1441–3(c). Any portion of a payment on a debt instrument or a corporate distribution that does not constitute U.S. source FDAP income under this paragraph (a)(2) solely because of a provision other than the source rules of sections 861 through 865 shall be taken into account as gross proceeds under paragraph (a)(3) of this section. For rules regarding the determination of the amount of a payment of U.S. source FDAP income under paragraph (a)(2) of this section made in a medium other than U.S. dollars, see § 1.1441–3(e). For determining the amount of a payment of a dividend equivalent, see section 871(m) and the regulations thereunder.

(B) *When payment of U.S. source FDAP income is made.* A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. If an FFI acts as an intermediary with respect to a

payment of U.S. source FDAP, the FFI will be treated as making a payment of such U.S. source FDAP to the person with respect to which the FFI acts as an intermediary when it pays or credits such amount to such person. For rules regarding when a payment is considered made in the case of income allocated under section 482 that apply for purposes of this paragraph (a)(2)(vii)(B), see § 1.1441–2(e)(2). The rules of § 1.1441–2(e)(3) regarding blocked income apply for purposes of this paragraph (a)(2)(vii)(B). The rules of § 1.1441–2(e)(4) regarding when a dividend is considered paid apply for purposes of this paragraph (a)(2)(vii)(B). For rules regarding when interest is considered paid if a foreign person has made an election under § 1.884–4(c)(1), see § 1.1441–2(e)(5).

(3) *Gross proceeds defined*—(i) *Sale or other disposition*—(A) *In general.* Except as otherwise provided in this paragraph (a)(3)(i), the term *sale or other disposition* means any sale, exchange, or disposition of property described in paragraph (a)(3)(ii) of this section that requires recognition of gain or loss under section 1001, without regard to whether the owner of such property is a foreign person that is not subject to U.S. Federal income tax with respect to such sale, exchange, or disposition. The term sale or other disposition includes (but is not limited to) sales of securities, redemptions of stock, retirements and redemptions of indebtedness, and entering into short sales and a closing transaction in a forward contract, option or other instrument that is otherwise a sale. Such term further includes a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment. Such term does not include grants or purchases of options, exercises of call options for physical delivery, or mere executions of contracts that require delivery of personal property or an interest therein. For purposes of this section only, a constructive sale under section 1259 or a mark to fair market value under section 475 or 1296 is not a sale or disposition.

(B) *Special rule for sales effected by brokers.* In the case of a sale effected by a broker (with the term ''effect'' defined in § 1.6045–1(a)(10)), a sale means a sale as defined in § 1.6045–1(a)(9) with respect to property described in paragraph (a)(3)(ii) of this section.

(C) *Special rule for gross proceeds from sales settled by clearing organization.* In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from a sale or disposition are limited to the net amount paid or credited to a member's account that is associated with a sale of property described in paragraph (a)(3)(ii) of this section by such member as of the time that such transaction is settled under the settlement procedures of such organization. A clearing organization for purposes of this paragraph (a)(3)(i)(C) is an entity that is in the business of holding securities for member organizations and transferring securities among such members by credit or debit to the account of a member without the necessity of physical delivery of the securities.

(ii) *Property of a type that can produce interest or dividends that are U.S. source FDAP income*—(A) *In general.* Property is of a type that can produce interest or dividends that are U.S. source FDAP income when the property is of a type that ordinarily gives rise to the payment of interest or dividends constituting U.S. source FDAP income, regardless of whether any such payment is made during the period such property is held by the person selling or disposing of such property. Thus, for example, stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States if a dividend from such corporation would be from sources within the United States, regardless of whether the stock pays dividends at regular intervals and regardless of whether the issuer has any plans to pay dividends or has ever paid a dividend with respect to the stock.

(B) *Termination of specified notional principal contract.* In the case of a termination that requires recognition of gain or loss under section 1001 of a contract that can produce the payment of a dividend equivalent as defined in section 871(m), such contract shall be treated as property that is described in paragraph (a)(3)(ii)(A) of this section, without regard to whether the taxpayer is a foreign person subject to U.S. Federal income tax with respect to such transaction. To the extent that the proceeds from such termination include the payment of a dividend equivalent, the gross amount of such proceeds will not include the amount of such dividend equivalent.

(C) *Registered investment company distributions.* The amount of a distribution that is designated as a capital gain dividend under section 852(b)(3)(C) or 871(k)(2) is a payment of gross proceeds to the extent attributable to property described in paragraph (a)(3)(ii)(A) of this section.

(iii) *Payment of gross proceeds*—(A) *When gross proceeds are paid.* With respect to a sale that is effected by a broker that results in a payment of gross proceeds as defined under this paragraph (a)(3), the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment. In a case in which gross proceeds are paid to a financial institution or other entity acting as an intermediary for the person selling or otherwise disposing of the property, the gross proceeds are considered paid to such person on the date that the proceeds are credited to the account of or otherwise made available to such institution.

(B) *Amount of gross proceeds.* Except as otherwise provided in this paragraph (a)(3)—

(*1*) The amount of gross proceeds from a sale or other disposition means the total amount realized as a result of a sale or other disposition of property described in paragraph (a)(3)(ii) under section 1001;

(*2*) In the case of a sale effected by a broker, the amount of gross proceeds from a sale or other disposition means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans. The broker may but is not required to take commissions into account with respect to the sale in determining the amount of gross proceeds;

(*3*) In the case of a corporate distribution, the amount treated as gross proceeds excludes the amount described in paragraph (a)(2)(vii)(A) of this section that is treated as U.S source FDAP income;

(*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; and

(*5*) In the case of a sale, retirement, or redemption of a debt obligation, gross proceeds excludes the amount of original issue discount treated as U.S. source FDAP income under paragraph (a)(2)(iii) of this section.

(iv) *Withholding requirements on gross proceeds.* For the withholding requirements with respect to a payment constituting gross proceeds and for determining the withholding agent that is required to withhold on such payment, see § 1.1471–2(a)(2)(v).

(4) *Payments not treated as withholdable payments.* The following payments are not withholdable

payments under paragraph (a)(1) of this section—

(i) *Certain short-term obligations.* A payment of interest or original issue discount on short-term obligations described in section 871(g)(1)(B)(i) or 881(f).

(ii) *Effectively connected income.* Any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year. An item of income is taken into account under section 871(b)(1) or 882(a)(1) when the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year. An amount of income shall not be treated as taken into account under section 871(b)(1) or 882(a)(1) if the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States.

