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Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Final Rule

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

[TD 9657]

RIN 1545-BL73

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:** Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons. The text of the temporary regulations also serves as the text of the proposed regulations set forth in a cross-reference notice of proposed rulemaking (REG-130967-13) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective date.* These regulations are effective on March 6, 2014.

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SUPPLEMENTARY INFORMATION:**Background****I. In General**

This document contains amendments to the Income Tax Regulations (CFR part 1) under sections 1471 through 1474 of the Code (commonly known as the Foreign Account Tax Compliance Act, or FATCA). 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. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the Internal Revenue Service (IRS) regarding their U.S. accounts, and on certain

payments to certain nonfinancial foreign entities (NFFE) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874) and, on September 10, 2013, a correction to the final regulations was published in the **Federal Register** (78 FR 55202) (final regulations). The Treasury Department and the IRS received numerous comments in response to the final regulations.

Following publication of the final regulations, the Treasury Department and the IRS also issued additional guidance under chapter 4. Notice 2013-43 (2013-31 I.R.B. 113) previews the revised timelines for implementation of the FATCA requirements (which are adopted by these temporary regulations) and provides additional guidance concerning the treatment of FFIs located in jurisdictions that have signed intergovernmental agreements for the implementation of FATCA (IGAs) but have not yet brought those IGAs into force. In particular, Notice 2013-43 clarifies that a jurisdiction is treated as having in effect an IGA if the jurisdiction is listed on the Treasury Web site as a jurisdiction that is treated as having an IGA in effect. In general, the Treasury Department and the IRS intend to include on this list jurisdictions that have signed but have not yet brought into force an IGA. The list of jurisdictions that are treated as having an IGA in effect is available at the following address: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>. Notice 2013-69 (2013-46 I.R.B. 503) further previews some of the changes that the Treasury Department and IRS intend to make to the final regulations and publishes a draft of the agreement that an FFI may enter into with the IRS in order to satisfy its obligations under section 1471(b) of the Code and be treated as a participating FFI (FFI agreement). Revenue Procedure 2014-13 (2014-3 I.R.B. 419) provides the final FFI agreement.

II. Regulatory Approach to Implementing Chapter 4

Chapter 4 grants the Secretary of the Treasury broad regulatory authority to prescribe rules and procedures relating to the diligence, reporting and withholding obligations under FATCA. The Treasury Department and the IRS exercised this authority by publishing final regulations that provide specific operational guidelines for implementing FATCA in a manner consistent with its

policy objectives. As described in the preamble to the final regulations, the final regulations implement the statute based on a risk-based approach that is intended to address policy considerations, eliminate unnecessary burdens, and to the extent possible, build on existing practices and obligations.

Following publication of the final regulations, the Treasury Department and the IRS received unsolicited comments suggesting changes to or requesting clarification of certain rules in the final regulations. As a result of these comments, the Treasury Department and the IRS have continued to work with affected parties to develop rules that achieve an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. As part of this process, the Treasury Department and the IRS have carefully considered comments received in response to the final regulations and have met with stakeholders. While many of these comments reiterate comments that were received and considered prior to the publication of the final regulations or suggest changes to the final regulations that are outside the scope of these temporary regulations, a number of comments proposed changes to the final regulations that the Treasury Department and the IRS believe warrant inclusion in these temporary regulations. The Treasury Department and the IRS will accept comments and engage with interested stakeholders in connection with finalizing these temporary regulations.

Explanation of Provisions**I. In General**

In response to comments and after further consideration, these temporary regulations revise and further clarify the final regulations. To this end, these temporary regulations take into account helpful comments received and provide additional detail and certainty regarding the scope of obligations imposed under chapter 4. In addition, these temporary regulations reflect changes made to the final regulations to coordinate the chapter 4 regulations with the temporary regulations published under chapters 3 and 61 and section 3406 of the Code. Additionally, these temporary regulations contain modifications to the final regulations to further harmonize them with the IGAs. Several of the changes made by these temporary regulations were previewed in Notice 2013-69, the draft FFI agreement, and

certain of the draft IRS forms released throughout 2013.

The following sections provide a discussion of the additions and modifications made by the temporary regulations to the final regulations. To facilitate this discussion, the defined terms set forth in the temporary regulations are used throughout.

II. Comments and Changes to § 1.1471-1—Scope of Chapter 4 and Definitions

To address comments received and to provide further clarification, these temporary regulations modify certain definitions contained in the final regulations.

A. Direct Reporting NFFE, Sponsored Direct Reporting NFFE, and Sponsoring Entity

Comments requested an election providing NFFEs with the ability to report information about their substantial U.S. owners directly to the IRS rather than to withholding agents. In response to these comments and as previewed in Notice 2013-69, these temporary regulations provide certain NFFEs with elections to be treated as direct reporting NFFEs or sponsored direct reporting NFFEs. A NFFE that is treated as a direct reporting NFFE or sponsored direct reporting NFFE shall be treated as an excepted NFFE. Accordingly, definitions have been added for a direct reporting NFFE and a sponsored direct reporting NFFE, and the definition of a sponsoring entity has been modified. Conforming changes have also been made throughout these temporary regulations to implement these changes.

B. Excepted NFFE

These temporary regulations modify the definition of excepted NFFE such that excepted NFFEs include, among other things, a direct reporting NFFE and a sponsored direct reporting NFFE. In addition, to correct an oversight, the definition of excepted NFFE under these temporary regulations is further expanded to include a NFFE that is a qualified intermediary (QI), withholding foreign partnership (WP) or withholding foreign trust (WT).

C. Offshore Obligation and Offshore Account

In response to comments stating that the definition of offshore obligation in the final regulations is unclear, and in order to harmonize chapters 4 and 61, these temporary regulations define offshore obligation by cross-reference to § 1.6049-5(c)(1) (which now uses the term *offshore obligation* instead of *offshore account*). These temporary

regulations also remove the definition of offshore account because it is included in the definition of offshore obligation under § 1.6049-5(c)(1).

D. Pre-FATCA Form W-8

These temporary regulations make a clarifying change to the definition of pre-FATCA Form W-8. The final regulations define pre-FATCA Form W-8 as certain Forms W-8 that do not contain chapter 4 statuses. However, the chapter 4 status of a non-U.S. individual filing a Form W-8 is the same as his or her chapter 3 status. Therefore, the definition in the final regulations could be interpreted to mean that any Form W-8 previously submitted by a non-U.S. individual could not be treated as a pre-FATCA Form W-8. These temporary regulations modify the definition of pre-FATCA Form W-8 to avoid this result.

E. Standardized Industry Coding System

The final regulations define the term *standardized industry code* to mean a code that is part of a coding system that is used to classify account holders by business type for purposes other than tax purposes and that is implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized. In response to comments, these temporary regulations remove the term *standardized industry code* and replace it with the term *standardized industry coding system*. The term *standardized industry coding system* in these temporary regulations is substantially similar to the term *standardized industry code* in the final regulations, except that it focuses on a coding system used by the withholding agent to classify account holders, rather than a specific code that is part of such a coding system. Additionally, and in response to comments, with respect to a preexisting obligation of an entity, the preexisting obligation documentary evidence rules have been liberalized by eliminating the requirement that the classification of the payee's status be recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent is formed or organized.

F. Certain Foreign Insurance Companies Treated as U.S. Persons

The final regulations treat a foreign insurance company that is not licensed to do business in any State and makes an election under section 953(d) as a foreign person. Comments requested that a foreign insurance company that has made an election under section 953(d) be treated as a U.S. person. A foreign insurance company that has

made an election under section 953(d) is required to report on its U.S. income tax return the U.S. persons that own a direct or indirect interest in it. As previewed in Notice 2013-69, and in light of the existing reporting requirements applicable to these entities, the temporary regulations modify the definition of U.S. person to include a foreign insurance company that has made an election under section 953(d) and that either is not a specified insurance company or is a specified insurance company that is licensed to do business in any State. In such cases, the foreign insurance company will be required to continue to report on its owners in accordance with its election under section 953(d). A foreign insurance company that has made an election under section 953(d) and that is a specified insurance company that is not licensed to do business in any State will continue to be treated as a foreign person for purposes of chapter 4.

G. Coordination of Definitions

In response to comments requesting clarification and in order to coordinate the definitions in the final regulations with the definitions in chapters 3 and 61 and the FFI agreement, these temporary regulations add definitions of backup withholding, branch, chapter 4 withholding rate pool, exempt recipient, IGA, non-exempt recipient, reportable payment, and reporting Model 2 FFI and modify the definition of a U.S. branch treated as a U.S. person. In addition, the definitions of financial institution, limited branch, limited FFI, and substantial U.S. owner are modified to ensure coordination between the FFI agreement and these temporary regulations.

H. Harmonization With IGAs

These temporary regulations modify the definition of nonreporting IGA FFI to include (in addition to an FFI that is identified or treated as a nonreporting financial institution pursuant to a Model 1 or Model 2 IGA that is not a registered deemed-compliant FFI) an FFI that is a resident of, located in, or established in a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under the temporary regulations. Certain definitions (including the definition of retirement plan under § 1.1471-6(f)) are also modified to further harmonize these temporary regulations and the IGAs.

III. Comments and Changes to § 1.1471-2—Requirement To Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

A. Grandfathered Obligations—Definitions—Material Modification

Comments indicated that outstanding life insurance contracts often contain a provision permitting the substitution of an insured and, as a result, cannot be a grandfathered obligation under the final regulations. Because such provisions are prevalent in existing life insurance contracts, the Treasury Department and the IRS have determined that life insurance contracts that have such a provision should be eligible for grandfathered status until the provision is invoked, but that any change or substitution of the insured under the contract should be treated as a material modification such that grandfathered status would no longer apply. These temporary regulations modify the final regulations accordingly.

B. Grandfathered Obligations—Determination by Withholding Agent of Grandfathered Treatment

The final regulations provide that a withholding agent is required to treat a modification of an obligation as material if the withholding agent knows or has reason to know that a material modification has occurred. The Treasury Department and the IRS received comments stating that it is difficult for a withholding agent to determine whether there has been a material modification of a grandfathered obligation absent a disclosure from the issuer of the obligation, and therefore that the receipt of such a disclosure should be the only instance in which a withholding agent is required to treat a modification of an obligation as material. In response to these comments, the temporary regulations modify the final regulations to provide that a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of an obligation as material only if the withholding agent has actual knowledge that a material modification has occurred. One example of an event that will cause a withholding agent to have actual knowledge of a material modification is if the withholding agent receives a disclosure indicating that there has been or will be a material modification to the obligation.

IV. Comments and Changes to § 1.1471-3—Identification of Payee

A. Payee Defined

1. Exceptions—U.S. Intermediary or Agent of a Foreign Person

Comments requested that, in cases in which a withholding agent makes a withholdable payment to a U.S. insurance broker that is acting as an intermediary for or agent of a foreign insurer, the withholding agent be allowed to treat the U.S. insurance broker as the payee unless the withholding agent has reason to know that the U.S. insurance broker will not satisfy its withholding obligations. These temporary regulations modify the final regulations to adopt this comment.

2. Exceptions—U.S. Branch of Certain Foreign Banks or Foreign Insurance Companies

A payment made to a U.S. branch of a participating FFI or a registered deemed-compliant FFI may be treated as a payment made to a U.S. person if the branch is treated as a U.S. person for purposes of withholding under chapter 4. The final regulations inadvertently omit a cross-reference to the regulations containing the requirements of U.S. branches to report information regarding certain U.S. owners of owner-documented FFIs and passive NFFEs. These temporary regulations add a cross-reference to § 1.1474-1(i)(1) and (2).

B. Determination of Payee's Status—Determination of Whether the Payment Is Made to a QI, WP, or WT

In order to harmonize the rules in chapter 4 with those in chapters 3 and 61, these temporary regulations clarify that, with respect to a withholding agent's determination of whether a payment is made to a QI, WP, or WT, a Form W-8IMY, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," provided by such entity must contain the entity's QI-EIN, WP-EIN, or WT-EIN (as applicable). In addition, QIs, WPs, and WTs that have a GIIN must provide both a QI-EIN, QP-EIN, or WT-EIN and the GIIN to a withholding agent on the Form W-8IMY.

C. Rules for Reliably Associating a Payment With a Withholding Certificate or Other Appropriate Documentation

1. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—In General

These temporary regulations clarify that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that both acts as an intermediary and is located outside of the FFI's country of residence, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate. This change provides more detail on the use of GIINs issued to branches or disregarded entities of an FFI and that are used, in part, to identify an FFI to withholding agents.

2. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—Withholding Statement—Special Requirements for an FFI Withholding Statement

Comments requested additional clarification to the final regulations concerning the requirements of an FFI withholding statement, specifically with regard to the use of a chapter 4 withholding rate pool identified on an FFI withholding statement to allocate a withholdable payment (or portion of a withholdable payment) to persons included within the chapter 4 withholding rate pool. Some of these clarifications have already been previewed in the draft FFI agreement, published in Notice 2013-69, and the final FFI agreement, published in Rev. Proc. 2014-13. These temporary regulations provide further clarification of FFI withholding statement requirements, including rules on when a chapter 4 withholding rate pool may be used by an FFI to allocate withholdable payments to a class of persons within a particular type of chapter 4 withholding rate pool. For example, if a participating FFI (including a reporting Model 2 FFI) that is a non-U.S. payor receives a withholdable payment on behalf of an account holder of a U.S. account, the participating FFI may include the account holder in a chapter 4 withholding rate pool of U.S. payees provided on an FFI withholding statement to the withholding agent to allocate the payment (or portion thereof) to the U.S. payee pool when the participating FFI reports the account holder under § 1.1471-4(d)(3) (Form

8966, "FATCA Report," reporting) or § 1.1471-4(d)(5) (election to report on Form 1099). As a result, the participating FFI need not provide payee specific information to the withholding agent with respect to the account holder, even if such information would typically be required under chapter 61, because it will be reported to the IRS under chapter 4.

Additionally, reporting Model 1 FFIs and reporting Model 2 FFIs (without regard to whether such FFIs are U.S. or non-U.S. payors) may include certain recalcitrant account holders in a chapter 4 withholding rate pool of U.S. payees when such payments are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients). This rule was added to provide coordination between the various reporting regimes. For example, a reporting Model 2 FFI may include an account holder of a non-consenting U.S. account in a chapter 4 withholding rate pool of U.S. payees with respect to a withholdable payment that is not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 when the FFI reports the account holder as described in § 1.1471-4(d)(6) for the year in which the payment is made.

Finally, in order to clarify potential ambiguities, and as previewed in the draft and final FFI agreement, these temporary regulations provide that an FFI withholding statement should indicate the portion of the payment allocated to a pool of recalcitrant account holders that hold dormant accounts for which the FFI (and not the withholding agent) will withhold in escrow under the procedures described in § 1.1471-4(b)(6). Additionally, a participating FFI that elects to apply backup withholding under § 1.1471-4(b)(3)(iii) to a withholdable payment that is also a reportable payment (as described under chapter 61) must also indicate the portion of the payment allocated to each recalcitrant account holder subject to backup withholding under section 3406 and report such payment to the IRS on Form 1099. A participating FFI will not be able to make the election to backup withhold under § 1.1471-4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

3. Requirements for Validity of Certificates—Withholding Certificate of an Intermediary, Flow-Through Entity, or U.S. Branch (Form W-8IMY)—Withholding Statement—Special Requirements for a Chapter 4 Withholding Statement and Exempt Beneficial Owner Withholding Statement

An intermediary providing a withholding certificate for a withholdable payment under chapter 4 may also need to provide information under chapter 3 or chapter 61 if those chapters also apply to the payment the intermediary receives. These temporary regulations modify the final regulations to coordinate with chapters 3 and 61 by providing cross-references to the regulations under those chapters to clarify the information required to be included on a withholding statement when a withholdable payment is also reportable under chapters 3 or 61.

4. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Period of Validity

Under chapter 4, withholding certificates are valid for three years, unless an exception permits indefinite validity (until a change in circumstances occurs). Beneficial owner withholding certificates provided by certain entities qualify for indefinite validity if the certificate is furnished with documentary evidence establishing the entity's foreign status. Comments requested that section 501(c) entities be excluded from the requirement to furnish documentary evidence of foreign status as it is an undue burden on such entities. The Treasury Department and the IRS agree that it is appropriate to exclude these entities from the requirement to furnish documentary evidence of foreign status. In response to these comments and to coordinate with the rules under chapter 3, these temporary regulations cross-reference the rules for indefinite validity of withholding certificates for section 501(c) entities in § 1.1441-1(e)(4)(ii)(B).

5. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Electronic Transmission of Withholding Certificate, Written Statement, and Documentary Evidence

The final regulations provide that a withholding agent may accept withholding certificates, written statements, and documentary evidence supporting a payee's claim of chapter 4 status electronically if the agent is able to verify the identity of the sender as the

person named on the form. Comments requested that the verification rules be modified or eliminated to reduce the burden on the withholding agent. The Treasury Department and the IRS agree with the comments, but have determined that the electronic transmission requirements under chapter 4 should match those to be revised under chapter 3 in consideration of these comments. Therefore, these temporary regulations modify the final regulations by cross-referencing the electronic submission rules in § 1.1441-1(e)(4)(iv)(C) which have been modified to adopt the change in a separate regulations package. These temporary regulations also make similar conforming changes to the final regulations with respect to requirements for an intermediary to electronically submit a withholding statement with a withholding certificate to a withholding agent.

6. Applicable Rules for Withholding Certificates, Written Statements, and Documentary Evidence—Acceptable Substitute Withholding Certificate—Non-IRS Form for Individuals

In general, a withholding agent may substitute its own form for an official Form W-8 if the substitute form contains provisions that are substantially similar to the official form. The final regulations provide that if a substitute form is used in place of a W-8BEN for individuals, the form must contain, among other things, the individual's city and country of birth. The Treasury Department and the IRS received comments indicating that the inclusion of city of birth on this form would impose an undue burden on withholding agents. In response to comments, these temporary regulations remove the city of birth requirement. After further consideration, however, the temporary regulations require that the substitute form must contain the individual's date of birth, without regard to whether a foreign tax identification number is provided.

7. Documentation Furnished on Account-by-Account Basis Unless Exception Provided for Sharing Documentation Within Expanded Affiliated Group—Preexisting Account

The Treasury Department and the IRS received comments requesting that, for preexisting accounts, a withholding agent be allowed to rely on documentation held at a branch of the withholding agent or a branch of another expanded affiliated group member even if the withholding agent does not treat the accounts as consolidated obligations. The comments

indicated that, in certain cases, the requirement to treat the accounts as consolidated obligations in order to share documentation is too burdensome. These temporary regulations modify the final regulations to allow a withholding agent, with respect to a preexisting account that it maintains, to rely on documentation furnished by a payee for a preexisting account held at another branch of the withholding agent or a branch of another expanded affiliated group member solely to determine the chapter 4 status of the account holder if: (i) The withholding agent obtains and reviews copies of such documentation supporting the chapter 4 status of the payee and (ii) the withholding agent has no reason to know that, when the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect.

D. Documentation Requirements To Establish Payee's Chapter 4 Status

1. Reliance on Pre-FATCA Form W-8

The final regulations generally allow the withholding agent to rely on a pre-FATCA Form W-8 for international organizations. In order to clarify a potential ambiguity and to conform with chapter 3, these temporary regulations provide that reliance on a pre-FATCA Form W-8 is limited to international organizations as defined under chapter 3 and under section 7701(a)(18).

2. Identification of U.S. Persons—In General

Under chapter 4, a withholding agent must treat certain payees as U.S. persons. In order to clarify a potential ambiguity, these temporary regulations provide that foreign branches of U.S. persons and FFIs that have elected to be treated as U.S. persons under section 953(d) (despite the fact that such FFIs may not be U.S. persons for other purposes of chapter 4) should be treated as U.S. persons by a withholding agent if the withholding agent has a valid Form W-9, “*Request for Taxpayer Identification Number and Certification*,” from the payee or is required to presume that the payee is a U.S. person. This reduces burden because FFIs that have elected to be treated as U.S. persons under section 953(d) are generally treated as U.S. persons under chapter 3 and would need to provide a Form W-9 in connection with payments subject to chapter 3 withholding and reporting.

3. Identification of U.S. Persons—Preexisting Obligations

The final regulations provide that a withholding agent (other than a

participating FFI or registered deemed-compliant FFI) that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it previously reviewed a Form W-9 or other documentation that established that the payee is a U.S. person and established that the payee is an exempt recipient for purposes of chapter 61. Comments from U.S. withholding agents indicated that the burden of documenting such payees that have previously been classified as U.S. persons is both significant and disproportionate to the benefits of obtaining documentation of U.S. status. In response to these comments, these temporary regulations modify the final regulations to allow withholding agents (other than a participating FFI or registered deemed-compliant FFI) to treat the payee of a payment with respect to a preexisting obligation as a U.S. person if the withholding agent has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through documentation or the application of the rules in § 1.6049-4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

4. Identification of Participating FFIs and Registered Deemed-Compliant FFIs

The final regulations generally provide that a withholding agent may only treat a payee as a participating FFI or registered deemed-compliant FFI if the withholding agent receives an appropriate withholding certificate and a GIIN. The final regulations also provide a transitional rule for when withholding agents may treat payments made prior to January 1, 2017, with respect to a preexisting obligation, as made to a payee that is a participating FFI or registered deemed-compliant FFI. Under this rule the payee only needs to provide the withholding agent with its GIIN (which the withholding agent must verify) and indicate whether the FFI is a participating FFI or a registered deemed-compliant FFI. After further consideration and to coordinate with the rules under chapters 3 and 61, these temporary regulations modify the final regulations to provide that in such cases the payee must also have provided the withholding agent with a pre-FATCA Form W-8, as payees that receive U.S. source FDAP income would have already been required to provide a withholding certificate to a withholding agent. These temporary regulations further clarify the final regulations such that, when a participating FFI or a registered deemed-compliant FFI has a branch (including a disregarded entity of the FFI) that is located outside of the

FFI's country of residence and receives the payment, the GIIN of the branch (or disregarded entity) must be disclosed on the withholding certificate.

5. Identification of Excepted NFFEs—Identifying a Direct Reporting NFFE, Identifying a Sponsored Direct Reporting NFFE, and Identification of an Excepted Inter-Affiliate FFI

These temporary regulations provide that direct reporting NFFEs and sponsored direct reporting NFFEs qualify as excepted NFFEs. Consistent with this change, these temporary regulations add to the final regulations identification rules with respect to direct reporting NFFEs and sponsored direct reporting NFFEs. Additionally, under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations with respect to an excepted inter-affiliate FFI to allow such FFIs to hold depository accounts to pay for expenses in the country in which the FFI is operating and that are maintained within the same country. Accordingly, conforming changes have also been made by these temporary regulations to add identification rules with respect to an excepted inter-affiliate FFI. An identification rule was not necessary under the final regulations because an excepted inter-affiliate FFI was not allowed to hold an account with a withholding agent other than a member of its expanded affiliated group.

E. Standards of Knowledge

1. GIIN Verification

The final regulations provide that, under certain circumstances, a withholding agent has reason to know that a payee is not a financial institution. To clarify a potential ambiguity, these temporary regulations provide that a withholding agent has reason to know that a withholdable payment is being made to a limited branch of a participating or registered deemed-compliant FFI when it is directed to make payment to an address of the FFI in a jurisdiction other than the address of the participating FFI or registered deemed-compliant FFI (or branch of such FFI) that is identified as

the FFI (or branch of such FFI) that is supposed to receive the payment. These temporary regulations further provide special rules regarding a direct reporting NFFE and a sponsored direct reporting NFFE's claim of chapter 4 status.

2. Reason to Know

Under chapter 4, a withholding agent may not rely on an FFI's claim of chapter 4 status if the withholding agent has reason to know that such claim is unreliable or incorrect. Under the final regulations, the withholding agent is required to review information used to satisfy AML due diligence requirements in determining whether a claim of chapter 4 status was unreliable or incorrect. In response to comments, these temporary regulations modify the final regulations such that when a withholding agent has classified a person by business type for AML due diligence or another regulatory purpose (other than for a tax purpose) that requires the withholding agent to periodically monitor or update the classification, the withholding agent will have reason to know that information contained in its account files conflicts with the person's claim of chapter 4 status only if the classification recorded by the withholding agent is inconsistent with the chapter 4 status claimed. Comments also requested additional time to review the information collected for AML due diligence because it is typically gathered and stored by a different department or division of the withholding agent and is not linked to the customers' account files. These temporary regulations adopt this comment and allow 30 days to review information collected for AML due diligence for new accounts.

The final regulations also provide due diligence requirements with respect to U.S. indicia of account holders for payments made with respect to preexisting obligations. After further consideration, the temporary regulations modify these provisions such that the U.S. indicia-based due diligence requirements generally do not apply to a withholding agent that has previously documented an account for purposes of chapter 3 or chapter 61. However, under the temporary regulations, a withholding agent that applies the limits on reason to know described in chapter 3 or chapter 61 must review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person. A cross-reference in § 1.1471-3(e)(4)(viii)(A)(4) has also been corrected.

F. Presumptions Regarding Chapter 4 Status of the Person Receiving the Payment in the Absence of Documentation

The Treasury Department and the IRS intend for the chapter 4 presumption rules for determining the status of a person as an individual or an entity and as U.S. or foreign to be identical to the presumption rules in chapters 3 and 61. To ensure coordination of these rules, these temporary regulations modify the final regulations by cross-referencing the presumption rules under chapter 3, rather than restating the rules in detail. This change ensures coordination between the presumption rules in chapter 3 and chapter 4 in the event that the chapter 3 presumption rules are modified.

V. Comments and Changes to § 1.1471-4—FFI Agreement

A. Withholding Requirements

1. Satisfaction of Withholding Requirements—Election To Withhold Under Section 3406

As announced in Notice 2013-69, these temporary regulations modify the final regulations to coordinate withholding under chapter 4 and backup withholding under section 3406. Under § 1.1474-6(f), a participating FFI that makes a withholdable payment that is also a reportable payment to a recalcitrant account holder is not required to apply backup withholding under section 3406 if it withholds on the payment under chapter 4. A reportable payment that is not subject to withholding under chapter 4 remains subject to backup withholding under section 3406. Additionally, these temporary regulations provide under § 1.1471-4(b)(3)(iii) that a participating FFI may satisfy its chapter 4 withholding obligations for a withholdable payment that is a reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding if the participating FFI elects for backup withholding under section 3406 to apply (rather than withholding under chapter 4 with regard to such payees). A participating FFI will not be able to make the election to backup withhold under § 1.1471-4(b)(3)(iii) unless it is able to report on the payment and tax withheld consistent with the rules under chapter 61 and section 3406.

2. Special Rule for Dormant Accounts

With respect to dormant accounts of recalcitrant account holders, the final regulations permit a participating FFI to

escrow amounts withheld under chapter 4 rather than deposit such amounts with the IRS. To coordinate with the chapter 3 and 61 regulations which would have required such amounts to be withheld upon, the temporary regulations limit this allowance to amounts not otherwise subject to withholding under chapter 3 or backup withholding under section 3406. In addition, a participating FFI may not delegate its responsibility to escrow the withheld tax to the withholding agent from which it receives the payment. These modifications are intended to harmonize the treatment of such escrowed amounts under chapters 3 and 4 and are consistent with the provisions of the FFI agreement.

B. Due Diligence for the Identification and Documentation of Account Holders and Payees

1. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—U.S. Indicia and Relevant Documentation Rules—Documentation to be Retained Upon Identifying U.S. Indicia—Standing Instructions to Pay Amounts

The final regulations provide a cure for standing instructions to pay amounts to an account maintained in the United States for an account holder that differs from the cure provided under chapter 3. These temporary regulations modify the final regulations to provide an option to follow the chapter 3 rules by adding a cross-reference to § 1.1441-7(b)(12).

2. Identification and Documentation Procedure for Preexisting Individual Accounts—Specific Identification and Documentation Procedures for Preexisting Individual Accounts—Exception for Preexisting Individual Accounts Previously Documented as Held by Foreign Individuals

The final regulations provide that a participating FFI that has previously established an account holder's status as foreign in order to fulfill its reporting obligations as a U.S. payor under chapter 61 is not required to perform an electronic search or enhanced review. Comments requested that this exception be extended to the identification and documentation performed by an agent of a participating FFI that is a U.S. payor. To address these comments and to further coordinate between the IGAs and the regulations, these temporary regulations modify the final regulations to adopt this comment.

C. Account Reporting

1. Reporting Requirements In General—Financial Institution Required to Report an Account—Special Reporting of Account Holders of Territory Financial Institutions

Section 1.1471–4(d)(2)(ii)(B) provides a special reporting rule for participating FFIs that maintain an account held by a territory financial institution acting as an intermediary. If such territory financial institution agrees to be treated as a U.S. person, the participating FFI is not required to report under § 1.1471–4 with respect to the account holders of the territory financial institution because such entities will report directly to the IRS. However, if the territory financial institution does not agree to be treated as a U.S. person, the final regulations require the participating FFI to report under § 1.1471–4 with respect to each account holder of the territory financial institution that receives a withholdable payment (or portion thereof) and that is a specified U.S. person or substantial U.S. owner of a foreign entity (indirect account holders). The final regulations are ambiguous about how a participating FFI could report on these indirect account holders. To provide more clarity with respect to the reporting requirements and to provide additional flexibility, the temporary regulations give participating FFIs the option of reporting on these indirect account holders on either Form 8966 or Form 1099. Additionally, these temporary regulations clarify the scope of information that must be reported by a participating FFI on Form 8966 or Form 1099 with respect to account holders of a territory financial institution that has not elected to be treated as a U.S. person.

2. Reporting Requirements In General—Financial Institution Required to Report an Account—Requirement To Identify the GIIN of a Branch That Maintains an Account

The final regulations provide that a participating FFI may elect to comply with its obligation to report under § 1.1471–4(d)(3) or § 1.1471–4(d)(5) on a branch-by-branch basis. After further consideration, the temporary regulations provide that a participating FFI may report under § 1.1471–4(d)(3) or § 1.1471–4(d)(5) with respect to all of the participating FFI's U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). Consistent with the final regulations, a participating FFI

must include the GIIN assigned to the participating FFI or its branch (including a disregarded entity of the FFI), as applicable, to identify the jurisdiction of the FFI or branch (or disregarded entity) that maintains the accounts subject to reporting.

3. Reporting Requirements In General—Financial Institution Required To Report an Account—Reporting by Participating FFIs and Registered Deemed-Compliant FFIs (Including QIs, WPs, WTs, and Certain U.S. Branches Not Treated as U.S. Persons) for Accounts of Nonparticipating FFIs (Transitional)

The final regulations provide transitional reporting requirements for a participating FFI or registered deemed-compliant FFI making a payment of a foreign reportable amount to a nonparticipating FFI. Under § 1.1474–1(d)(4)(iii)(C) of the final regulations, a participating FFI is required to report the aggregate amount of foreign reportable amounts paid to each payee that is a nonparticipating FFI, even when such payments are not associated with a financial account. The final regulations define foreign reportable amount as a payment of FDAP income that would be a withholdable payment if paid by a U.S. person. Comments requested changes and clarification with respect to the transitional rule because it was unclear regarding the scope of payments subject to reporting and because of the cost of modifying systems to comply with this reporting rule. These temporary regulations continue to provide transitional reporting rules, but, consistent with Notice 2013–69, modify it to address these comments. First, the temporary regulations clarify that reporting will be required only with respect to nonparticipating FFIs that maintain an account with the participating FFI. Second, these temporary regulations modify the definition of foreign reportable amount to mean foreign source payments as described in § 1.1471–4(d)(4)(iv) paid to or with respect to each such account. Third, the temporary regulations provide that instead of reporting only foreign reportable amounts paid to such nonparticipating FFIs, a participating FFI may report all payments made with respect to the account (not only foreign reportable amounts). Fourth, the temporary regulations provide that, when a participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI and the participating FFI has been unable to obtain such consent, it may report the aggregate number of accounts held by

all such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts. These temporary regulations also modify the final regulations to provide that the information required under the transitional reporting rule will be provided on Form 8966, not Form 1042–S, “Foreign Person’s U.S. Source Income Subject to Withholding,” and accordingly move the transitional rule to § 1.1471–4(d)(2)(ii)(F) and delete a residual paragraph in § 1.1474–1(d)(3)(iii) and renumber (d)(3)(iv) through (d)(3)(x). These changes were previously announced in Notice 2013–69 and are also included in the final FFI agreement. Finally, the temporary regulations require participating FFIs to retain account statements for accounts maintained for such nonparticipating FFIs.