(iii) *Ordinary course of business payments.* Payments made in the ordinary course of the withholding agent's business for nonfinancial services, goods, and the use of property. Such payments include ordinary course payments for nonfinancial services, wages, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of nonfinancial services, goods, and other tangible property. Ordinary course payments do not include dividends; any interest other than interest described in the preceding sentence; dividend equivalent payments with respect to which the withholding agent acts as custodian, intermediary, or agent; or bank or brokerage fees.

(iv) *Gross proceeds from sales of excluded property.* Gross proceeds from the sale or other disposition of any property that can produce U.S. source FDAP income excluded from the definition of withholdable payment under paragraphs (a)(4)(i) through (iii) of this section.

(v) *Fractional Shares.* Sales described in § 1.6045–1(c)(3)(ix).

(5) *Special payment rules for flow-through entities, complex trusts, and estates*—(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 U.S. source FDAP income 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 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 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 is treated as 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.* In a case in which an amount of U.S. source FDAP income is paid to a grantor trust, a person treated as an owner 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.

(vi) *Special rule for NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is a NWP or NWT, the rules described in paragraphs 5(ii) and (iii) shall not apply, and U.S. source FDAP income is treated as paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) Special rule for determining when gross proceeds are treated as paid to partner, owner, or beneficiary of a flow through entity. [Reserved].

(6) *Reporting of withholdable payments.* See § 1.1474–1(c) and (d) for a description of the income tax return and information reporting requirements applicable to a withholding agent that has made a withholdable payment.

(7) *Example. Satisfaction of payee's chapter 4 liability by withholding agent.* FFI1 is entitled to receive a payment of $100 of U.S. source interest from withholding agent, WA. The payment is subject to withholding under chapter 4 of the Internal Revenue Code, but is not subject to withholding under section 1442, and FFI1 has no substantive tax liability under section 881 with respect to this payment. A pays the full $100 to FFI1 and, after the date of payment, pays the $30 of tax due under chapter 4 to the IRS from its own funds. Because no underlying tax liability of FFI1 is satisfied, and further because WA and FFI1 did not execute any agreement for WA to pay this tax and WA did not have an obligation to pay this tax apart from the requirements of chapter 4, WA's payment of the tax does not give rise to a deemed payment of U.S. source FDAP income to FFI1 under paragraph (a)(2)(v) of this section. Thus, WA is not required to pay any additional tax with respect to this payment for purposes of chapter 4.

(b) *Substantial U.S. owner*—(1) *Definition.* The term *substantial United States owner* (or *substantial U.S. owner*) means:

(i) With respect to any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of such corporation (by vote or value);

(ii) With respect to any foreign partnership, any specified U.S. person that owns, directly or indirectly, more than ten percent of the profits interests or capital interests in such partnership; and

(iii) In the case of a trust—

(A) Any specified U.S. person treated as an owner of any portion of such trust under subpart E of Part I of subchapter J of chapter 1 (sections 671 through 679); or

(B) Any specified U.S. person that holds, directly or indirectly, more than ten percent of the beneficial interests of such trust.

(2) *Direct and indirect ownership in foreign entities.* For purposes of this paragraph (b), ownership includes direct ownership and indirect ownership by application of paragraph (b)(2)(i), (ii), or (iii) of this section.

(i) *Indirect ownership of stock.* Stock owned directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, or an entity described in § 1.1471–6 or 1.1472–1(c)(1)) that is a corporation, partnership, or trust shall be considered as being owned proportionately by its shareholders, partners, grantors or others persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, or beneficiaries, respectively. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) *Indirect ownership in a partnership or beneficial trust interest.* A capital or profits interest in a partnership or an ownership or beneficial trust interest (as defined in paragraph (b)(3) of this section) owned or held directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI, a U.S. financial institution, or an entity described in § 1.1471–6 or 1.1472–1(c)(1)) that is a corporation, partnership, or trust shall be considered as being owned or held proportionately by its shareholders,

partners, grantors or others persons treated as owners under sections 671 through 679 of any portion of the trust that includes the partnership or beneficial trust interest, or beneficiaries, respectively. Partnership or beneficial trust interests considered to be owned or held by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned or held by such person.

(iii) *Indirect ownership through U.S. persons.* Attribution under these rules shall not stop with a specified U.S. person in the chain of ownership running from the foreign entity that does not meet the definition of a substantial U.S. owner to the extent that the result of further attribution would be to treat a specified U.S. person as a substantial U.S. owner.

(iv) *Ownership and holdings through options.* If any specified U.S. person holds, directly or indirectly applying the principles of paragraphs (b)(2)(i), (ii), and (iii) of this section, an option to acquire stock in a corporation or an option to acquire a capital or profits interest in a partnership or an ownership or beneficial interest in a trust, such option shall be considered as ownership of the underlying equity or other ownership interest by such person in such entity for purposes of this paragraph (b). For purposes of the preceding sentence, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock or other ownership interest described in this paragraph (b)(2)(iv).

(v) *Determination of proportionate interest.* For purposes of this paragraph (b), and except as otherwise provided in paragraph (b)(3) of this section, the determination of a person's proportionate interest in a corporation, partnership, or trust is based on all relevant facts and circumstances. In this determination, any arrangement that artificially decreases a specified U.S. person's proportionate interest in any such entity will not be recognized in determining whether such person is a substantial U.S. owner.

(3) *Beneficial trust interests*—(i) *Holding a beneficial interest*—(A) *In general.* For purposes of paragraph (b)(1)(iii)(B) of this section, a specified U.S. person will be treated as directly or indirectly holding a beneficial interest in a foreign trust if such specified U.S. person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. Whether a person has a right to a mandatory distribution is determined taking into account all facts and circumstances.

(B) *Discretionary distribution.* A discretionary distribution is a distribution at the discretion of the trustee of such trust.

(ii) *Valuation rules for beneficial interests in foreign trusts.* If a specified U.S. person is a beneficiary of a foreign trust and may receive solely one or more discretionary distributions, the value of the specified U.S. person's interest in the foreign trust is the fair market value of the currency and other property distributed from the foreign trust to the specified U.S. person during the prior calendar year. If a specified U.S. person is a beneficiary of a foreign trust and has the right to receive solely mandatory distributions from the trust, the value of the specified U.S. person's interest in the foreign trust is determined under section 7520. If a specified U.S. person is a beneficiary of a foreign trust and has the right to receive mandatory distributions and discretionary distributions from the trust, the value of the specified U.S. person's interest in the foreign trust is the sum of the value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the specified U.S. person as a beneficiary and the value of the specified U.S. person's right as a beneficiary to receive mandatory distributions from the trust as determined under section 7520.

(iii) *Determining the ten percent threshold in the case of a beneficial interest in a foreign trust*—(A) *Discretionary beneficial interests.* If a specified U.S. person is a direct or indirect beneficiary of a foreign trust and may only receive a discretionary distribution, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the currency or other property distributed to such specified U.S. person during the prior calendar year exceeds ten percent of the value of all distributions made by such trust during that year.

(B) *Mandatory beneficial interests.* If a specified U.S. person is a direct or indirect beneficiary of a foreign trust and has the right to receive only mandatory distributions from the trust, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds ten percent of the value of all the assets held by the trust.

(C) *Mandatory and discretionary beneficial interests.* If a specified U.S. person is a beneficiary of a foreign trust and such person has the right to mandatory distributions from the trust and the opportunity for discretionary distributions from the trust, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds either ten percent of the value of all distributions made by such trust during the year or ten percent of the value of all assets of the trust.

(4) *Exception for certain beneficial interests.* A specified U.S. person with an interest described in paragraph (b)(3)(iii)(A) of this section shall only be treated as a substantial U.S. owner if the value of the currency or other property distributed to such specified U.S. person during the calendar year exceeds $5,000. A specified U.S. person described in paragraph (b)(3)(iii)(B) or (C) of this section shall only be treated as a substantial U.S. owner if the value of such person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds $50,000.

(5) *Special rule for certain investment vehicles and insurance.* In the case of any financial institution described in § 1.1471–5(e)(1)(iii) or (iv), paragraphs (b)(1)(i) through (iii) of this section shall be applied by substituting ''zero percent'' for ''ten percent.''

(6) *Determination dates for substantial U.S. owners.* A foreign entity may make the determination of whether it has one or more direct or indirect substantial U.S. owners as of the last day of such entity's accounting year or as of the date on which such foreign entity provides the documentation described in § 1.1471–3(d) to the withholding agent with which the foreign entity holds an account for which such determination is required to be made.

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

Example 1. Indirect ownership. U is a specified U.S. person. U owns directly 100% of the sole class of stock of F1, a foreign corporation. F1 owns directly 90% of the sole class of stock of F2, a foreign corporation, and U owns directly the remaining 10% of the sole class of stock of F2. F2 owns directly 10% of the sole class of stock of F3, a foreign corporation, and U owns directly 3% of the sole class of stock of F3. U is treated as owning 13% of the sole class of stock of F3 for purposes of this paragraph (b), and is treated as owning 100% of the sole class of stock of F2 for purposes of this paragraph (b). U is a substantial U.S. owner of F1, F2, and F3.

Example 2. Determining the 10% threshold in the case of a beneficial interest in a foreign

trust. U, a United States citizen, holds only an interest described in paragraph (b)(3)(iii)(A) in FT1, a foreign trust. U also holds only an interest described in paragraph (b)(3)(iii)(A) in FT2, also a foreign trust, and FT2, in turn, holds only an interest described in paragraph (b)(3)(iii)(A) in FT1. U receives $25,000 from FT1 in Year 1. FT2 receives $120,000 from FT1 in Year 1 and distributes the entire amount to its beneficiaries in year 1. The distribution from FT1 is FT2's only source of income. U receives $40,000 from FT2. FT1 distributes $750,000 to all of its beneficiaries in Year 1. U's discretionary interest in FT1 does not meet the 10% threshold as determined under paragraph (b)(3)(iii)(A). See paragraph (b)(3)(ii). U's discretionary interest in FT2, however, does meet the 10% threshold as determined under paragraph (b)(3)(iii)(A).

Example 3. Determining ownership (determination date). F, a foreign corporation that is an NFFE, has a calendar year accounting year. On December 31 of Year 1, U, a specified U.S. person, owns 12% of the sole class of outstanding stock of F. In March of Year 2, F redeems a portion of U's stock and reduces U's ownership of F to 9%. In May of Year 2, F opens an account with P, a participating FFI, and delivers to P the documentation required under § 1.1471–3(d). At the time F opens its account with P, U is the only specified U.S. person that directly or indirectly owns stock in F. Because of the redemption, U's interest in F is 9% on the date F opens its account with P. F may determine whether it has a substantial U.S. owner as of the date it provides the documentation required under § 1.1471–3(d) to P, which would be the day it opens the account. As a result, F may indicate in its § 1.1471–3(d) documentation that it has no substantial U.S. owners.

(c) *Specified U.S. person.* The term *specified United States person* (or *specified U.S. person*) means any U.S. person other than—

(1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in § 1.1472–1(c)(1)(i);

(2) Any corporation that is a member of the same expanded affiliated group as a corporation described in § 1.1472–1(c)(1)(i);

(3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);

(4) The United States or any wholly owned agency or instrumentality thereof;

(5) Any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(6) Any bank as defined in section 581;

(7) Any real estate investment trust as defined in section 856;

(8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–64);

(9) Any common trust fund as defined in section 584(a);

(10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);

(11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; and

(12) A broker as defined in section 6045(c) and § 1.6045–1(a)(1).

(d) *Withholding agent*—(1) *In general.* Except as provided in this paragraph (d), the term *withholding agent* means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment.

(2) *Participating FFIs as withholding agents.* Except as otherwise provided in the FFI agreement of a participating FFI, the term withholding agent includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in § 1.1471–5(h)). The term withholding agent also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under § 1.1471–5(f)(1)(ii). For the withholding requirements of a participating FFI with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see § 1.1471–4(b).

(3) *Grantor trusts as withholding agents.* The term withholding agent includes a grantor trust with respect to a withholdable payment or a passthru payment (in the case of a grantor trust that is a participating FFI) made to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such owner of a trust, see § 1.1473–1(a)(5)(v).

(4) *Deposit and return requirements.* See § 1.1474–1(a) for the requirement of any person that meets the definition of a withholding agent under this paragraph (d) to deposit any tax withheld, and § 1.1474–1(c) and (d) for the requirement to file income tax and information returns.

(5) *Multiple withholding agents.* When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1474–1(a). A person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(6) *Exception for certain individuals.* The term withholding agent excludes an individual with respect to a withholdable payment made by such person that is not made in the course of such person's trade or business (including as an agent with respect to making or receiving such payment).

(e) *Foreign entity.* The term *foreign entity* means any entity that is not a U.S. person and includes a territory entity.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 11. Section 1.1474–1 is added to read as follows:

§ 1.1474–1 Liability for withheld tax.

(a) *Payment and returns of tax withheld*—(1) *In general.* A withholding agent is required to deposit any tax withheld pursuant to chapter 4 of the Internal Revenue Code as provided under paragraph (b) of this section and to make the returns prescribed by paragraphs (c) and (d) of this section, except as otherwise may be required by an FFI agreement. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment subject to withholding under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld with an authorized financial institution, as required under paragraph (b) of this section, is liable for the amount of tax not withheld and deposited.