4. Reporting Requirements In General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rule for U.S. Payors Other Than U.S. Branches

The final regulations provide that a participating FFI that is a U.S. payor (other than a U.S. branch) is treated as satisfying its chapter 4 reporting obligations with respect to accounts that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs if it reports the information required under chapter 61 and the information described under § 1.1471–4(d)(5)(ii) (requiring additional information on accounts held by specified U.S. persons, U.S. owned foreign entities that are NFFEs, and owner-documented FFIs). In response to comments, the temporary regulations modify the final regulations to allow a participating FFI that is a U.S. payor to satisfy its chapter 4 reporting obligations with respect to its U.S. accounts or accounts held by owner-documented FFIs either by reporting the information described in chapter 61 and § 1.1471–4(d)(5)(ii) or (iii) (the information reporting would be made on Form 1099 for U.S. accounts that are not U.S. owned NFFEs), as provided in the final regulations, or by reporting the information described in § 1.1471–4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) (the information reporting would be made on Form 8966). A participating FFI that reports the information described in § 1.1471–4(d)(3)(ii), (d)(3)(iii) or (d)(3)(iv) and that is required to report payments under chapter 61 is not relieved of that obligation.

5. Reporting Requirements in General—Special U.S. Account Reporting Rules for U.S. Payors—Special Reporting Rules for U.S. Branches Not Treated as U.S. Persons

The final regulations do not include a rule for reporting by a U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person. To correct this oversight, these temporary regulations add new § 1.1471-4(d)(2)(iii)(C) to provide that such a U.S. branch is treated as having satisfied its reporting requirements under chapter 4 if it reports the information required under chapter 61 with respect to account holders of accounts that the U.S. branch is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

6. Reporting on Recalcitrant Account Holders—Extensions in Filing

In response to comments, the temporary regulations modify the final regulations to provide an automatic 90-day extension of time in which to file Form 8966 with respect to recalcitrant account holders. An additional 90-day hardship extension may be provided in certain circumstances. These revisions are consistent with the extensions of time already permitted for filing Form 8966 with respect to U.S. accounts.

7. Treatment of a Disregarded Entity

In response to comments and in order to address a potential ambiguity in the final regulations about whether a disregarded entity that is owned by an FFI is treated as a branch of an FFI, these temporary regulations clarify that the term branch with respect to an FFI includes an entity that is disregarded as an entity separate from the FFI. This clarification was previewed in the draft FFI agreement which was published in Notice 2013-69. These temporary regulations make additional changes throughout the final regulations to further clarify the treatment of a disregarded entity when such an entity is treated as a branch of an FFI. For example, the GIIN verification procedures that apply with respect to a branch of an FFI also apply with respect to a disregarded entity that is owned by an FFI. Additionally, a disregarded entity that is owned by an FFI may be treated as a limited branch if the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains, and the reason to know standards that apply to withholdable payments made to a branch of a participating or registered deemed-compliant FFI also

apply to withholdable payments made to a disregarded entity that is owned by such an FFI.

D. Expanded Affiliated Group Requirements

The final regulations require that, in general, each FFI within an expanded affiliated group must be either a participating FFI or a registered deemed-compliant FFI. Comments noted that some FFIs within an expanded affiliated group will have the status of an exempt beneficial owner and requested that the regulations be modified to allow for such FFIs to be excluded from this requirement. The temporary regulations modify the final regulations to adopt this comment.

E. Verification—IRS Review of Compliance

The final regulations allow the IRS to request additional information in its review of Form 8966. The temporary regulations further allow the IRS to request additional information to determine an FFI's compliance with the applicable FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

F. Event of Default

The final regulations define events of default under an FFI agreement. This definition includes the failure to significantly reduce, over a period of time, the number of recalcitrant account holders and payees that are nonparticipating FFIs. Comments were made that this language was ambiguous and could imply an event of default, for example, even in circumstances in which an FFI consistently complies with the regulatory due diligence procedures. Accordingly, in response to the comments, these temporary regulations modify the final regulations to provide that this event of default consists of a failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees.

VI. Comments and Changes to § 1.1471-5—Definitions Applicable to Section 1471

A. U.S. Accounts—Account Holder—in General; Grantor Trust

The definition of account holder in the final regulations does not treat a grantor trust as an account holder to the

extent that the grantor is treated as owning the trust or all the assets in the trust under sections 671 through 679, regardless of whether the grantor is a U.S. or foreign person. If such grantor is a foreign person and the beneficiary of the trust is a U.S. person, the grantor is treated as the account holder and consequently, the account is a non-U.S. account and no beneficiary that is a specified U.S. person is treated as having an interest in the portion of the trust owned by the grantor. Therefore, the specified U.S. person is not an account holder and would not be reported even though such U.S. person might be a substantial U.S. owner of the foreign grantor trust. Further, for purposes of determining whether a foreign grantor trust has a substantial U.S. owner (and is a U.S. account), the final regulations provide that a substantial U.S. owner is any specified U.S. person treated as owning any portion of the grantor trust under sections 671 through 679, and a trust owned only by U.S. grantors is not treated as having a beneficiary that is a specified U.S. person. Thus, in contrast to the account holder rule, the test for determining a substantial U.S. owner of a trust is made without regard to the treatment of the settlor of the trust as a foreign grantor under sections 671 through 679. In response to requests for further clarification, these temporary regulations remove the grantor trust rule in the definition of account holder in the final regulations so that the general rule for treating an entity as an account holder will apply to treat a grantor trust as the account holder. Accordingly, a grantor trust that holds an account must provide documentation of its chapter 4 status as a FFI or NFFE. This change harmonizes the treatment of a grantor trust as an account holder for purposes of the chapter 4 withholding provisions with the provisions in chapters 3 and 61, which treat a grantor trust, rather than the grantor, as the payee.

B. Financial Accounts—Value of Interest Determined, Directly or Indirectly, Primarily by Reference to Assets That Give Rise (or Could Give Rise) to Withholdable Payments, and Return Earned on the Interest (Including Upon a Sale, Exchange, or Redemption) Determined, Directly or Indirectly, Primarily by Reference to one or More Investment Entities or Passive NFFEs

While financial accounts generally include equity or debt interests (other than regularly traded interests) in investment entities, financial accounts include only certain enumerated categories of interests in holding companies, treasury centers, and other

financial institutions. Among the enumerated categories are certain equity and debt interests whose return or value is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. The final regulations provide that a debt interest is considered to have a value determined primarily by reference to such assets if the debt interest is secured by the assets of a U.S. person. The final regulations provide that an equity interest is considered to have a value determined primarily by reference to such assets if the amount payable upon redemption of the equity interest is secured primarily by assets that give rise (or could give rise) to withholdable payments. A similar provision under another enumerated category treating certain interests in holding companies and treasury centers as financial accounts (see §§ 1.1471–5(b)(1)(iii)(B)(2) and (3)) also applies to a debt interest secured by the assets of one or more investment entities described in §§ 1.1471–5(e)(4)(i)(B) or (C) or one or more passive NFFE that are members of the entity's expanded affiliated group (collectively, the secured equity and debt provisions).

Comments have suggested that these provisions are overbroad because it is questionable whether the value of, or return earned on, a debt or equity interest is determined primarily by reference to assets of a U.S. person solely because the debt or equity interest is secured by such assets. In response to these comments, these temporary regulations modify the final regulations by eliminating the secured equity or debt provisions. The facts and circumstances may nonetheless lead to a conclusion that the value of a secured equity or debt interest is determined, directly or indirectly, primarily by reference to assets giving rise to withholdable payments (for example, when the amount payable as interest on, or upon redemption or retirement of, a debt interest is determined primarily by reference to the assets securing the debt interest).

In addition, the final regulations provide that a debt interest is considered to have a value determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments if amounts payable as interest on, or upon redemption or retirement of, the debt are determined primarily by reference to the profits or assets of a U.S. person. This provision inadvertently did not address whether debt interests with amounts payable by reference to equity interests in a U.S. person are debt interests whose return or value is

determined primarily by reference to assets that give rise (or could give rise) to withholdable payments. To correct this omission, the temporary regulations modify the final regulations to include a reference to equity interests in, as well as profits and assets of, a U.S. person.

C. Definition of Financial Institution

1. In General

The final regulations provide that the definition of financial institution includes a holding company or treasury center that is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity. Comments noted that the definition, with respect to an insurance company, should be limited to a specified insurance company which is itself a financial institution. These temporary regulations correct the final regulations to treat a holding company or treasury center as a financial institution if it is part of an expanded affiliated group that includes a specified insurance company.

2. Holding Financial Assets for Others as a Substantial Portion of Its Business—Income Attributable To Holding Financial Assets and Related Financial Services

The final regulations provide that an entity is a custodial institution if at least 20 percent of the entity's gross income is attributable to holding financial assets for others and related financial services. The final regulations define income attributable to holding financial assets to include, among other things, fees for providing financial advice. As a result, an entity could qualify as a custodial institution under the final regulations even if the entity's sole business is to provide financial advice to clients and it does not conduct any activities as a custodian or broker. Comments indicated that this definition is overly broad and could cause entities that do not hold financial assets and therefore have no financial accounts to be treated as custodial institutions. In response, these temporary regulations modify the final regulations to define income attributable to holding financial assets to include fees for providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

3. Investment Entity—Examples

The final regulations generally provide that an investment entity includes an entity whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets

and that is managed by another entity that primarily conducts as a business certain investment-related activities. Examples 7 and 8 in § 1.1471–5(e)(4)(v) are clarified such that a foreign introducing broker does not manage an entity if it does not have discretionary authority to manage its clients' assets. However, even though these facts have been added to Examples 7 and 8, the results in Examples 7 and 8 remain the same. In Example 7, even when the introducing broker has discretionary authority to act unilaterally on its client's behalf with respect to its client's investments, because the introducing broker is an individual, the entity that she manages would not be treated as an investment entity under § 1.1471–5(e)(4)(i)(B). By comparison, because the introducing broker in Example 8 is an entity that primarily conducts as a business certain investment related activities, the entity managed by the introducing broker would be treated as an investment entity under § 1.1471–5(e)(4)(i)(B).

4. Exclusions—Excepted Nonfinancial Group Entities—In General

The final regulations provide that a holding company, treasury center, or captive finance company will not qualify as an excepted nonfinancial group entity if, among other things, it is formed in connection with or availed of certain arrangements or investment vehicles. Comments requested additional guidance on what it means to be "formed in connection with or availed of." The temporary regulations modify the final regulations such that any entity that existed at least six months prior to its acquisition by an arrangement or investment vehicle and which, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to be formed in connection with or availed of such an arrangement or investment vehicle, in the absence of other facts suggesting the existence of an investment strategy.

5. Exclusions—Excepted Nonfinancial Group Entities—Nonfinancial Group

For purposes of determining whether an expanded affiliated group is a nonfinancial group, the final regulations provide an income test for the three-year period preceding the year for which the determination is made. Comments requested: (i) That this exclusion also be applicable if the expanded affiliated group has been in existence for less than three years and (ii) that a group would qualify if it meets the income test over an average of three years (rather than having to meet the test in each of the

three preceding years). The Treasury Department and the IRS have determined that the exclusion should be available to expanded affiliated groups that have been in existence for less than three years, and these temporary regulations modify the final regulations accordingly. The Treasury Department and the IRS continue to believe, however, that only expanded affiliated groups that meet the income test in each year of the testing period should qualify for the exclusion.

In order to provide further clarification when determining the percentage of income or assets of the group that produce or are held for the production of passive income, these temporary regulations also modify the final regulations by excluding transactions between members of the expanded affiliated group. In addition, these temporary regulations provide guidance on measuring the value of such assets.

6. Exclusions—Excepted Nonfinancial Group Entities—Holding Company

Comments requested that, for purposes of determining if a holding company is part of an excepted nonfinancial group, a trust or partnership that owns all the stock of a common parent corporation of an expanded affiliated group be eligible for treatment as a holding company and member of an excepted nonfinancial group. Otherwise, such entities are not treated as part of the expanded affiliated group and cannot qualify for such exception. These temporary regulations modify the final regulations to allow a partnership or other non-corporate entity to be treated as a holding company (and therefore as a potential member of an excepted nonfinancial group) if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of two or more corporations and each such corporation has its own subsidiaries such that it is the common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate such group for purposes of applying the rules of this section unless the non-corporate entity is treated as the common parent entity of the entire expanded affiliated group in accordance with § 1.1471–5(i)(10).

7. Exclusions—Excepted Nonfinancial Group Entities—Treasury Center

Comments were received that the definition of a treasury center in the final regulations is too narrow in that an entity that manages working capital but does not otherwise invest or trade may not satisfy this definition. For example, a group's cash pooling entity may be in a net deficit position and therefore may not be considered to be investing or trading in financial assets. In addition, with respect to the financing activities of such a vehicle, the final regulations could be read to limit situations in which an entity that is itself equity funded can qualify as a treasury center. In response to these comments, the temporary regulations modify the final regulations to clarify that an entity that manages the working capital of an expanded affiliated group (or any member thereof) will not cease to qualify as a treasury center solely because it has no investments and does not trade in financial assets. Further, the temporary regulations clarify that equity-funded affiliates may qualify as treasury centers.

8. Exclusions—Excepted Inter-Affiliate FFI

Under the final regulations, a financial institution does not include certain foreign entities that are considered excepted inter-affiliate FFIs. One of the requirements for such an entity is that it does not receive payments from, or hold an account with, a withholding agent other than a member of its expanded affiliated group. Comments requested that such entities be permitted to hold bank accounts with certain non-U.S. persons outside of the expanded affiliated group. The temporary regulations modify the final regulations to allow such entities to hold depository accounts maintained in the country in which the entity is operating to pay for expenses in that same country.

D. Deemed-Compliant FFIs

1. Registered Deemed-Compliant FFIs—Restricted Funds

Under chapter 4, interests in a restricted fund that are not issued directly by the fund can only be sold through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks, or restricted distributors. In response to comments, even though these temporary regulations do not eliminate the requirement of the restricted fund to terminate its agreement with any distributor that has a change in status that causes it to no

longer qualify to be a distributor and redeem or transfer all debt and equity interests of the FFI issued through that distributor, these temporary regulations do remove the requirement that the restricted fund certify to the IRS.

2. Registered Deemed-Compliant FFIs—Qualified Credit Card Issuers and Servicers

Comments were received that an FFI that issues credit cards may form a separate entity that services the credit cards. Under the final regulations, such an entity could be an FFI, but would not be treated as a registered deemed-compliant FFI because it is not an issuer of credit cards, even though such FFI would otherwise qualify for registered deemed-compliant FFI status. Pursuant to these comments, the temporary regulations expand the registered deemed-compliant FFI category to include qualified credit card servicers.