(3) *Use of agents*—(i) *In general.* A withholding agent may use an agent to fulfill its obligations under chapter 4 of the Internal Revenue Code. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding

agent. The withholding agent's liability under paragraph (a)(2) of this section will exist irrespective of the fact that the agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of chapter 4. However, the same tax, interest, or penalties shall not be collected more than once. If the agent is a foreign person, a withholding agent may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of chapter 4 of the Internal Revenue Code, but only if—

(A) There is a written agreement between the withholding agent and the foreign person acting as agent;

(B) Books and records and relevant personnel of the foreign agent are available (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapter 4; and

(C) The withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Internal Revenue Code.

(ii) *Liability of agent of withholding agent.* An agent of a withholding agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 4 of the Internal Revenue Code. However, a foreign agent cannot apply the provisions of this paragraph (a)(3) to appoint another person its agent with respect to the payments it receives from the withholding agent.

(4) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *In general.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under § 1.1471–2(a) or 1.1472–1(b), or withholds at less than the 30 percent rate prescribed under sections 1471 and 1472, is liable under this section for the tax required to be withheld under § 1.1471–2(a) or 1.1472–1(b), without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in § 1.1471–3(f) in order to treat the payment as exempt from withholding; or

(B) The withholding agent can demonstrate to the satisfaction of the Commissioner that the proper amount of withholding was satisfied by another withholding agent or was otherwise paid.

(ii) *Withholding satisfied by another withholding agent.* If a withholding agent fails to deduct and withhold any amount required to be deducted and withheld under § 1.1471–2(a) or 1.1472–1(b), and that tax is paid by another withholding agent, then the amount of tax required to be deducted and withheld shall not be collected from the first-mentioned withholding agent. However, the withholding agent is not relieved from liability for any interest or penalties or additions to tax otherwise applicable in respect of the failure to deduct and withhold.

(b) *Payment of withheld tax.* Every withholding agent who withholds tax pursuant to chapter 4 of the Internal Revenue Code shall deposit such tax with an authorized financial institution as provided in § 1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to the income tax return described in paragraph (c) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of such tax due for such year at such place as the IRS shall specify. The tax shall be paid when filing the return described in paragraph (c)(1) of this section for such year, unless the IRS specifies otherwise.

(c) *Income tax return*—(1) *In general.* Every withholding agent shall file an income tax return on Form 1042 (or such other form as the IRS may prescribe) to report chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section). This income tax return shall be filed on the same income tax return used to report amounts subject to reporting for chapter 3 purposes as described in § 1.1461–1(b). The return must show the aggregate amount of payments that are chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section) and must report the tax withheld for the preceding calendar year by the withholding agent, in addition to any information required by the form and its accompanying instructions. Withholding certificates and other statements or information provided to a withholding agent are not required to be attached to the return. A Form 1042 (or such other form as the IRS may prescribe) must be filed under this paragraph (c)(1) even if no tax was required to be withheld for chapter 4 purposes during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable period of limitations on assessment and collection with respect to the amounts required to be reported on the Form 1042. For purposes of determining the applicable period of limitations, chapter 4 reportable amounts are treated as if such amounts are subject to withholding under chapter 3. See section 6501 and the regulations thereunder for the applicable period of limitations. Adjustments to the total amount of tax withheld described in § 1.1474–2 shall be stated on the return as prescribed by the form and accompanying instructions. A participating FFI shall file Form 1042 in accordance with this paragraph (c) except as otherwise provided in its FFI agreement.

(2) *Amended returns.* An amended return under this paragraph (c) must be filed on Form 1042 (or such other form as the IRS may prescribe). An amended return must include such information as the form or its accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(d) *Information returns for payment reporting*—(1) *Filing requirement*—(i) *In general.* Every withholding agent must file an information return on Form 1042–S (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. A separate Form 1042–S must be filed with the IRS for each recipient of an amount subject to reporting. A separate Form 1042–S must also be filed with the IRS for each separate type of payment made to a single recipient. The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 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 1042–S. 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) on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The copy provided to the recipient of the payments may show more than one type of income or other payment subject to reporting on the Form 1042–S. 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).

(ii) *Recipient*—(A) *Defined.* The term *recipient* under this paragraph (d) means a person that is a recipient of a passthru payment (including a withholdable payment) or, in the case of a participating FFI, foreign reportable amount described in paragraph (d)(2)(ii) of this section reportable for Form 1042–S reporting purposes, and includes—

(*1*) A participating FFI or a deemed-compliant FFI (regardless of whether such FFI is a flow-through entity or acts as an intermediary with respect to the payment except as otherwise provided under paragraph (d)(1)(ii)(B)(*7*) of this section);

(*2*) A nonparticipating FFI that is a beneficial owner of the payment;

(*3*) A territory financial institution that acts as an intermediary with respect to a payment and that agrees to be treated as a U.S. person under § 1.1471–3(c)(3)(iii)(F), and a territory financial institution that is a beneficial owner of the payment;

(*4*) An account holder of a participating FFI to the extent that the FFI issues a Form 1042–S to such person or the FFI provides information sufficient for a withholding agent to report on a Form 1042–S with respect to such account holder under an election by the participating FFI under section 1471(b)(3) or when the participating FFI or QI does not otherwise have withholding responsibility for the payment;

(*5*) An NFFE except to the extent described in paragraph (d)(1)(ii)(A)(*6*) of this section;

(*6*) A partner, owner, or beneficiary in a flow-through entity that is an NFFE when the withholding agent treats such partner, owner, or beneficiary as a payee and beneficial owner for purposes of determining the amount required to be withheld under § 1.1472–1;

(*7*) An exempt beneficial owner of a payment, including when the payment is made to such owner through a nonparticipating FFI that provides documentation and information sufficient for a withholding agent to determine the portion of the payment paid to such owner;

(*8*) A qualified intermediary that is a foreign branch of a U.S. person except as otherwise provided under paragraph (d)(1)(ii)(B)(*7*) of this section);

(*9*) A limited branch of a participating FFI; and

(*10*) Any other person required to be reported as a recipient as required on Form 1042–S or the instructions to the form.