3. Registered Deemed-Compliant FFIs—Sponsored Investment Entities and Controlled Foreign Corporations

Under the final regulations, an FFI remains liable for its withholding and reporting obligations under chapter 4 even if a sponsoring entity performs these responsibilities on behalf of such FFI. In response to comments, these temporary regulations modify the final regulations to clarify that a sponsoring entity will not be jointly and severally liable for the sponsored FFI's obligations unless the sponsoring entity is also a withholding agent that is separately liable for such obligations.

4. Certified Deemed-Compliant FFIs—Nonregistering Local Bank

The final regulations provide that, in order to be treated as a nonregistering local bank, an FFI's business must consist primarily of receiving deposits from and making loans to unrelated retail customers. Comments noted that the final regulations do not provide a definition of unrelated for this and other purposes. In addition, it may be unclear how the final regulations would apply to a member-owner of a credit union or similar cooperative credit organization. In order to address these concerns, and consistent with the IGAs, these temporary regulations modify the final regulations such that a credit union or similar cooperative credit organization will be eligible for treatment as a nonregistering local bank if its business consists primarily of receiving deposits from and making loans to members, provided that no such member has a greater than five percent interest in such credit union or cooperative credit organization. For purposes of

determining what unrelated means for retail customers of a bank, as well as for purposes of aggregating the interests of related members of a credit union or cooperative credit organization under the five percent test, the temporary regulations provide that the rules of section 267(b) apply.

5. Certified Deemed-Compliant FFIs—Limited Life Debt Investment Entities (Transitional)

Comments were received stating that most securitization investment vehicles could not meet the requirements in the final regulations for a limited life debt investment entity (LLDIE) to be treated as certified deemed-compliant FFIs. To accommodate industry practices and expand the types of securitization vehicles that will qualify as a LLDIE, these temporary regulations make a number of significant changes to the definition of LLDIE in the final regulations. These changes include: (i) Removing the requirement that a LLDIE's organizational documents cannot be amended without the consent of all of its investors; (ii) clarifying that a LLDIE issues debt or equity interests under a trust indenture or similar agreement; (iii) extending the category so that it applies to a LLDIE that issued all of its interests on or before January 17, 2013 (for example, the date that the final regulations were filed); (iv) allowing a LLDIE to be treated as a certified deemed-compliant FFI until the LLDIE liquidates or terminates; (v) removing the requirement that investors be unrelated to each other; and (vi) expanding the types of assets that the entity can hold and still qualify as a LLDIE.

6. Certified Deemed-Compliant FFIs—Investment Advisors and Investment Managers

In response to comments, and to coordinate with the IGAs, these temporary regulations add certain investment advisors and investment managers that do not maintain financial accounts as entities eligible for treatment as certified deemed-compliant FFIs. Accordingly, these temporary regulations also add identification rules with respect to such investment advisors and investment managers.

7. Related Persons

Certain provisions in the final regulations (such as §§ 1.1471–3(c)(9)(ii)(B); 1.1471–5(f)(2)(i)(B); 1.1471–5(f)(4)(i); and 1.1471–5(i)(6)(i)) use the term *related* or *unrelated* to describe a relationship between parties. Comments noted that the final regulations do not define what is meant

by *related*. These temporary regulations generally amend the relevant paragraphs of the final regulations to provide that parties are related for purposes of the relevant paragraph when such parties have a relationship described in section 267(b).

E. Expanded Affiliated Group

Comments requested that a LLDIE not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity. These comments indicated that because interests in these entities are generally held through a clearing organization, these entities often would not be able to determine the identity of their investors. In addition, comments noted the burden of monitoring ownership changes for the purpose of determining when to include or exclude a LLDIE as a member of an expanded affiliated group, and the potential adverse consequences to the rest of the group in the event that any such entity is not properly included. Comments also stated that the definition of expanded affiliated group in the final regulations presents challenges with respect to non-corporate entities that are within a chain of commonly controlled corporations. For example, the final regulations do not clearly indicate whether constructive ownership rules apply to determine whether a non-corporate entity is controlled by a member of the group. In response to these comments, these temporary regulations modify the definition of expanded affiliated group to exclude from the group pre-existing LLDIEs (for example, a LLDIE that issued all of its interests, and was in existence, on or before January 17, 2013) and clarify the ownership rules applicable to corporate and non-corporate members of the group. These temporary regulations also permit (but do not require) a non-corporate entity to be treated as the common parent entity of the expanded affiliated group.

VII. Comments and Changes to Section 1.1471–6—Payments Beneficially Owned by Exempt Beneficial Owners—Foreign Central Bank of Issue

Comments were received stating that the functions of a foreign central bank of issue may be performed by an institution other than a bank. In response to these comments and in order to coordinate the regulations with the IGAs, these temporary regulations modify the final regulations to include an institution performing such functions within the definition of a foreign central bank of issue. In addition, comments stated that a foreign central bank of

issue may earn income from cash as well as securities. Accordingly, the temporary regulations allow a foreign central bank of issue to be a beneficial owner with respect to income earned on cash.

Comments also stated that some foreign central banks maintain depository accounts solely for their employees. These comments requested that such employee-only accounts not be treated as accounts held in connection with commercial activities. The Treasury Department and the IRS believe there is a low risk of tax evasion with respect to such employee accounts, and that the burden on central banks to register as an FFI for these activities and provide documentation as intermediaries would be disproportionately high. Therefore, the temporary regulations modify the final regulations to exclude maintaining such accounts from the definition of commercial activities.

VIII. Comments and Changes to Section 1.1472–1—Withholding on NFFE

A. Exceptions—Payments to an Excepted NFFE—Active NFFEs

Comments noted that fiscal year financial statements may not be used in determining whether an entity is an active NFFE. These comments noted that preparing calendar year financial statements for entities using non-calendar fiscal years would cause significant burdens without commensurate benefits. Therefore, these comments suggested that an entity be able to use either its calendar or fiscal year in analyzing whether the entity meets the active NFFE test. Comments further suggested that an entity be allowed to use financial statements based on foreign accounting principles. These comments have been adopted and these temporary regulations modify the final regulations accordingly.

B. Exceptions—Payments Made to an Excepted NFFE

After further consideration, these temporary regulations provide that QIs, WPs, and WTs are treated as excepted NFFEs.

C. Exceptions—Payments to an Excepted NFFE—Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs

These temporary regulations provide that excepted NFFE includes a NFFE that is a direct reporting NFFE or sponsored direct reporting NFFE. A direct reporting NFFE is a NFFE that elects to report on Form 8966 directly to the IRS certain information about its

direct or indirect substantial U.S. owners (or it may be required to certify on Form 8966, or in such other manner as the IRS may prescribe, that it does not have any such substantial U.S. owners) in lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account. A direct reporting NFFE is required to register with the IRS to obtain a GIIN and to agree to comply with the provisions in the regulations regarding reporting information about its substantial U.S. owners. In general, withholding agents and participating FFIs will identify and document a direct reporting NFFE in a manner similar to how withholding agents and participating FFIs will document a participating FFI, including by verifying that the GIIN of the direct reporting NFFE is listed on the IRS FFI List. Notwithstanding that a direct reporting NFFE will document itself to withholding agents and participating FFIs in a manner similar to a participating FFI, it will not be treated as a participating FFI and will not enter into an FFI agreement. Therefore, since the definition of excepted NFFE includes a direct reporting NFFE, an account held by a direct reporting NFFE will not be treated as a U.S. account and will not be reported to the IRS by a participating FFI with which the direct reporting NFFE has a financial account.

In addition, these temporary regulations modify the final regulations such that an entity may act as a sponsor for one or more direct reporting NFFEs. A sponsoring entity will report on Form 8966 directly to the IRS (on the sponsored direct reporting NFFE's behalf) information about each sponsored direct reporting NFFE's direct or indirect substantial U.S. owners. These changes were previously announced in Notice 2013-69 and were made in response to comments.

IX. Changes and Comments to § 1.1473-1—Section 1473 Definitions

A. Definition of Withholdable Payment—U.S. Source FDAP Income Defined—Special Rule for Sales of Interest Bearing Debt Obligations; Gross Proceeds Defined—Payment of Gross Proceeds—Amount of Gross Proceeds

Under the final regulations, income that is otherwise described as U.S. source FDAP income does not include interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates. In order to harmonize this rule with the rules in chapter 3, these temporary regulations provide that this type of interest is not

excluded from U.S. source FDAP income or gross proceeds if the sale or exchange is part of a plan described in the anti-abuse rule under § 1.1441-3(b)(2)(ii).

B. Definition of Withholdable Payment—Payments Not Treated as Withholdable Payments—Offshore Payments of U.S. Source FDAP Income Prior to 2017 (Transitional)

1. In General

The final regulations provide an exclusion from the definition of withholdable payments for certain non-intermediated offshore payments of U.S. source FDAP income prior to 2017. The Treasury Department and the IRS intended to provide that the exclusion does not apply to debt or equity issued by a U.S. person in order to prevent U.S. persons from exploiting this exception by issuing debt or equity interests through a foreign branch. To clarify the issue, these temporary regulations modify the final regulations such that the exclusion does not apply to payments made with respect to debt or equity issued by a U.S. person (excluding a deposit account maintained by a foreign branch of a U.S. financial institution).

Comments indicated that because the defined term *payments with respect to an offshore obligation* is not used in the final regulations, it is unclear whether, in order for this exception to apply, all payments must be made outside the U.S. To clarify, these temporary regulations modify the final regulations to use the defined term.

2. Insurance Brokers

Because the final regulations treat insurance brokers as intermediaries, the transitional rule for offshore payments of U.S. source FDAP income under the final regulations does not apply to insurance and reinsurance premiums paid to foreign insurance companies by non-U.S. insurance brokers. Comments were received stating that the transitional rule should apply to such premiums, because it applies to insurance premiums paid directly by the insured. These temporary regulations provide a transitional rule such that, for purposes of the exception for offshore payments, an intermediary does not include a person acting as an insurance broker with respect to premiums.

C. Definition of Withholdable Payment—Payments Not Treated as Withholdable Payments—Collateral Arrangements Prior to 2017 (Transitional)

Comments requested relief from withholding on payments made by a secured party with respect to collateral securing one or more transactions under a collateral arrangement between the secured party and the counterparty. Comments indicated that general industry practice is to commingle collateral from all counterparties in a single account held by the secured party and that this practice does not permit the identification of collateral to a particular counterparty. As a result, a secured party is currently unable to determine whether it is acting as an intermediary or a principal with respect to some or all of the payments made to the counterparty based upon the secured party's right under a collateral arrangement to sell or loan the collateral to a third party. To allow the industry time to develop the systems necessary to make this determination, these temporary regulations add a transitional rule so that withholding on such payments will begin on January 1, 2017, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement.

D. Substantial U.S. Owner—Indirect Ownership of Foreign Entities—Interests Owned or Held by a Related Person

The final regulations define a substantial U.S. owner to include a specified U.S. person that owns, directly or indirectly, more than 10 percent of a foreign corporation, partnership, or trust. Ownership is determined by aggregating interests held by related persons, applying certain provisions of the regulations under section 267 to determine whether such persons are related. These temporary regulations clarify that a person must have direct or indirect ownership in the entity before the aggregation rules apply, such that a substantial U.S. owner does not include an individual with no ownership interest other than an interest attributed to him from a related person.

X. Changes and Comments to § 1.1474-1—Liability for Withheld Tax and Withholding Agent Reporting

A. Information Returns for Payment Reporting—Filing Requirement—in General

The final regulations provide a general statement that a withholding agent needs to file a Form 1042-S to report a chapter 4 reportable amount,

even though there are exceptions to this rule, such as the exception applicable to a participating FFI that provides its withholding agent with sufficient information for it to do the reporting. The final regulations have been modified to qualify this language.

The final regulations also provide that a recipient copy of the Form 1042-S may include more than one type of income, which would thus display information differently than the copy filed with the IRS. For refund purposes, it is important for the IRS to match the recipient copy of the Form 1042-S to the copy filed with the IRS. As previewed in the draft Form 1042-S instructions released on November 1, 2013, and to coordinate with the regulations under chapter 3, these temporary regulations remove the allowance for withholding agents to include more than one type of income or other payment on the copy of the Form 1042-S furnished to the recipient.

However, to allow sufficient time for withholding agents to adapt to this change to the final regulations, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of the Form 1042-S for calendar year 2014. Starting with calendar year 2015, the Form 1042-S and accompanying instructions will require a separate Form 1042-S for each type of income or other payment.

B. Information Returns for Payment Reporting—Filing Requirement—Recipient—Defined; Persons That Are Not Recipients

For Form 1042-S reporting, the final regulations provide that an excepted NFFE that is not acting as an agent or intermediary with respect to the payment is the recipient of the payment in question. However, if such entity is a flow-through entity, it is not treated as a recipient on the Form 1042-S for chapter 3 purposes. In order to have a consistent definition of recipient for chapters 3 and 4 reporting purposes (because reporting for both chapters is performed on a single Form 1042-S), these temporary regulations modify the final regulations by providing that an excepted or passive NFFE that is a flow-through entity is not treated as a recipient. Also, the final regulations have been modified to remove the provision indicating that a participating FFI or registered deemed-compliant FFI is not a recipient when it fails to provide information to the withholding agent regarding its reporting pools, which is reflected on Form 1042-S. These temporary regulations further remove the references to a participating

FFI, registered deemed-compliant FFI, and U.S. branch that is not treated as a U.S. person from the definition of persons that are not recipients.

C. Information Returns for Payment Reporting—Amounts Subject To Reporting—in General

These temporary regulations make a correction to the definition of the term *chapter 4 reportable amount* in § 1.1474-1(d)(2) to add that this amount must also be a withholdable payment.

D. Information Returns for Payment Reporting—Method of Reporting—Payments by U.S. Withholding Agents to Recipients—Payments To Participating FFIs, Deemed-Compliant FFIs, and Certain QIs

Consistent with changes made by these temporary regulations to clarify the chapter 4 withholding rate pools, the final regulations are modified to clarify that a withholding agent that receives an FFI withholding statement from a participating FFI or registered deemed-compliant FFI [must report with respect to each such pool identified on the FFI withholding statement] on a separate Form 1042-S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool identified on an FFI withholding statement.

XI. Comments and Changes to § 1.1474-6—Coordination of Chapter 4 With Other Withholding Provisions

These temporary regulations add a coordination rule for instances in which a participating FFI withholds under chapter 4 on a payment made to a recalcitrant account holder that is a U.S. non-exempt recipient, and such payment is also a reportable amount subject to backup withholding. The rule is applicable to cases in which the participating FFI does not elect to withhold on the payment under section 3406.

XII. Future Guidance

A. Verification Requirements of Sponsoring Entities

Regulations describing the verification requirements of sponsoring entities will be proposed and issued separately from these temporary regulations. Under the proposed regulations, a sponsoring entity will be required to make two separate compliance certifications: one on behalf of its sponsored FFI or sponsored direct reporting NFFE with respect to the sponsored FFI's compliance with the requirements of an FFI agreement or the sponsored direct reporting NFFE's

election to be treated as a direct reporting NFFE (as applicable), and a second certification on the sponsoring entity's own behalf with respect to its compliance with the requirements of its status as a sponsoring entity. In addition, the verification requirements in the proposed regulations will allow the IRS to request additional information from a sponsoring entity, such as regarding the information reported on the forms filed with the IRS with respect to a sponsored FFI or sponsored direct reporting NFFE in order to review such entities' compliance with the requirements for maintaining their status as a sponsored FFI or sponsored direct reporting NFFE, and to assist the IRS with its review of account holder or substantial U.S. owner compliance with tax reporting requirements.

B. FFI Agreement

Several changes made by these temporary regulations are not reflected in and may be inconsistent with certain provisions in the FFI agreement. As a result, the Treasury Department and the IRS intend to publish a revenue procedure revising the FFI agreement to conform to these regulations. For instance, the rules regarding an optional escrow by a participating FFI of tax withheld on withholdable payments to dormant accounts held by recalcitrant account holders are modified in these temporary regulations. The FFI agreement will be revised to reflect that the tax withheld in escrow becomes due 90 days after the date that the account ceases to be a dormant account, rather than the date that is the earlier of 90 days or the end of the calendar year following the date that the account ceases to be a dormant account.

In addition, cross references to the temporary regulations under chapters 3, 4, and 61 will be updated to reflect changes to the numbering of various sections of those temporary regulations after the date of publication of the revenue procedure containing the FFI agreement. For example, cross references in the FFI agreement to terms defined in the chapter 4 temporary regulations will be modified to reflect the addition of the term reporting Model 2 FFI and the renumbering of subsequent sections in § 1.1471-1(b). In addition, an incorrect citation to § 1.6049-4(b)(6) will be removed.

The FFI agreement will also be revised to reflect a change to the reporting requirements by participating FFIs that elect to backup withhold under section 3406 rather than to withhold under chapter 4 on a withholdable payment that is a

reportable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient subject to backup withholding. These temporary regulations clarify that a participating FFI may make the election to apply backup withholding under section 3406 with respect to an account holder only if it complies with the information reporting rules under chapter 61 and section 3406. Accordingly, various sections of the FFI agreement will be modified to reflect this change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has 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 temporary regulations is contained in a number of provisions including §§ 1.1471–3, 1.1471–4, 1.1472–1, 1.1474–1, and 1.1474–6. In addition, these temporary regulations amend a number of collections of information set out in TD 9610. The IRS intends that the information collection requirements of these temporary regulations will be satisfied by filing Forms 8957, 8966, the W–8 series of forms, W–9, 1042, 1042–S, the 1099 series of forms, as well as income tax returns (for example, Forms 1040 and 1120F) and Form 843 relating to refunds. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these temporary regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

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

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

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that an agency prepare a costs and benefits analysis and a budgetary impact statement before promulgating a rule that may result in the expenditure by State, local, and

tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Treasury Department and the IRS have determined that there is no federal mandate imposed by this rulemaking that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara Ferris, Nancy Lee, Michael Kaercher, and Kamela Nelan of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues 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 1.1471–3 is also issued under 26 U.S.C. 1473.

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

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

■ **Par. 2.** Section 1.1471–1 is amended:

■ 1. By removing paragraph (b)(81).

■ 2. By redesignating paragraphs (b)(115) through (b)(142) as (b)(124) through (b)(151), paragraphs (b)(108) through (b)(114) as (b)(116) through (b)(122), paragraph (b)(107) as (b)(114), paragraphs (b)(82) through (b)(106) as (b)(88) through (b)(112), paragraphs (b)(75) through (b)(80) as (b)(82) through (b)(87), paragraphs (b)(62) through (b)(74) as (b)(68) through (b)(80), paragraphs (b)(39) through (b)(61) as (b)(44) through (b)(66), paragraphs (b)(28) through (b)(38) as (b)(32) through (b)(42), paragraphs (b)(18) through (b)(27) as (b)(21) through (b)(30), paragraphs (b)(9) through (b)(17) as (b)(11) through (b)(19), and paragraphs (b)(7) and (b)(8) as (b)(8) and (b)(9).

■ 3. By adding new paragraphs (b)(7), (b)(10), (b)(20), (b)(31), (b)(43), (b)(67), (b)(81), (b)(113), (b)(115), and (b)(123).

■ 4. By revising newly-designated paragraphs (b)(23), (b)(35), (b)(41), (b)(48), (b)(50), (b)(76), (b)(77), (b)(83), (b)(88), (b)(91), (b)(98), (b)(100), (b)(104)(i), (b)(104)(ii)(A) through (C), (b)(105), (b)(124), (b)(125), (b)(128), (b)(135), and (b)(141).

The revisions and additions read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(7) [Reserved]. For further guidance, see § 1.1471–1T(b)(7).

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(10) [Reserved]. For further guidance, see § 1.1471–1T(b)(10).

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(20) [Reserved]. For further guidance, see § 1.1471–1T(b)(20).

* * * * *

(23) [Reserved]. For further guidance, see § 1.1471–1T(b)(23).

* * * * *

(31) [Reserved]. For further guidance, see § 1.1471–1T(b)(31).

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(35) [Reserved]. For further guidance, see § 1.1471–1T(b)(35).

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(41) [Reserved]. For further guidance, see § 1.1471–1T(b)(41).

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(43) [Reserved]. For further guidance, see § 1.1471–1T(b)(43).

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(48) [Reserved]. For further guidance, see § 1.1471–1T(b)(48).

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(50) [Reserved]. For further guidance, see § 1.1471–1T(b)(50).

* * *

(67) [Reserved]. For further guidance, see § 1.1471–1T(b)(67).

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(76) [Reserved]. For further guidance, see § 1.1471–1T(b)(76).

(77) [Reserved]. For further guidance, see § 1.1471–1T(b)(77).

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(81) [Reserved]. For further guidance, see § 1.1471–1T(b)(81).

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(83) [Reserved]. For further guidance, see § 1.1471–1T(b)(83).

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(88) [Reserved]. For further guidance, see § 1.1471–1T(b)(88).

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(91) [Reserved]. For further guidance, see § 1.1471–1T(b)(91).

* * *

(98) [Reserved]. For further guidance, see § 1.1471–1T(b)(98).

* * *

(100) [Reserved]. For further guidance, see § 1.1471–1T(b)(100).

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(104) * * *

(i) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1471–1T(b)(104)(ii)(C).

(105) [Reserved]. For further guidance, see § 1.1471–1T(b)(105).

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(113) [Reserved]. For further guidance, see § 1.1471–1T(b)(113).

* * *

(115) [Reserved]. For further guidance, see § 1.1471–1T(b)(115).

* * *

(123) [Reserved]. For further guidance, see § 1.1471–1T(b)(123).

(124) [Reserved]. For further guidance, see § 1.1471–1T(b)(124).

(125) [Reserved]. For further guidance, see § 1.1471–1T(b)(125).

* * *

(128) [Reserved]. For further guidance, see § 1.1471–1T(b)(128).

* * *

(135) [Reserved]. For further guidance, see § 1.1471–1T(b)(135).

* * *

(141) [Reserved]. For further guidance, see § 1.1471–1T(b)(141).

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■ **Par. 3.** Section 1.1471–1T is added to read as follows:

§ 1.1471–1T Scope of chapter 4 and definitions (temporary).

(a) [Reserved]. For further guidance, see § 1.1471–1(a).

(b) [Reserved]. For further guidance, see § 1.1471–1(b).

(1) through (6) [Reserved]. For further guidance, see § 1.1471–1(b)(1) through (6).

(7) *Backup withholding.* The term *backup withholding* means the withholding required under section 3406.

(8) [Reserved]. For further guidance, see § 1.1471–1(b)(8).

(9) [Reserved]. For further guidance, see § 1.1471–1(b)(9).

(10) *Branch.* The term *branch* means a branch as defined in § 1.1471–4(e)(2)(ii).

(11) through (19) [Reserved]. For further guidance, see § 1.1471–1(b)(11) through (19).

(20) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* means a pool identified on a chapter 4 withholding statement (as described in § 1.1471–3(c)(3)) provided by an intermediary or flow-through entity with respect to a withholdable payment and that is allocated to payees that are nonparticipating FFIs. The term *chapter 4 withholding rate pool* also includes, with respect to a pool identified on an FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI with respect to a withholdable payment that is allocated to a class of recalcitrant account holders subject to withholding under chapter 4 as described in § 1.1471–4(d)(6)(i) (including a pool of account holders to which the escrow procedures for dormant accounts apply and U.S. persons included in a U.S. payee pool to the extent allowed and as described in § 1.1471–3(c)(3)(iii)(B)(2)(ii) and (iii)).

(21) through (22) [Reserved]. For further guidance, see § 1.1471–1(b)(21) through (22).

(23) *Consolidated obligations.* The term *consolidated obligations* means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(104)(ii) of this section or in order to share documentation between the obligations pursuant to § 1.1471–3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§ 1.1471–3(e)

and 1.1471–4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§ 1.1471–3(c)(6)(ii), 1.1471–3(d), 1.1471–4(c), 1.1471–5(a)(4), and 1.1471–5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

(24) through (30) [Reserved]. For further guidance, see § 1.1471–1(b)(24) through (30).

(31) *Direct reporting NFFE.* The term *direct reporting NFFE* has the meaning set forth in § 1.1472–1(c)(3).

(32) through (34) [Reserved]. For further guidance, see § 1.1471–1(b)(32) through (34).

(35) *Effective date of the FFI agreement.* The term *effective date of the FFI agreement* with respect to an FFI or a branch of an FFI that is a participating FFI means the date on which the IRS issues a GIIN to the FFI or branch. For participating FFIs that receive a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

(36) through (40) [Reserved]. For further guidance, see § 1.1471–1(b)(36) through (40).

(41) *Excepted NFFE.* The term *excepted NFFE* means a NFFE that is described in § 1.1472–1(c)(1).

(42) [Reserved]. For further guidance, see § 1.1471–1(b)(42).

(43) *Exempt recipient.* The term *exempt recipient* means a person described in § 1.6049–4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045–2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041–3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income).

(44) through (47) [Reserved]. For further guidance, see § 1.1471–1(b)(44) through (47).

(48) *FFI agreement.* The term *FFI agreement* means an agreement that is described in § 1.1471–4(a). An FFI agreement includes a QI agreement, a WP agreement, and a WT agreement that

is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014. The term *FFI agreement* also includes a QI agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014.

(49) [Reserved]. For further guidance, see § 1.1471-1(b)(49).

(50) *Financial institution*. The term *financial institution* has the meaning set forth in § 1.1471-5(e) and includes a financial institution as defined in an applicable Model 1 or Model 2 IGA.

(51) through (66) [Reserved]. For further guidance, see § 1.1471-1(b)(51) through (66).

(67) *Intergovernmental agreement (IGA)*. The term *intergovernmental agreement* or *IGA* means any applicable Model 1 or Model 2 IGA.

(68) through (75) [Reserved]. For further guidance, see § 1.1471-1(b)(68) through (75).

(76) *Limited branch*. The term *limited branch* has the meaning set forth in § 1.1471-4(e)(2)(iii). With respect to a reporting Model 2 FFI, a limited branch is a branch of the reporting Model 2 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI, or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), and for which the reporting Model 2 FFI meets the terms of the applicable Model 2 IGA with respect to the branch.

(77) *Limited FFI*. The term *limited FFI* has the meaning set forth in § 1.1471-4(e)(3)(ii). With respect to a reporting Model 2 FFI, a limited FFI is a related entity that operates in a jurisdiction that prevents the entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited FFIs under § 1.1471-4(e)(3)(iv), and for which the reporting Model 2 FFI meets the requirements of the applicable Model 2 IGA with respect to the entity.

(78) through (80) [Reserved]. For further guidance, see § 1.1471-1(b)(78) through (80).

(81) *Non-exempt recipient*. The term *non-exempt recipient* means a person that is not an exempt recipient.

(82) [Reserved]. For further guidance, see § 1.1471-1(b)(82).

(83) *Nonreporting IGA FFI*. The term *nonreporting IGA FFI* means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI, and an FFI that is a resident of, or located or established in, a Model 1 or Model 2 IGA jurisdiction, as the context requires, and that meets the requirements for certified deemed-compliant FFI status under § 1.1471-5(f)(2).

(84) through (87) [Reserved]. For further guidance, see § 1.1471-1(b)(84) through (87).

(88) *Offshore obligation*. The term *offshore obligation* means an offshore obligation defined in § 1.6049-5(c)(1) (by substituting the terms *withholding agent* or *financial institution* for the term *payor*).

(89) through (90) [Reserved]. For further guidance, see § 1.1471-1(b)(89) through (90).

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

(92) through (97) [Reserved]. For further guidance, see § 1.1471-1(b)(92) through (97).

(98) *Payor*. The term *payor* has the meaning set forth in §§ 31.3406(a)-2 and 1.6049-1(a)(2) and generally includes a withholding agent.

(99) [Reserved]. For further guidance, see § 1.1471-1(b)(99).

(100) *Person*. The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder and includes an entity or arrangement that is an insurance company. The term *person* also includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(101) through (103) [Reserved]. For further guidance, see § 1.1471-1(b)(101) through (103).

(104) [Reserved]. For further guidance, see § 1.1471-1(b)(104).

(i) The term *preexisting obligation* means any account, instrument, contract, debt, or equity interest maintained, executed, or issued by the withholding agent that is outstanding on June 30, 2014. With respect to a withholding agent that is a participating FFI, the term *preexisting obligation* means any account, instrument, or contract (including any debt or equity

interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a withholding agent that is a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to § 1.1471-5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under § 1.1471-5(f).

(ii) [Reserved]. For further guidance, see § 1.1471-1(b)(104)(ii).

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(104)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(104)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(104)(i) of this section.

(105) *Pre-FATCA Form W-8*. The term *pre-FATCA Form W-8* means a version of a Form W-8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441-1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired, or a Form W-8 that was issued prior to 2013 and furnished by an individual to establish such individual's foreign status but otherwise meets the requirements of § 1.1441-1(e)(1)(ii) applicable to such certificate and has not expired.

(106) through (112) [Reserved]. For further guidance, see § 1.1471-1(b)(106) through (112).

(113) *Reportable payment*. The term *reportable payment* means a payment of interest or dividends (as defined in section 3406(b)(2)) and other reportable

payments (as defined in section 3406(b)(3)).

(114) [Reserved]. For further guidance, see § 1.1471-1(b)(114).

(115) *Reporting Model 2 FFI*. The term *reporting Model 2 FFI* means a participating FFI that is described in § 1.1471-1(b)(91).

(116) through (122) [Reserved]. For further guidance, see § 1.1471-1(b)(116) through (122).

(123) *Sponsored direct reporting NFFE*. The term *sponsored direct reporting NFFE* has the meaning set forth in § 1.1472-1(c)(5).

(124) *Sponsoring entity*. The term *sponsoring entity* means (i) an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472-1(c)(5).

(125) *Standardized industry coding system*. The term *standardized industry coding system* means a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(126) through (127) [Reserved]. For further guidance, see § 1.1471-1(b)(126) through (127).

(128) *Substantial U.S. owner*. The term *substantial U.S. owner* or *substantial United States owner* has the meaning set forth in § 1.1473-1(b). In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE the term *substantial U.S. owner* means a *controlling person* as defined in the applicable Model 2 IGA.

(129) through (134) [Reserved]. For further guidance, see § 1.1471-1(b)(129) through (134).

(135) *U.S. branch treated as a U.S. person*. The term *U.S. branch treated as a U.S. person* means a U.S. branch of a participating FFI, registered deemed-compliant FFI, or NFFE that is treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A).

(136) through (140) [Reserved]. For further guidance, see § 1.1471-1(b)(136) through (140).

(141) *U.S. person*—(i) The term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District

of Columbia (including an agency or instrumentality thereof). The term *U.S. person* or *United States person* also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)) and is not licensed to do business in any State, or the foreign insurance company is a specified insurance company and is licensed to do business in any State.

(ii) The term *U.S. person* or *United States person* does not include a foreign insurance company that has made an election under section 953(d) if it is a specified insurance company and is not licensed to do business in any State.

(142) through (151) [Reserved]. For further guidance, see § 1.1471-1(b)(142) through (151).

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

(d) *Expiration date*. The applicability of this section expires on February 28, 2017.

■ **Par. 4.** In § 1.1471-2,

■ a. Revise paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(2)(iii)(A), and (a)(2)(v).

■ b. Remove the heading of paragraph (a)(4)(ii), and add introductory text to paragraph (a)(4)(ii).

■ c. Revise paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (b)(2)(i)(A)(1), (b)(2)(ii)(A)(4), (b)(2)(ii)(B)(2), (b)(2)(iv), and (b)(4)(ii).