(B) *Persons that are not recipients.* Persons that are not recipients include—

(*1*) A person that the withholding agent properly treats as a U.S. person under the rules of § 1.1471–3;

(*2*) Except as provided in paragraph (d)(1)(ii)(A)(*8*) of this section, a wholly owned entity that is disregarded under § 301.7701–2(c)(2) as an entity separate from its owner;

(*3*) A flow-through entity that is an NFFE to the extent that the withholding agent treats a partner, owner, or beneficiary of the NFFE as a recipient pursuant to paragraph (d)(1)(ii)(A)(*6*) of this section;

(*4*) An owner of an NFFE except as otherwise provided in paragraph (d)(1)(ii)(A)(*6*) of this section;

(*5*) A territory financial institution that acts as an intermediary with respect to a payment and does not agree to be treated as a U.S. person under § 1.1471–3(c)(3)(iii)(G);

(*6*) An account holder that is included in a pool of recalcitrant account holders of a participating FFI;

(*7*) A participating FFI, registered deemed-compliant FFI, or foreign branch of a U.S. financial institution that is a QI that is acting as an intermediary or flow-through entity with respect to a payment to the extent that such entity provides to its withholding agent information sufficient for the withholding agent to report on Form 1042–S with respect to one or more account holders of such FFI or payees that are nonparticipating FFIs;

(*8*) A nonparticipating FFI that acts as an intermediary with respect to a payment or that is a flow-through entity; and

(*9*) Any other person not treated as a recipient on Form 1042–S and its accompanying instructions.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means an amount reportable on a Form 1042–S for chapter 4 of the Internal Revenue Code purposes that is—

(A) U.S. source FDAP income (regardless of whether subject to withholding under chapter 4 and including a passthru payment that is U.S. source FDAP income) paid on or after January 1, 2014;

(B) Gross proceeds subject to withholding under chapter 4; and

(C) Foreign passthru payments subject to withholding under chapter 4.

(ii) *Special transitional reporting by participating FFIs*—(A) *Reporting requirements for certain payments to nonparticipating FFIs.* In the case of a participating FFI that makes a payment to a nonparticipating FFI of a foreign reportable amount, the participating FFI shall report with respect to each such nonparticipating FFI the aggregate amount of all such payments made to the participating FFI for each of the calendar years 2015 and 2016. A *foreign reportable amount* means–

(*1*) *FDAP income.* A payment of FDAP income as defined in § 1.1473–1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person; and

(*2*) *Other financial payments.* [Reserved].

(B) *Payments to limited branches.* A participating FFI shall report withholdable payments made to limited branches as described in § 1.1471–4(e)(2).

(iii) *Exceptions to reporting.* A chapter 4 reportable amount does not include any amount that is excluded from the definition of withholdable payments under § 1.1473–1(a)(4)(i), (iii), (iv), and (v).

(iv) *Coordination with chapter 3 of the Internal Revenue Code.* A payment that is not subject to reporting under this paragraph (d)(2) may be subject to chapter 3 reporting on Form 1042–S to the extent provided on such form and its accompanying instructions or under § 1.1461–1(c)(2). The recipient information and other information required to be reported on Form 1042–S for purposes of chapter 4 shall be in addition to the information required to be provided on Form 1042–S for purposes of chapter 3.

(3) *Required information.* The information required to be furnished under this paragraph (d)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge), the presumption rules of § 1.1471–3(f), or the requirements for reporting recalcitrant account holders of participating FFIs under § 1.1471–4(d)(6). The Form 1042–S must include the following information, if applicable—

(i) The name, address, and EIN of the withholding agent;

(ii) A description of each category of income or payment made based on the income and payment codes provided on the form (for example, interest, dividends, and gross proceeds) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate and amount of withholding applied or the basis for exempting the payment from withholding under chapter 4 of the

Internal Revenue Code (based on exemption codes provided on the form);

(iv) The name and address of the recipient and its TIN or EIN (when required);

(v) The name and address of any FFI acting as an intermediary, a flow-through entity that is an NFFE, or territory financial institution that is not treated as a U.S. person under § 1.1471–3(c)(2)(iii)(G) when an account holder or owner of such entity (including an unknown recipient or owner) is treated as the recipient of the payment;

(vi) The TIN or EIN of an entity reported under paragraph (d)(3)(v) of this section;

(vii) The country (based on the country codes provided on the form) of the recipient and of any entity the name of which appears on the form; and

(viii) Such information as the form or instructions may require in addition to, or in lieu of, information required under this paragraph (d)(3).

(4) *Method of reporting*—(i) *Payments by U.S. withholding agent to recipients.* Except as otherwise provided in this paragraph (d) or on the Form 1042–S and its accompanying instructions, a withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary) and that makes a payment of a chapter 4 reportable amount must file a separate Form 1042–S for each recipient that receives such amount. Except as otherwise provided on Form 1042–S or its instructions, only payments for which the income or payment code, exemption code, withholding rate, and recipient code are the same may be reported on a single Form 1042–S filed with the IRS. See paragraph (d)(4)(ii) of this section for reporting of payments made to a person that is not a recipient and that is otherwise to be reported on Form 1042–S.

(A) *Payments to certain entities that are beneficial owners.* If the beneficial owner of a payment made by a U.S. withholding agent is an exempt beneficial owner, a nonparticipating FFI, an NFFE, or a territory entity, it must complete Form 1042–S treating such entity as the recipient of the payment.

(B) *Payments to participating FFIs, deemed-compliant FFIs, or certain QIs.* A U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or a deemed-compliant FFI shall complete Forms 1042–S treating the participating FFI or the deemed-compliant FFI as the recipient. A participating FFI acting as an intermediary with respect to a payment may provide a U.S. withholding agent with pooled information regarding recalcitrant account holders that are entitled to the payment pursuant to an election under section 1471(b)(3) and § 1.1471–2(a)(2)(iii), pursuant to § 1.1471–2(a)(2)(i) in the case of a payment of U.S. source FDAP to a participating FFI that is an NQI, NWP, or NWT, or pursuant to § 1.1471–2(a)(2)(iii)(B) in the case of a foreign branch of a U.S. financial institution that provides pooled information regarding its account holders subject to withholding under chapter 4 of the Internal Revenue Code. The U.S. withholding agent must complete a separate Form 1042–S issued to the FFI for each such pool to the extent required on Form 1042–S and its accompanying instructions. A participating FFI may, however, provide to its withholding agent specific payee information with respect to one or more recalcitrant account holders that are entitled to the payment. In such a case, the participating FFI providing such information shall not be treated as a recipient of the payment. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable to cases in which participating FFIs, deemed-compliant FFIs, or certain QIs are not treated as recipients.

(C) *Amounts paid to territory financial institutions acting as intermediaries.* A U.S. withholding agent making a payment to a territory financial institution acting as an intermediary shall complete Form 1042–S as follows—

(*1*) If the territory financial institution has agreed to be treated as a U.S. person with respect to the payment under § 1.1471–3(c)(3)(iii)(F), the withholding agent files Form 1042–S treating the territory financial institution as the recipient; or

(*2*) If the territory financial institution has provided the withholding agent with a withholding certificate that transmits information regarding beneficial owners or other recipients of a chapter 4 reportable amount, the withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the territory financial institution's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and must report the territory financial institution under that paragraph.

(D) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an NFFE shall complete Forms 1042–S treating the NFFE as the recipient unless such withholding agent treats a partner, owner, or beneficiary in a flow-through entity that is an NFFE as a payee for purposes of determining the amount required to be withheld under § 1.1472–1(b).

(ii) *Payments made by withholding agents to certain entities that are not recipients*—(A) *Form 1042–S reporting of entities that provide information for a withholding agent to perform specific payee reporting.* If a U.S. withholding agent makes a payment of a chapter 4 reportable amount to a flow-through entity that is an NFFE, a nonparticipating FFI receiving a payment on behalf of an exempt beneficial owner, a territory financial institution, a participating FFI, a deemed-compliant FFI, or a foreign branch of a U.S. financial institution that is acting as a QI, it must complete a separate Form 1042–S for each recipient that is an owner of or account holder in such entity to the extent the withholding agent can reliably associate the payment with valid documentation (under the rules of § 1.1471–3(c) and (d)) provided by such entity (as applicable) with respect to each such recipient. If a payment is made through tiers of such entities, the withholding agent must nevertheless complete Form 1042–S for each recipient to the extent it can reliably associate the payment with documentation provided with respect to that recipient. A withholding agent that is completing a Form 1042–S for a recipient described in this paragraph (d)(4)(ii)(A) must include on the Form 1042–S the name of such entity through which the recipient receives the payment and its TIN or FFI–EIN (if applicable).

(B) *Nonparticipating FFIs that act as intermediaries.* 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 or as a flow-through entity with regard to a payment under rules described in § 1.1471–3(c)(2)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(*7*), it shall report the recipient of the payment as an unknown recipient and shall 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 but receives a valid withholding certificate or other documentary evidence from a person that is the single owner of a disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. The FFI–EIN on the Form 1042–S, or TIN, if required, must be the single owner's FFI–EIN or TIN.

(iii) *Reporting by nonparticipating FFIs, flow-through entities, or territory financial institutions that do not elect to*

be treated as U.S. persons. A nonparticipating FFI, a flow-through entity that is a foreign person, or territory financial institution must file Forms 1042–S for chapter 4 reportable amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042–S will not be required, however, if another withholding agent has reported the same amount with regard to the same recipient for which such entity would otherwise be required to file a return under this paragraph (d)(4)(iii) and the entire amount that should be withheld from such payment has been withheld. The nonparticipating FFI, flow-through entity, or territory financial institution must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent or to the extent it knows, or has reason to know, that less than the required amount has been withheld.

(iv) *Other withholding agents.* Any person that is a withholding agent that is not a participating FFI shall file Forms 1042–S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form. A participating FFI shall file Forms 1042–S in accordance with this paragraph (d) except as otherwise provided in its FFI agreement.

(e) *Magnetic media reporting.* A withholding agent that is not a financial institution and that is required to file 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2(b) of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042–S on magnetic media. See § 301.1474–1(a) of this chapter for the requirements applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042–S on magnetic media.

(f) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 4 of the Internal Revenue Code and the regulations thereunder. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 4 and the regulations thereunder is treated for purposes of section 1474 and this paragraph (f) as having withheld tax in accordance with the provisions of chapter 4 and the regulations thereunder. This paragraph (f) does not relieve a withholding agent from tax liability under chapter 3 or 4 of the Internal Revenue Code or the regulations under those chapters.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time to file Form 1042 or 1042–S as described in § 1.1461–1(g).

(h) *Penalties.* For penalties and additions to tax for failure to file returns or file and furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 4 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(i) *Reporting requirements with respect to owner-documented FFIs*—(1) *Reporting by U.S. withholding agent.* In a case in which a U.S. withholding agent makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder that the withholding agent treats as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent will be required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect interest in such entity the following information—

(*a*) The name of the owner-documented FFI;

(*b*) The name of the specified U.S. person;

(*c*) The TIN or EIN of the specified U.S. person;

(*d*) The address of the specified U.S. person; and

(*e*) Any other information required on the form and accompanying instructions provided for purposes of such reporting.

(2) *Cross reference to reporting by participating FFIs.* For the reporting requirements of a participating FFI with respect to an account holder that it treats as an owner-documented FFI, see § 1.1471–4(d)(2)(iv).

(j) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 12. Section 1.1474–2 is added to read as follows:

§ 1.1474–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except as otherwise provided by this section, a withholding agent that has overwithheld tax under chapter 4 and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the amount of overwithheld tax either pursuant to the reimbursement procedure described in paragraph (a)(3) of this section or pursuant to the set-off procedure described in paragraph (a)(4) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(3) or (a)(4) of this section. After such time, a refund of the amount of overwithheld tax can only be claimed pursuant to the procedures described in § 1.1474–5 and chapter 65 of the Code and the regulations thereunder.

(2) *Overwithholding.* For purposes of this section, the term *overwithholding* means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income or other payment pursuant to chapter 4 of the Internal Revenue Code or the regulations thereunder in excess of both the amount required to be withheld with respect to such item of income or other payment under chapter 4 and, in the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(3) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount of overwithheld tax. In such a case, the withholding agent may reimburse itself by reducing, by the amount actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. A withholding agent must obtain valid documentation as described under § 1.1471–3(c)(7) with respect to the beneficial owner or payee supporting a reduced rate of withholding before adjusting the amount of tax under this paragraph (a)(3)(i). Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

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

(B) The withholding agent states on timely filed (not including extensions) Form 1042–S the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner or payee is repaid an amount of overwithheld tax under the provisions of this paragraph (a)(3), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment, and the withholding agent must provide a copy of such receipt to the beneficial owner or payee. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(4) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 of the Internal Revenue Code or the regulations thereunder to be withheld from the amount paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such payment under chapter 3 or 4, respectively, and the regulations thereunder.

(5) *Examples.* The principles of paragraph (a) of this section are illustrated by the following examples:

Example 1. (i) Fund A, organized as a United Kingdom corporation, is a unit investment trust that is an FFI and that is a resident that qualifies for the benefits of the income tax treaty between the United States and the United Kingdom. On December 1, 2014, domestic corporation C pays a dividend of $100 to Fund A, at which time C withholds $30 of tax pursuant to § 1.1471–2(a) and remits the balance of $70 to Fund A because it does not hold valid documentation that Fund A is a participating FFI or deemed-compliant FFI. On February 10, 2015, prior to the time that C is obligated to file its Form 1042, Fund A furnishes a valid Form W–8BEN described in §§ 1.1441–1(e)(2)(i) and 1.1471–3(c)(3)(ii) upon which C may rely to treat Fund A as the beneficial owner of the income and as a participating FFI so that C may reduce the rate of withholding to 15% under the provisions of the United States-United Kingdom income tax treaty with respect to the payment. C repays the excess tax withheld of $15 to Fund A.