The revisions read as follows:

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

(a) * * *

(1) [Reserved]. For further guidance, see § 1.1471-2T(a)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471-2T(a)(2)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-2T(a)(2)(ii).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-2T(a)(2)(iii)(A).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471-2T(a)(2)(v).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-2T(a)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-2T(a)(4)(ii)(A).

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

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(1) [Reserved]. For further guidance, see § 1.1471-2T(b)(2)(i)(A)(1).

* * * * *

(ii) * * *

(A) * * *

(4) [Reserved]. For further guidance, see § 1.1471-2T(b)(2)(ii)(A)(4).

* * * * *

(B) * * *

(2) [Reserved]. For further guidance, see § 1.1471-2T(b)(2)(ii)(B)(2).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471-2T(b)(2)(iv).

* * * * *

(4) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-2T(b)(4)(ii).

* * * * *

■ **Par. 5.** Section 1.1471-2T is added to read as follows:

§ 1.1471-2T Requirement to deduct and withhold tax on withholdable payments to certain FFIs (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-2(a).

(1) *General rule of withholding*. Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under § 1.1471-3(a) with respect to that payment and the chapter 4 status of such payee. See § 1.1471-3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements that apply when a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a

withholdable payment to a NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472-1. Except as otherwise provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under § 1.1473-1(a).

(2) [Reserved]. For further guidance, see § 1.1471-2(a)(2).

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471-3(d)(4) and a withholding statement that meets the requirements of § 1.1471-3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch of a participating FFI that is treated as a U.S. person under § 1.1441-1(b)(2)(iv)(A).

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after June 30, 2014, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another withholding agent has withheld the full amount required. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471-3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI

withholding agreement, WP agreement, or WT agreement.

(iii) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii).

(A) *Election to be withheld upon for U.S. source FDAP income.* A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after June 30, 2014, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in § 1.1471-3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of § 1.1471-3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

(1) through (4) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii)(A)(1) through (4).

(B) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(iv).

(v) *Withholding obligation of a foreign branch of a U.S. financial institution.* Generally, a foreign branch of a U.S. financial institution is a withholding agent and is not an FFI. However, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section and § 1.1472-1(b) in addition to meeting its obligations under either § 1.1471-4(b) and its FFI agreement or § 1.1471-5(f). Similarly, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a

registered deemed-compliant FFI. Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section and § 1.1472-1(b). A foreign branch of a U.S. financial institution that is not a QI is not permitted to make an election to be withheld upon.

(vi) [Reserved]. For further guidance, see § 1.1471-2(a)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471-2(a)(3).

(4) [Reserved]. For further guidance, see § 1.1471-2(a)(4).

(i) through (i)(B) [Reserved]. For further guidance, see § 1.1471-2(a)(4)(i) through (a)(4)(i)(B).

(ii) *Exception to withholding for certain payments made prior to July 1, 2016 (transitional).*

(A) *In general.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on January 1, 2015, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A *prima facie FFI* means any payee if—

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

(iii) through (viii) [Reserved]. For further guidance, see § 1.1471-2(a)(4)(iii) through (viii).

(5) through (5)(ii) [Reserved]. For further guidance, see § 1.1471-2(a)(5) through (a)(5)(ii).

(b) [Reserved]. For further guidance, see § 1.1471-2(b).

(1) [Reserved]. For further guidance, see § 1.1471-2(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471-2(b)(2).

(i) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(A).

(1) Any obligation outstanding on July 1, 2014;

(2) through (3) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(A)(2) through (3).

(B) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(i)(B).

(ii) [Reserved]. For further guidance, see § 1.1471-2(b)(2)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A).

(1) through (3) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A)(1) through (3).

(4) A life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract but, in the case of a life insurance contract that contains a provision that permits the substitution of a new individual as the insured under the contract, only until a substitution occurs; and

(5) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(A)(5).

(B) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B).

(1) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B)(1).

(2) Lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or an annuity contract that permits a substitution of a new individual as the annuitant under the contract);

(3) through (4) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(ii)(B)(3) through (4).

(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(2)(iii).

(iv) *Material modification*. In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001–3(e). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) through (3)(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(3) through (b)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471–2(b)(4).

(i) [Reserved]. For further guidance, see § 1.1471–2(b)(4)(i).

(ii) *Determination of material modification*. For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of the obligation as material only if the withholding agent has actual knowledge thereof, such as in the event the withholding agent receives a disclosure indicating that there has been or will be a material modification to such obligation. The issuer of the obligation (or an agent of the issuer) that is a withholding agent is required to treat a modification of the obligation as

material if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation.

(iii) [Reserved]. For further guidance, see § 1.1471–2(b)(4)(iii).

(c) [Reserved]. For further guidance, see § 1.1471–2(c).

(d) *Expiration date*. The applicability of this section expires on February 28, 2017.

■ **Par. 6.** Section 1.1471–3 is amended:

■ 1. By adding paragraphs

(c)(6)(ii)(B)(7), (c)(8)(v), (d)(5)(iii), and (d)(11)(x) through (xii).

■ 2. By revising paragraphs (a)(3)(iii), (a)(3)(v) through (vi), (b)(3), (c)(3)(ii)(C) through (D), (c)(3)(iii)(A) introductory text, (c)(3)(iii)(A)(5), (c)(3)(iii)(B)(1) through (4), (c)(5)(ii)(B), (c)(6)(ii)(B)(3), (c)(6)(ii)(B)(5) through (6), (c)(6)(ii)(C)(3) through (5), (c)(6)(ii)(E)(3), (c)(6)(iv), (c)(6)(v)(A) through (B), (c)(9)(ii)(B), (c)(9)(v), (d)(1), (d)(2)(i), (d)(2)(iii), (d)(4)(i) and (ii), (d)(4)(iii) introductory text, (d)(4)(iii)(A)(1), (d)(4)(iv)(A), (d)(4)(iv)(C) through (D), (d)(4)(v), (d)(5)(i) through (ii), (d)(6)(vii)(A)(1), (d)(11)(viii)(A) introductory text, (d)(11)(viii)(C), (d)(12)(iii)(A) through (B), (e)(2) through (3), (e)(4) introductory text, (e)(4)(i) through (iv), (e)(4)(v) introductory text, (e)(4)(v)(B)(1) through (2), (e)(4)(vi)(B), (e)(4)(vii)(B), (e)(4)(viii)(A)(4), and (f)(1) through (9).

The additions and revisions read as follows:

§ 1.1471–3 Identification of payee.

(a) * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(iii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–3T(a)(3)(vi).

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see § 1.1471–3T(b)(3).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(ii)(C).

(D) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(ii)(D).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(A).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(A)(5).

* * * * *

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(1).

(2) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(2).

(i) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(2)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(2)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(3).

(4) [Reserved]. For further guidance, see § 1.1471–3T(c)(3)(iii)(B)(4).

* * * * *

(5) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(5)(ii)(B).

* * * * *

(6) * * *

(ii) * * *

(B) * * *

(3) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(3).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(5).

(6) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(6).

(7) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(B)(7).

(C) * * *

(3) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(3).

(4) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(4).

(5) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(C)(5).

* * * * *

(E) * * *

(3) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(ii)(E)(3).

* * * * *

(iv) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(v)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(6)(v)(B).

* * * * *

(8) * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(c)(8)(v).

(9) * * *

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(c)(9)(ii)(B).

* * * * *

(v) [Reserved]. For further guidance, see § 1.1471–3T(c)(9)(v).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(2)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(2)(iii).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iii).

(A) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iii)(A)(1).

* * * * *

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(A).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(C).

(D) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(iv)(D).

(v) [Reserved]. For further guidance, see § 1.1471–3T(d)(4)(v).

(5) * * *

(i) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii) through (d)(5)(ii)(B).

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(d)(5)(iii) through (d)(5)(iii)(B).

(6) * * *

(vii) * * *

(A) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(d)(6)(vii)(A)(1).

* * * * *

(11) * * *

(viii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(viii)(A).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(viii)(C).

* * * * *

(x) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(x).

(xi) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(xi).

(xii) [Reserved]. For further guidance, see § 1.1471–3T(d)(11)(xii) through (d)(11)(xii)(C).

(12) * * *

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471–3T(d)(12)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(d)(12)(iii)(B).

(e) * * *

(2) [Reserved]. For further guidance, see § 1.1471–3T(e)(2).

(3) [Reserved]. For further guidance, see § 1.1471–3T(e)(3).

(i) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471–3T(e)(3)(iv).

(4) [Reserved]. For further guidance, see § 1.1471–3T(e)(4).

(i) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii) through (e)(4)(ii)(B).

(A) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(ii)(B).

(iii) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(iv) through (e)(4)(iv)(B)(2).

(v) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v).

* * * * *

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v)(B)(1).

(2) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(v)(B)(2).

* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(vi)(B).

(vii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(vii)(B).

* * * * *

(viii) * * *

(A) * * *

(4) [Reserved]. For further guidance, see § 1.1471–3T(e)(4)(viii)(A)(4).

* * * * *

(f) * * *

(1) [Reserved]. For further guidance, see § 1.1471–3T(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471–3T(f)(2).

(3) [Reserved]. For further guidance, see § 1.1471–3T(f)(3).

(4) [Reserved]. For further guidance, see § 1.1471–3T(f)(4).

(5) [Reserved]. For further guidance, see § 1.1471–3T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471–3T(f)(6).

(7) [Reserved]. For further guidance, see § 1.1471–3T(f)(7) through (f)(7)(ii).

(i) [Reserved]. For further guidance, see § 1.1471–3T(f)(7)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3T(f)(7)(ii).

(8) [Reserved]. For further guidance, see § 1.1471–3T(f)(8).

(9) [Reserved]. For further guidance, see § 1.1471–3T(f)(9) through (f)(9)(ii).

* * * * *

■ **Par. 7.** Section 1.1471–3T is added to read as follows:

§ 1.1471–3T Identification of payee (temporary).

(a) [Reserved]. For further guidance, see § 1.1471–3(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–3(a)(1) through (2).

(3) [Reserved]. For further guidance, see § 1.1471–3(a)(3).

(i) through (ii)(B) [Reserved]. For further guidance, see § 1.1471–3(a)(3)(i) through (a)(3)(ii)(B).

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment.

Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent such withholdable payment is a payment of premiums) that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution or U.S. insurance broker as the payee if the withholding agent does not have reason to know that the U.S. financial institution or U.S. insurance broker will not comply with its obligations to withhold under sections 1471 and 1472.

(iv) [Reserved]. For further guidance, see § 1.1471–3(a)(3)(iv).

(v) *Disregarded entity or limited branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i) as an entity separate from its single owner must treat the single owner as the payee. The rules under § 1.1471–3(d)(4) and (e)(3) apply to determine the circumstances under which a withholding agent may treat a payment made to a disregarded entity owned by an FFI as made to a payee that is a participating FFI or registered deemed-compliant FFI, and not as a payment made to a payee that is a nonparticipating FFI. A withholding agent that makes a payment to a limited branch (including an entity disregarded

as a separate entity from its owner if such owner is an FFI and the disregarded entity is unable to comply with the terms of an FFI agreement with respect to accounts that it maintains) will be required to treat the payment as being made to a nonparticipating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of either a participating FFI or registered deemed-compliant FFI is a payment to a U.S. person if the U.S. branch is treated as a U.S. person for purposes of § 1.1441-1(b)(2)(iv). In such case the U.S. branch is treated as the payee. A U.S. branch, however, 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. Accordingly, a U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9, “Request for Taxpayer Identification Number and Certification”). See also paragraph (f)(6) of this section for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch of either a participating FFI or registered deemed-compliant 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) and § 1.1471-2(a)(2)(iii), for purposes of chapter 4. See § 1.1471-4(c)(2)(v) for the rule requiring a U.S. branch that has elected to be treated as a U.S. person to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See also § 1.1474-1(i)(1) and (2) for the requirement of a U.S. branch to report information regarding certain U.S. owners of owner documented FFIs and passive NFFEs. See § 1.1471-4(d) for rules for when a U.S. branch of a participating FFI is required to report as a U.S. person.

(vii) [Reserved]. For further guidance, see § 1.1471-3(a)(3)(vii).

(b) [Reserved]. For further guidance, see § 1.1471-3(b).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(b)(1) through (2).

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a

valid Form W-8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, provides the person's QI-EIN, WP-EIN, or WT-EIN, and the person's GIIN, if applicable.

(4) [Reserved]. For further guidance, see § 1.1471-3(b)(4).

(c) [Reserved]. For further guidance, see § 1.1471-3(c).

(1) through (2)(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(1) through (c)(2)(ii).

(3) [Reserved]. For further guidance, see § 1.1471-3(c)(3).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii).

(A) through (B) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii)(A) through (B).

(C) The person's entity classification for U.S. tax purposes;

(D) The person's chapter 4 status; and

(E) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(ii)(E).

(iii) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii).

(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch of such entity (whether or not such branch is treated as a U.S. person) is valid for purposes of chapter 4 only if it is furnished on a Form W-8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

(1) through (4) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(A)(1) through (4).

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity, whether or not such branch is treated as a U.S. person, and a QI, WP, or WT that is a participating FFI or registered deemed-compliant FFI), and an EIN in the case of a QI, WP, or WT. Additionally, if a branch (other than a U.S. branch) of a participating FFI or registered deemed-compliant FFI outside of its country of residence acts as an intermediary, the GIIN of such branch must be provided on the withholding certificate. In the case of a U.S. branch, the GIIN provided must be the GIIN assigned to the participating FFI or registered deemed-compliant FFI.

(6) through (12) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(A)(6) through (12).

(B) [Reserved]. For further guidance, see § 1.1471-3(c)(3)(iii)(B).

(1) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. A withholding statement may be provided electronically only if it meets the requirements of § 1.1441-1(e)(3)(iv)(B). The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under § 1.1474-1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a payment for which a withholding statement is also required for purposes of chapter 3 may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(2) *Special requirements for an FFI withholding statement.*

(i) An FFI withholding statement may include either payee-specific information or pooled information that indicates the portion of the payment allocable to a chapter 4 withholding rate pool of U.S. payees, each class of recalcitrant account holders identified in § 1.1471-4(d)(6), or a class of nonparticipating FFIs. If payee-specific information is provided for purposes of chapter 4 it must indicate both the portion of the payment allocated to each payee and each payee's chapter 4 status. A participating FFI that applies the escrow procedures described in § 1.1471-4(b)(6) for dormant accounts must also indicate the portion of the payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts for which the participating FFI

(and not the withholding agent) will withhold in escrow. The withholding statement provided by a participating FFI that applies the election to backup withhold under § 1.1471–4(b)(3)(iii) must also indicate the portion of the reportable payment that is a withholdable payment allocated to each recalcitrant account holders subject to backup withholding under section 3406. See section 3406 for when backup withholding is required, including the exception to backup withholding under § 31.3406(g)–1(e). Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a WP, WT, or QI with respect to the account must also identify each intermediary or flow-through entity that receives the payment and such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent or payor reasonably requests in order to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

(ii) An FFI withholding statement provided by a reporting Model 2 FFI or a reporting Model 1 FFI may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees, which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 (for example, presumed U.S. non-exempt recipients) and that are, with respect to a reporting Model 2 FFI, the holders of non-consenting U.S. accounts as described in an applicable IGA when the FFI reports the accounts in one of the pools described in § 1.1471–4(d)(6) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, the holders of accounts that have U.S. indicia for which appropriate documentation sufficient to treat the accounts as held by other than specified U.S. persons has not been provided pursuant to an applicable Model 1 IGA and the reporting Model 1 FFI reports the accounts as U.S. reportable accounts pursuant to the applicable Model 1 IGA for the year in which the payment is made.