(ii) During the 2014 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4 of the Code; accordingly, its Form 1042 for such year, filed on March 15, 2015, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30 for such year. Pursuant to § 1.6414–1, C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, C is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2015 calendar year with respect to taxes due under chapters 3 or 4. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to Fund A in 2014 is required to show tax withheld of $30 and tax repaid of $15 to Fund A.

Example 2. (i) In November 2014, Bank A, a foreign bank organized in the United Kingdom that is a nonqualified intermediary, receives on behalf of one of its account holders, Z, an individual, a $100 dividend payment from C, a domestic corporation. At the time of payment, C withholds $30 pursuant to § 1.1471–2(a) and remits the balance of $70 to Bank A, because it does not hold valid documentation that it may rely on to treat Bank A as a participating FFI or deemed-compliant FFI. On December 2014, prior to the time that C files its Forms 1042 and 1042–S, Bank A furnishes a valid Form W–8IMY and FFI withholding statement described in § 1.1471–3(c)(3)(iii) that establishes Bank A's status as a participating FFI that is a nonqualified intermediary, as well as a valid Form W–8BEN that has been completed by Z as described in § 1.1471–3(c)(2)(ii) and § 1.1441–1(e)(2)(i) upon which C may rely to treat the payment as made to Z, a nonresident alien individual who is a resident of the United Kingdom eligible for a reduced rate of withholding of 15% under the income tax treaty between the United States and United Kingdom. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C remits the amount of $15 to Bank A for the benefit of Z.

(ii) During the 2014 calendar year, C makes no other payments upon which tax is required to be withheld under chapters 3 or 4; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2015, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2015 calendar year. The Form 1042–S required to be filed by C for 2014 with respect to the dividend of $100 beneficially owned by Z is required to show tax withheld of $30 and tax repaid of $15 to Z.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent that has underwithheld under chapter 4, may apply the procedures described in § 1.1461–2(b) (by substituting the term ''chapter 4'' for ''chapter 3'') to satisfy its withholding obligations under chapter 4 with respect to a payee or beneficial owner.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 13. Section 1.1474–3 is added to read as follows:

§ 1.1474–3 Withheld tax as credit to beneficial owner of income.

(a) *Creditable tax.* The entire amount of the income, if any, attributable to a payment from which tax is required to be withheld under chapter 4 of the Internal Revenue Code (including income deemed paid by a withholding agent under § 1.1473–1(a)(2)(v)) shall be included in gross income in a return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons that are not the beneficial owners.* Amounts actually deducted and withheld under chapter 4 of the Internal Revenue Code on payments made to a fiduciary, agent, partnership, trust, or intermediary are deemed to have been paid by the beneficial owner of the item of income or other payment subject to withholding under chapter 4 except when the fiduciary, agent, partnership, trust, or intermediary pays the tax from its own funds and does not in turn withhold with respect to the payment made to such person. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 of the Internal Revenue Code upon any amount of distributable net income or other taxable distribution received from a foreign trust, the part of any amount withheld at source under chapter 4 of the Code that is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded to the beneficiary in accordance with § 1.1474–5 and chapter 65 of the Code.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 14. Section 1.1474–4 is added to read as follows:

§ 1.1474–4 Tax paid only once.

(a) *Tax paid.* If the tax required to be withheld under chapter 4 on a payment is paid by the payee, beneficial owner,

or the withholding agent, it shall not be re-collected from any other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable.

(b) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 15. Section 1.1474–5 is added to read as follows:

§ 1.1474–5 Refunds or credits.

(a) *Refund and credit*—(1) *In general.* Except to the extent otherwise provided in this section, a refund or credit under chapter 65 of tax which has actually been withheld at the source at the time of payment under chapter 4 shall be made to the beneficial owner of the payment to which the amount of withheld tax is attributable if the beneficial owner or payee meets the requirements of this paragraph (a). To the extent that the amount withheld under chapter 4 of the Internal Revenue Code is not actually withheld at source, but is later paid by the withholding agent to the IRS, the refund or credit under chapter 65 of the Code shall be made to the withholding agent to the extent the withholding agent can provide documentation with respect to the beneficial owner or payee described in paragraphs (a)(2) and (3) of this section sufficient for the beneficial owner or payee to have obtained a refund of the tax and sufficient for the withholding agent to have applied a reduced rate or exemption from withholding under chapter 4 of the Code. The preceding sentence shall not, however, apply to a nonparticipating FFI that is acting as a withholding agent with respect to one or more of its account holders. In such a case, only the account holders of the nonparticipating FFI will be entitled to a credit or refund of an amount withheld upon under chapter 4, to the extent otherwise allowable under this section.

(2) *Limitation to refund and credit for a nonparticipating FFI.* Notwithstanding paragraph (a)(1) of this section, a nonparticipating FFI (determined as of the time of payment) that is the beneficial owner of an item of income or other payment that is subject to withholding under chapter 4 of the Code shall not be entitled to any credit or refund pursuant to section 1474(b)(2) and this section unless it is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States. If the nonparticipating FFI is entitled to a reduced rate of tax with respect to an item of income or other payment by reason of any treaty obligation of the United States, the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate on the item of income or other payment, and no interest otherwise allowable under section 6611 shall be allowed or paid with respect to such credit or refund

(3) *Requirement to provide additional documentation for certain beneficial owners*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, no refund or credit shall be allowed under paragraph (a)(1) of this section to a beneficial owner from whose income or other payment to which the amount of such withheld tax was attributable if such beneficial owner is an NFFE, unless the NFFE attaches to its income tax return the information described in paragraph (a)(3)(iii) of this section.

(ii) *Claim of reduced withholding under an income tax treaty.* Paragraph (a)(3)(i) of this section does not apply to a beneficial owner that is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States.

(iii) *Additional documentation to be furnished to the IRS for certain NFFEs.* The information described in this paragraph (a)(3)(iii) is—

(A) A certification that the beneficial owner does not have any substantial U.S. owners;

(B) The form described in § 1.1472–1(e)(2) relating to each substantial U.S. owner of such entity; or

(C) Other appropriate documentation to establish withholding was not required under chapter 4.

(b) *Tax repaid to payee.* For purposes of this section and § 1.6414–1, any amount of tax withheld under chapter 4, which, pursuant to § 1.1474–2(a)(1), is repaid by the withholding agent to the beneficial owner of the income or payment to which the withheld amount is attributable shall be considered as tax which, within the meaning of sections 1474 and 6414, was not actually withheld by the withholding agent.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 16. Section 1.1474–6 is added to read as follows:

§ 1.1474–6 Coordination of chapter 4 of the Internal Revenue Code with other withholding provisions.