(iii) An FFI withholding statement provided by a participating FFI or registered deemed-compliant FFI that is a non-U.S. payor (a payor other than a U.S. payor as defined in § 1.6049–5(c)(5)) may indicate, with respect to a withholdable payment, that the payment is allocable to a chapter 4 withholding rate pool of U.S. payees (in addition to the U.S. payees described in

paragraph (c)(3)(iii)(B)(2)(ii) of this section), which is comprised of account holders that are not subject to withholding under chapters 3 or 4 or to backup withholding under section 3406 and that are, with respect to a participating FFI (including a reporting Model 2 FFI), account holders that hold U.S. accounts (as defined in § 1.1471–1(b)(134) and an applicable Model 2 IGA) that the FFI reports as U.S. accounts pursuant to § 1.1471–4(d)(3) or (5) for the year in which the payment is made; with respect to a registered deemed-compliant FFI (other than a reporting Model 1 FFI), account holders of U.S. accounts that the FFI reports pursuant to the conditions of its applicable deemed-compliant status under § 1.1471–5(f)(1) for the year in which the payment is made; or with respect to a reporting Model 1 FFI, account holders of U.S. accounts that the reporting Model 1 FFI reports as reportable U.S. accounts pursuant to an applicable Model 1 IGA, and which includes the U.S. TINs of such account holders, for the year in which the payment is made.

(3) *Special requirements for a chapter 4 withholding statement.* A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through entity that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs. Additionally, if the payment is a reportable amount under chapters 3 or 61, see the provisions of those chapters for any additional information that may be required (including pooled information under the alternative procedures described in § 1.1441–1(e)(3)(iv)(D), if applicable).

(4) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or

other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment. With respect to the amount of the payment allocable to each exempt beneficial owner and subject to withholding under chapter 3, see § 1.1441–1(e)(3)(iv).

(C) through (H) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iii)(C) through (H).

(iv) through (v) [Reserved]. For further guidance, see § 1.1471–3(c)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471–3(c)(4).

(5) [Reserved]. For further guidance, see § 1.1471–3(c)(5).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(i) through (c)(5)(i)(E).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii)(A).

(B) *Preexisting obligation documentary evidence.* With respect to a preexisting obligation of an entity, any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) or a standardized industry coding system and that was recorded by the withholding agent consistent with its normal business practices for AML or another regulatory purpose (other than for tax purposes), to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and

(C) [Reserved]. For further guidance, see § 1.1471–3(c)(5)(ii)(C).

(6) [Reserved]. For further guidance, see § 1.1471–3(c)(6).

(i) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii).

(A) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(A).

(B) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(B).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–3(c)(6)(ii)(B)(1) through (2).

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section (other than an entity described in paragraph (c)(6)(ii)(C)(2)(iii) of this section) and documentary evidence establishing the entity's foreign status when both are provided together;

(4) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(B)(4).

(5) A withholding certificate, written statement, or documentary evidence furnished by a foreign government, government of a U.S. territory, foreign central bank (including the Bank for International Settlements), international organization, or entity that is wholly owned by any such entities;

(6) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation); and

(7) For the validity period of a beneficial owner withholding certificate provided by an entity described in paragraph (c)(6)(ii)(C)(2)(iii) of this section, see § 1.1441-1(e)(4)(ii).

(C) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(C).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(C)(1) through (c)(6)(ii)(C)(2)(x).

(3) A withholding certificate or written statement of an owner-documented FFI, but not including the withholding statements, documentary evidence, and withholding certificates of its owners (unless such documentation is permitted indefinite validity under another provision);

(4) An owner reporting statement associated with a withholding certificate of an owner-documented FFI, provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(5) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the withholding agent does not know or have reason to know

that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(D).

(E) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(E).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(ii)(E)(1) through (2).

(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 invalid due to the change in circumstances or the date that a new certificate or new documentation is obtained. See, however, § 1.1441-1(e)(4)(ii)(D) for requirements, including the requirement to withhold under chapters 3 or 61, applicable when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

(iii) through (iii)(B) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(iii) through (c)(6)(iii)(B).

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.*

A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in § 1.1441-1(e)(4)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(v).

(A) *In general.* A withholding agent may substitute its own form for an official Form W-8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it

contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. A withholding agent may choose to provide a substitute form that does not include all of the chapter 4 statuses provided on the official version but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. A withholding agent that uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate (including the official Form W-8) from a person if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the person with an acceptable substitute form within five business days of receipt of an unacceptable form from the person. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the person and that the person must submit the acceptable form provided by the withholding agent in order for the person to be treated as having furnished the required withholding certificate.

(B) *Non-IRS form for individuals.* A withholding agent may also substitute its own form for an official Form W-8BEN (for individuals), regardless of whether the substitute form is titled a Form W-8. However, in addition to the name and address of the individual that is the payee or beneficial owner, the substitute form must provide all countries in which the individual is resident for tax purposes, country of birth, a tax identification number (if any) for each country of residence, the individual's date of birth, and must

contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. Notwithstanding the previous sentence, the signed certification provided on a form need not be signed under penalties of perjury if the form is accompanied by documentary evidence that supports the individual's claim of foreign status. Such documentary evidence may be the same documentary evidence that is used to support foreign status in the case of a payee whose account has U.S. indicia as described in paragraph (e) of this section or § 1.1471-4(c)(4)(i)(A). The form may also request other information required for purposes of tax or AML due diligence in the United States or in other countries.

(vi) through (vii) [Reserved]. For further guidance, see § 1.1471-3(c)(6)(vi) through (vii).

(7) through (7)(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(7) through (c)(7)(ii).

(8) [Reserved]. For further guidance, see § 1.1471-3(c)(8).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-3(c)(8)(i) through (iv).

(v) *Preexisting account.* A withholding agent may rely on documentation furnished by a payee for a preexisting account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent obtains and reviews copies of such documentation supporting the chapter 4 status designated for the payee and the withholding agent has no reason to know that, at the time the documentation is obtained by the withholding agent, the documentation is unreliable or incorrect. For example, the withholding agent may not rely on documentation furnished by a payee for a preexisting account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if, based on information in the withholding agent's account records, the withholding agent has reason to know that such documentation is unreliable or incorrect.

(9) [Reserved]. For further guidance, see § 1.1471-3(c)(9).

(i) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii)(A).

(B) The third-party data provider must be in the business of providing credit reports or business reports to customers unrelated to it and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity. For purposes of this paragraph (c)(9)(ii)(B), a customer is related to a third-party data provider if they have a relationship with each other that is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(ii)(C) through (F).

(iii) through (iv)(D) [Reserved]. For further guidance, see § 1.1471-3(c)(9)(iii) through (c)(9)(iv)(D).

(v) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, a participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on payments made after the transition period, if any, to the

account holder equal to the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (c)(9)(v), a related party transaction is a merger or sale of accounts in which either the acquirer is in the same expanded affiliated group as the predecessor or transferor prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtains a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471-4(c)(2)(ii)(B) for an additional allowance for a participating FFI to rely upon the determination made by another participating FFI as to the chapter 4 status of an account obtained as part of a merger or bulk acquisition for value.

(d) [Reserved]. For further guidance, see § 1.1471-3(d).

(1) *Reliance on pre-FATCA Form W-8.* To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate. This reliance is only available in the case of a payee that is an international organization if such payee is described under section 7701(a)(18). To establish the chapter 4 status of a payee that is not a foreign individual, a foreign government, or an international organization, a withholding agent may, for payments made prior to January 1, 2017, rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate if the withholding agent has one or more forms of documentary evidence described in paragraphs (c)(5)(ii), as necessary, to establish the chapter 4 status of the payee and the withholding agent has obtained any additional documentation or information required for the particular chapter 4 status (such as withholding statements, certifications as to owners, or required documentation for underlying owners), as set forth under the specific payee rules in paragraphs (d)(2) through (12) of this section. See paragraph (d)(4)(ii) and (iv) of this section for specific requirements applicable when relying upon a pre-FATCA Form W-8 for a participating FFI or registered deemed-compliant FFI. This paragraph (d)(1) does not apply to nonregistering local banks, FFIs with only low-value accounts, sponsored FFIs, owner-documented FFIs, territory financial institutions that are not the

beneficial owners of the payment, foreign central banks (other than a foreign central bank specifically identified as an exempt beneficial owner under a Model 1 IGA or Model 2 IGA), or international organizations not described under section 7701(a)(18).

(2) [Reserved]. For further guidance, see § 1.1471-3(d)(2).

(i) *In general.* A withholding agent must treat a payee as a U.S. person, including a payee that is a foreign branch of a U.S. person (other than a branch that is treated as a QI) or is an FFI that has elected to be treated as a U.S. person for tax purposes under section 953(d), if it has a valid Form W-9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 contains a certification that the payee is other than a specified U.S. person.

Notwithstanding the foregoing, a withholding agent receiving a Form W-9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W-9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W-9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person.

(ii) [Reserved]. For further guidance, see § 1.1471-3(d)(2)(ii).

(iii) *Preexisting obligations.* As an alternative to applying the rules in paragraphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W-9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee of a payment with respect to a preexisting obligation as a U.S. person if it has previously classified the payee as a U.S. person for purposes of chapters 3 or 61 and established (through the documentation or the application of the rules in § 1.6049-4(c)(1)(ii)) that the

payee is an exempt recipient for purposes of chapter 61.

(3) through (3)(ii) [Reserved]. For further guidance, see § 1.1471-3(d)(3) through (d)(3)(ii).

(4) [Reserved]. For further guidance, see § 1.1471-3(d)(4).

(i) *In general.* Except as otherwise provided in paragraphs (d)(4)(ii) through (iv) or paragraphs (e)(3)(i) and (ii) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), and the withholding certificate contains a GIIN 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 a GIIN). For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a participating FFI or registered deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a participating FFI or registered deemed-compliant FFI (including a U.S. entity that is disregarded as an entity separate from the FFI).

(ii) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee has provided the withholding agent with a pre-FATCA Form W-8 and (either orally or in writing) its GIIN and has indicated whether it is a participating FFI or a registered deemed-compliant FFI (or whether such branch or disregarded entity is treated as a participating FFI or a registered deemed-compliant FFI), and the withholding agent has verified the GIIN of the FFI, branch, or disregarded entity, as the context requires, in the manner described in paragraph (e)(3) of this section.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), if the payee provides the withholding agent with its GIIN and states whether the payee is a participating FFI or a registered deemed-compliant FFI, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section. A withholding agent that makes a payment of U.S. source FDAP income with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI) if—

(A) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(A).

(1) A written statement that contains the payee's GIIN, states that the payee is the beneficial owner of the payment, and indicates whether the payee is treated as a participating FFI or a registered deemed-compliant FFI, as appropriate; and

(2) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(A)(2).

(B) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iii)(B).

(iv) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iv).

(A) For payments made prior to January 1, 2015, a withholding agent may treat a payee that is an FFI or branch of an FFI (including an entity that is disregarded as an entity separate from the FFI) as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(B) [Reserved]. For further guidance, see § 1.1471-3(d)(4)(iv)(B).

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary evidence supporting the payee's claim of foreign status (as

described in paragraph (c)(5)(i) of this section).

(D) For payments made on or after January 1, 2015, that do not constitute U.S. source FDAP income, the withholding agent may continue to treat a payee as a reporting Model 1 FFI if the payee provides the withholding agent with its GIIN, either orally or in writing, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(v) *Reason to know.* Except as otherwise provided in this paragraph (d)(4), a withholding certificate or written statement pursuant to which the payee claims a status as a participating FFI or registered deemed-compliant FFI but does not provide the payee's GIIN or provides a GIIN that does not appear on the current published IRS FFI list will be invalid for purposes of chapter 4 beginning on the date that is 90 days after the date that the claim is made by the payee. The payee will be treated as an undocumented payee beginning on the date that the form is invalid, and will be subject to withholding on payments made on or after that date until valid documentation (which includes a confirmed GIIN under paragraph (e)(3)(i) of this section) is provided. A withholding agent that has withheld as required in the previous sentence may apply reimbursement or set-off procedures, as described in § 1.1474–2(a), if it is later determined that the payee appeared on the IRS FFI list as a participating FFI or registered deemed-compliant FFI at the time of payment.

(5) [Reserved]. For further guidance, see § 1.1471–3(d)(5).

(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a certified deemed-compliant FFI, other than a sponsored, closely held investment vehicle, if the withholding agent has a withholding certificate that identifies the payee as a certified deemed-compliant FFI, and the withholding certificate contains a certification by the payee that it meets the requirements to qualify as the type of certified deemed-compliant FFI identified on the withholding certificate. See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a certified deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a certified deemed-compliant FFI.

(ii) *Sponsored, closely held investment vehicles—* (A) *In general.* A withholding agent may treat a payee as

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

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

(iii) *Investment advisors and investment managers.*

(A) *In general.* A withholding agent may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as an investment advisor and investment manager. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if its AML due diligence documentation indicates that the payee has financial accounts.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an investment advisor and investment manager described in § 1.1471–5(f)(2)(v) if it obtains a written statement that indicates that the payee is an investment advisor and investment manager. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(6) [Reserved]. For further guidance, see § 1.1471–3(d)(6).

(i) through (vi) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(i) through (vi).

(vii) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii).

(A) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A).

(1) The payment is made with respect to an offshore obligation that has a balance or value not exceeding \$1,000,000 on the later of June 30, 2014, or the last day of the calendar year in which the account was opened, and the last day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4);

(2) through (5) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(A)(2) through (5).

(B) [Reserved]. For further guidance, see § 1.1471–3(d)(6)(vii)(B).

(7) through (10)(iii) [Reserved]. For further guidance, see § 1.1471–3(d)(7) through (d)(10)(iii).

(11) [Reserved]. For further guidance, see § 1.1471–3(d)(11).

(i) through (vii)(B)(3) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(i) through (d)(11)(vii)(B)(3).

(viii) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii).

(A) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014, and December 31, 2015, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in § 1.1472–1(c)(1)(iii) if the withholding agent—

(1) through (3) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(A)(1) through (3).

(B) through (B)(2) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(viii)(B) through (d)(11)(viii)(B)(2).

(C) *Exception for preexisting offshore obligations of \$1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014 (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence (as provided in paragraph (d)(11)(viii)(B) of this section), or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

(ix) through (ix)(C) [Reserved]. For further guidance, see § 1.1471–3(d)(11)(ix) through (d)(11)(ix)(C).

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

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a direct reporting NFFE if the withholding agent has—

(1)(i) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that

the payee is a foreign entity that is not a financial institution; or

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

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

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

(xi) *Identifying a sponsored direct reporting NFFE—(A) In general.* A withholding agent may treat a payment as having been made to a sponsored direct reporting NFFE if it has a withholding certificate that identifies the payee as a sponsored direct reporting NFFE and the withholding certificate includes the sponsored direct reporting NFFE's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3)(iv) of this section (indicating when a withholding agent may rely upon a GIIN). For payments prior to January 1, 2016, a sponsored direct reporting NFFE may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored direct reporting NFFE has not obtained a GIIN.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a sponsored direct reporting NFFE if the withholding agent has—

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

(2) Received (either orally or in writing) the GIIN of the sponsored direct reporting NFFE and has verified the

GIIN in the manner described in paragraph (e)(3)(iv) of this section. For payments prior to January 1, 2016, such requirement may be fulfilled by receiving (either orally or in writing) the GIIN of the sponsoring entity to the extent that the sponsored direct reporting NFFE has not obtained a GIIN.

(xii) *Identification of excepted inter-affiliate FFI.*

(A) *In general.* A participating FFI may treat a payee as an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv) if it has obtained a withholding certificate identifying the payee as such an entity.

(B) *Offshore obligations.* A participating FFI that makes a payment with respect to an offshore obligation may treat the payment as made to an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv) if the participating FFI obtains a written statement in which the payee certifies that it is a foreign entity operating as an excepted inter-affiliate FFI and that it is a member of an expanded affiliated group of participating FFIs or registered deemed-compliant FFIs. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence (as described in § 1.1471–3(c)(5)(i)) that provides the participating FFI with sufficient information to establish that the payee is an excepted inter-affiliate FFI described in § 1.1471–5(e)(5)(iv).