(a) *In general.* This section coordinates the withholding requirements of a withholding agent when a withholdable payment or passthru payment is subject to withholding under both chapter 4 and another provision of the Code. See § 1.1473–1(a) for the definition of withholdable payment and see § 1.1471–5(h) for the definition of passthru payment.

(b) *Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443*—(1) *In general.* In the case of a withholdable payment or passthru 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 of the Internal Revenue Code 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 of the Code that is also an amount subject to withholding under § 1.1441–2(a).

(2) *When withholding is applied.* For purposes of paragraph (b)(1) of this section, withholding is applied by a withholding agent under section 1441 (or section 1442 or 1443) or chapter 4 of the Code (as applicable) when the withholding agent has withheld on the payment and has designated the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4 to the extent required in the reporting described in § 1.1474–1(b) and (c). For purposes of allowing an offset of withholding and allowing a credit to a withholding agent against its liability for such tax as described in paragraph (b)(1) of this section, withholding is treated as applied for purposes of paragraph (a) of this section only when the withholding agent has actually withheld on a payment and has not made any adjustment for overwithheld tax applicable to the amount withheld that would be otherwise permitted with respect to the payment.

(c) *Coordination with amounts subject to withholding under section 1445*—(1) *In general.* An amount subject to withholding under section 1445 is not subject to withholding under chapter 4.

(2) *Determining amount of distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding*—(i) *Distribution from qualified investment entity.* In the case of a passthru payment (including a withholdable payment) subject to withholding under chapter 4 that is a distribution with respect to the stock of a qualified investment entity as

described in section 897(h)(4)(A), withholding under chapter 4 does not apply when withholding under section 1445 applies to such amounts. With respect to the portion of such distribution that is not subject to withholding under section 1445 but is subject to withholding under section 1441 (or section 1442 or 1443) and chapter 4, the coordination rule described in paragraph (b)(1) of this section shall apply.

(ii) *Distribution from a United States Real Property Holding Corporation.* A distribution (or portion of a distribution) from a United States real property holding corporation (or from a corporation that was a United States real property holding corporation at any time during the five-year period ending on the date of the distribution) with respect to its stock that is a United States real property interest under section 897(c) is subject to withholding under chapter 4 and is also subject to the withholding provisions of section 1441 (or section 1442 or 1443) and section 1445. In such a case, to the extent that the United States real property holding corporation chooses to withhold on a distribution only under section 1441 (or section 1442 or 1443) pursuant to § 1.1441–3(c)(4)(i)(A), the coordination rule described in paragraph (b)(1) of this section shall apply to such distribution. Alternatively, to the extent that the United States real property holding corporation chooses to withhold under both section 1441 (or section 1442 or 1443) and section 1445 pursuant to § 1.1441–3(c)(4)(i)(B), the coordination rule described in paragraph (b)(1) of this section shall apply to the portion of such distribution described in § 1.1441–3(c)(4)(i)(B)(1), and withholding under section 1445 shall apply to the amount of such distribution described in § 1.1441–3(c)(4)(i)(B)(2). A withholding agent other than a United States real property holding corporation may, absent actual knowledge or reason to know otherwise, rely on the representations of the United States real property holding corporation making the distribution regarding the portion of the distribution that is estimated to be a dividend under § 1.1441–3(c)(2)(ii)(A) and in the case of a failure by the withholding agent to withhold under chapter 4 the required amount shall be imputed to the United States real property holding corporation.

(d) *Coordination with section 1446*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, a withholdable payment or a passthru payment subject to withholding under section 1446 shall not be subject to withholding under chapter 4. See § 1.1473–1(a)(4)(ii) for the exclusion from withholdable payment and the requirements for such exclusion for any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(2) *Determining amount of distribution subject to section 1446.* [Reserved].

(e) *Coordination of withholding under section 3406.* [Reserved].

(f) Example. Chapter 4 withholding satisfies chapter 3 withholding obligation. WA, a U.S. withholding agent, makes a payment consisting of a dividend from sources within the United States to NPFFI. NPFFI is a nonparticipating FFI that is a resident of country X, a country that has an income tax treaty in force with the United States that would allow WA to reduce the rate of withholding for section 1442 purposes on a payment of U.S. source dividends paid to NPFFI to 15%. Because the payment is a withholdable payment and NPFFI is a nonparticipating FFI, WA withholds on the payment at the rate of 30% under chapter 4. WA does not make any adjustment for overwithholding that is otherwise permitted with respect to this payment. Although the payment is also an amount subject to withholding under section 1442, WA is not required to withhold any tax on this payment under section 1442. WA may credit its withholding applied under chapter 4 against the amount of tax otherwise required to be withheld on this payment under section 1442. See § 1.1474–5(a)(2) for the credit and refund procedures for nonparticipating FFIs that are entitled to a reduced rate of tax with respect to an amount subject to withholding under chapter 4 by reason of any treaty obligation of the United States.

(g) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 17. Section 1.1474–7 is added to read as follows:

§ 1.1474–7 Confidentiality of information.

(a) *Confidentiality of information.* Pursuant to section 1474(c)(1), the provisions of § 3406(f)–1(a) shall apply (substituting ''sections 1471 through 1474'' for ''section 3406'') to information obtained or used in connection with the requirements of chapter 4.

(b) *Exception for disclosure of participating FFIs.* Pursuant to section 1474(c)(2), the identity of a participating FFI or deemed-compliant FFI shall not be treated as return information for purposes of section 6103.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 18. The authority citation for part 301 is amended by adding an entry, in numerical order, to read as follows:

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

Section 301.1474–1 also issued under 26 U.S.C. 1474(f). * * *

Par. 19. Section 301.1474–1 is added to read as follows:

§ 301.1474–1 Required use of magnetic media for financial institutions filing Form 1042–S.

(a) *Financial institutions filing of information returns on Form 1042–S.* If a financial institution is required to file a Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding* under § 1.1474–1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules on magnetic media. Returns filed on magnetic media must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions and the IRS.gov Internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media filing. See § 601.601(d)(2) of this chapter.

(b) *Waiver.* The Commissioner may grant waivers from the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a financial institution fails to file a Form 1042–S 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 6723 of the Internal Revenue 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.

(d) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable

regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. See § 601.601(d)(2) of this chapter.

(2) *Financial institution.* The term *financial institution* has the meaning set forth in section 1471(d)(5) of the Internal Revenue Code and the regulations thereunder.

(e) *Effective/applicability date.* This section applies to any Form 1042–S filed with respect to taxable years ending after December 31, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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