(C) *Reason to know.* A participating FFI has reason to know that an entity is not an excepted inter-affiliate FFI if it makes any payments (other than a payment of bank deposit interest) to such entity.

(12) [Reserved]. For further guidance, see § 1.1471–3(d)(12).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471–3(d)(12)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471–3(d)(12)(iii).

(A) *In general.* A passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE, to avoid being withheld upon under § 1.1472–1(b).

(B) *Exception for preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014,

and December 31, 2015, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on June 30, 2014, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules).

(e) [Reserved]. For further guidance, see § 1.1471–3(e).

(1) [Reserved]. For further guidance, see § 1.1471–3(e)(1).

(2) *Notification by the IRS.* A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472 is incorrect knows that such a claim is incorrect beginning on the date that is 30 days after the date the notice is received.

(3) *GIIN verification.*

(i) *In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI, and that is required under paragraph (d)(4) of this section to confirm that the FFI or branch thereof (including an entity that is disregarded as an entity separate from the FFI) claiming status as a participating FFI or registered deemed-compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name

(including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. For purposes of this paragraph (e)(3)(i), the GIIN that the withholding agent must confirm is, with respect to a payee that is a participating FFI or registered deemed-compliant FFI, the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence) or, with respect to a payment that is made to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN assigned to the FFI identifying the country in which the branch or disregarded entity receiving the payment is located. The withholding agent will have reason to know that a withholdable payment is made to a limited branch (including a disregarded entity) of a participating or registered deemed-compliant FFI when it is directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is identified as the FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed as described in the preceding sentence. For example, if a participating FFI has identified Branch A, located in Jurisdiction A, as its branch to receive withholdable payments on a withholding certificate described in § 1.1471–3(e)(3)(ii), but subsequently directs the withholding agent to make the payment to an address of the FFI in Jurisdiction B, then the withholding agent will have reason to know that the payment is made to a limited branch, unless the withholding agent obtains documentation to treat the payment to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. An FFI whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing “applied for” in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to obtain a GIIN and to verify the accuracy of the GIIN against the published IRS FFI list before it has

reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's GIIN was actually removed from the list.

(ii) *Special rules for reporting Model 1 FFIs.* Prior to January 1, 2015, a withholding agent that receives an FFI's claim of status as a reporting Model 1 FFI will not be required to confirm that the FFI has a GIIN that appears on the published IRS FFI list. A withholding agent has reason to know that the FFI is not a reporting Model 1 FFI if the withholding agent does not have a permanent residence address for the FFI, or an address of the relevant branch of the FFI, located in the country in which the FFI claims to be a reporting Model 1 FFI, or the withholding agent is making a payment to a branch of the FFI at an address in a country that does not have in effect a Model 1 IGA.

(iii) *Special rules for direct reporting NFFEs.* A withholding agent that has received a payee's claim of status as a direct reporting NFFE and that is required under paragraph (d)(11)(x) of this section to confirm that the entity claiming status as a direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A payee whose registration with the IRS as a direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing “applied for” in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W–8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a direct reporting NFFE. If a direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a direct reporting NFFE on the earlier of the date that the withholding agent discovers that the NFFE has been removed from the list or the date that is one year from the date the NFFE's GIIN was actually removed from the list.

(iv) *Special rules for sponsored direct reporting NFFEs and sponsoring entities*—(A) *Sponsored direct reporting NFFEs*. A withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE and that is required under paragraph (d)(11)(xi) of this section to confirm that the entity claiming status as a sponsored direct reporting NFFE has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a NFFE if its name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsored direct reporting NFFE whose registration with the IRS as a sponsored direct reporting NFFE is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a sponsored direct reporting NFFE. If a sponsored direct reporting NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsored entity has been removed from the list or the date that is one year from the date the sponsored entity's GIIN was actually removed from the list.

(B) *Sponsoring entities (transitional rule)*. For payments made prior to January 1, 2016, a withholding agent that has received a payee's claim of status as a sponsored direct reporting NFFE has reason to know that such payee is not such a NFFE if the name of its sponsoring entity (including a name reasonably similar to the name the withholding agent has on file for the sponsoring entity) and the GIIN of its sponsoring entity do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made. A sponsoring entity whose registration with the IRS is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing "applied for" in the box for the GIIN. In such case, the withholding agent will have 90 days from the date it receives the Form W-8 to verify the accuracy of the GIIN against the published IRS FFI list before

it has reason to know that the payee is not a sponsored direct reporting NFFE. If the sponsoring entity of the NFFE is removed from the published IRS FFI list, the withholding agent knows that such NFFE is not a sponsored direct reporting NFFE on the earlier of the date that the withholding agent discovers that the sponsoring entity has been removed from the list or the date that is one year from the date the sponsoring entity's GIIN was actually removed from the list.

(4) *Reason to know*. A withholding agent has reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificate or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claim being made. For an obligation other than a preexisting obligation, a withholding agent has reason to know that a person's claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the chapter 4 status being claimed. A withholding agent will not, however, have reason to know that a person's claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created. In addition to the specific standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has obtained documentation to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only to the extent provided in this paragraph (e)(4). See also § 1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv). The limits on reason to know for multiple obligations held by the same person set forth in § 1.1441-7(b)(11) shall apply by substituting the term *chapter 4 status* for the term *foreign status*. See § 1.1471-3(e)(4)(vii) for the limits on reason to know with respect to a preexisting obligation.

(i) *Reason to know regarding an entity's chapter 4 status*. A withholding

agent has reason to know that a withholding certificate, written statement, or documentary evidence provided by or on behalf of an entity is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the entity's claim regarding its chapter 4 status. For example, a withholding agent has reason to know that an entity's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has obtained a financial statement or credit report for AML purposes that indicates that the entity is engaged in business as a financial institution. See also paragraph (e)(4) of this section for the 30-day period before a withholding agent has reason to know a claim is unreliable or incorrect based on AML information. Further, a withholding agent that has classified an entity as engaged in a particular type of business based on its records, such as through the use of a standardized industry coding system, has reason to know that the chapter 4 status claimed by the entity is unreliable or incorrect if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

(ii) *Reason to know applicable to withholding certificates*.

(A) *In general*. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. Except as otherwise provided in this paragraph (e)(4)(ii)(A), a withholding agent that has obtained a withholding certificate to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in § 1.1441-7(b)(5), associated with the person and for which appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441-1(e)(4)(ii)(D) for requirements

that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv). A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(B) *Withholding certificate provided by an FFI.* A withholding agent that obtains a withholding certificate to reliably associate a payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI does not need to apply the standards of knowledge described in § 1.1441–7(b)(5) if it has confirmed the FFI's GIIN on the current published IRS FFI list, in the manner described under paragraph (e)(3) of this section, within 90 days of receipt of the withholding certificate.

(iii) *Reason to know applicable to written statements.* A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(ii) of this section, to determine whether it has reason to know that a written statement is unreliable or incorrect in terms of establishing a person's claim of foreign status. The rules under paragraph (e)(4)(ii) shall be applied by substituting the term *written statement for withholding certificate*.

(iv) *Reason to know applicable to documentary evidence.*

(A) *In general.* A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence does not match the appearance or signature of the person presenting the document. A withholding agent may not treat documentary evidence as valid if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's chapter 4 status, or the documentary evidence lacks information necessary to establish the person's chapter 4 status. Additionally, a withholding agent that has obtained documentary evidence to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia,

as described in § 1.1441–7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with § 1.1441–7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also § 1.1441–1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv).

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

(2) *Organizational documents.* A withholding agent that obtains organizational documents for a payee solely for the purpose of supporting the chapter 4 status claimed by the entity will only be required to review the document sufficiently to establish that

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

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

(A) through (A)(7) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(v)(A) through (e)(4)(v)(A)(7).

(B) [Reserved]. For further guidance, see § 1.1471–3(e)(4)(v)(B).

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

(2) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) through (4) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the entity annually

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

(3) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(v)(B)(3).

(vi) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vi).

(A) through (A)(2) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vi)(A) through (e)(4)(vi)(A)(2).

(B) *Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.*

A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered deemed-compliant FFI in the withholding statement unless the withholding agent has information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records conflicts with the chapter 4 status claimed, the withholding agent has reason to know that the chapter 4 status claimed is unreliable or incorrect. A withholding agent is not, however, required to verify information contained in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapters 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section.

Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE has reason to know that the claim is unreliable or incorrect if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section has been obtained and provides details of such documentation, such as the type of documentation and an identification number of the person contained in the document.

(vii) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vii).

(A) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(vii)(A).

(B) *Reason to know there are U.S. indicia associated with preexisting obligations.* With respect to a preexisting obligation, a withholding agent may apply the limits on reason to know described in § 1.1441-7(b)(3)(ii) for a person that the withholding agent has previously documented for purposes of chapters 3 or 61 (applied without regard to the fact that section 1441 generally applies to reportable amounts under chapter 3 and without regard to whether the person was so documented before July 1, 2014). A withholding agent that applies the limits on reason to know described in § 1.1441-7(b)(3)(ii) must, however, review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person, if any.

(viii) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii).

(A) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(A).

(1) through (3) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(A)(1) through (3).

(4) Is a spouse or unmarried child under the age of 21 years of an individual described in one of the paragraphs (e)(4)(viii)(A)(1) through (3) of this section;

(B) through (D) [Reserved]. For further guidance, see § 1.1471-3(e)(4)(viii)(B) through (D).

(5) through (6) [Reserved]. For further guidance, see § 1.1471-3(e)(5) through (6).

(f) [Reserved]. For further guidance, see § 1.1471-3(f).

(1) *In general.* A withholding agent that cannot, prior to the payment,

reliably associate (within the meaning of paragraph (c) of this section) the payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a nonparticipating FFI). Paragraph (f)(2) of this section provides the presumption rules with respect to classification as an individual or entity. Paragraph (f)(3) of this section provides the presumption rules to determine a payee's U.S. or foreign status. Paragraph (f)(4) of this section provides the presumption rules with respect to an entity's chapter 4 status. Paragraph (f)(5) of this section provides the presumption rules with respect to an intermediary or flow-through entity. Paragraph (f)(6) of this section provides the presumption rules with respect to effectively connected income paid to a U.S. branch of a payee. Paragraph (f)(7) of this section provides the presumption rules that apply to a payment made to joint payees. Paragraph (f)(8) of this section provides rules for how a payee may rebut the presumptions described in this paragraph (f). Paragraph (f)(9) of this section provides the consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity and entity as the beneficial owner.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence (as described in paragraph (c)(5) of this section), but cannot determine a payee's status as an individual or an entity from the documentary evidence, must apply the presumption rules of § 1.1441-1(b)(3)(ii) to determine the payee's classification as an individual, trust, partnership, corporation, intermediary, or flow-through entity. Additionally, a withholding agent that receives valid documentary evidence with respect to an entity must apply the rules under § 1.1441-1(b)(3)(ii) to determine when it may treat such entity as a beneficial owner.

(3) *Presumptions of U.S. or foreign status.* If a withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence from which it is possible to determine the payee's U.S. or foreign status, it must apply the

presumption rules of § 1.1441–1(b)(3)(iii) to determine the U.S. or foreign status of the payee (substituting the term *withholdable payment* for the term *payment*). In the case of a payment that a withholding agent can reliably associate with valid documentation that indicates the payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, the payment will be presumed made to a specified U.S. person unless the withholding agent can apply the presumption rules of § 1.6049–4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person, or the person's name reasonably indicates that the person is a bank (for example because it contains the word *Bank* or a foreign equivalent).

(4) *Presumption of chapter 4 status for a foreign entity.* If a withholding agent cannot reliably associate a valid withholding certificate or valid documentary evidence sufficient to determine the chapter 4 status of the entity receiving payment under paragraph (d) of this section (for example, as a participating FFI, nonparticipating FFI, or NFFE), it must presume that the entity is a nonparticipating FFI.

(5) *Presumption of chapter 4 status of payee with respect to a payment to an intermediary or flow-through entity.* If a withholding agent makes a payment to a foreign flow-through entity or intermediary, including a payment that it is required to treat as made to such an entity under paragraphs (f)(2) and (3) of this section, and cannot reliably associate such payment with valid documentation under paragraph (c) of this section, the withholding agent must presume that the payment is made to a nonparticipating FFI.

(6) *Presumption of effectively connected income for payments to certain U.S. branches.* A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee of a payment that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN from the U.S. branch (either orally or in writing). A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance

Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

(7) *Joint payees*—(i) *In general.* If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W–9 in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5, the payment shall be treated as made to that payee.

(ii) *Exception for offshore obligations.* If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual if the payment with respect to the offshore obligation is made outside the United States (as described in § 1.6049–5(e)).

(8) *Rebuttal of presumptions.* A payee may rebut the presumptions described in paragraphs (f)(2) through (7) of this section by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(9) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(i) *In general.* Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in paragraphs (f)(2) through (7) of this section with

respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See § 1.1474–1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

(ii) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (f)(9)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the person are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the person based on such knowledge or reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent described in § 1.1474–1(a).

(g) [Reserved]. For further guidance, see § 1.1471–3(g).

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 8.** Section 1.1471–4 is amended:

■ 1. By removing paragraph (d)(3)(v).

■ 2. By redesignating paragraphs (d)(3)(vi) through (viii) as paragraphs (d)(3)(v) through (vii).

■ 3. By adding paragraphs (d)(2)(iii)(C), (d)(2)(ii)(F), and (d)(6)(vii).

■ 4. By revising paragraphs (a)(3), (b)(1) through (3), (b)(6), (c)(5)(iv)(B)(2)(vi), (c)(5)(iv)(E), (d)(1), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B)(2), (d)(2)(ii)(E), (d)(2)(iii)(A), (d)(2)(iii)(B) introductory text, (d)(3)(ii)(E), (d)(3)(iii)(F), (d)(5)(v) through (vi), (d)(7)(i), (d)(7)(ii)(A), (d)(7)(iii), (d)(7)(iv)(A) through (B), (d)(8), (d)(9) *Example 3*, *Example 5*, and *Example 7*, (e)(1), (e)(2)(ii), (f)(4)(i) through (ii), (g)(1) introductory text, (g)(1)(ii), and (g)(2).

■ 5. By removing the heading of paragraph (d)(7) and adding introductory text to paragraph (d)(7).

The additions and revisions read as follows:

§ 1.1471–4 FFI agreement.

(a) * * *

(3) [Reserved]. For further guidance, see § 1.1471-4T(a)(3).

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(b)(1).

(2) [Reserved]. For further guidance, see § 1.1471-4T(b)(2).

(3) [Reserved]. For further guidance, see § 1.1471-4T(b)(3).

(i) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-4T(b)(3)(iii).

* * * * *

(6) [Reserved]. For further guidance, see § 1.1471-4T(b)(6).

* * * * *

(c) * * *

(5) * * *

(iv) * * *

(B) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see § 1.1471-4T(c)(5)(iv)(B)(2)(vi).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(c)(5)(iv)(E).

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(d)(1).

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(A).

(B) * * *

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

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(E).

(F) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(ii)(F).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(B).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471-4T(d)(2)(iii)(C).

(3) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.1471-4T(d)(3)(ii)(E).

(iii) * * *

(F) [Reserved]. For further guidance, see § 1.1471-4T(d)(3)(iii)(F).

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(5) * * *

(v) [Reserved]. For further guidance, see § 1.1471-4T(d)(5)(v).

(vi) [Reserved]. For further guidance, see § 1.1471-4T(d)(5)(vi).

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(6) * * *

(vii) [Reserved]. For further guidance, see § 1.1471-4T(d)(6)(vi).

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(7) [Reserved]. For further guidance, see § 1.1471-4T(d)(7).

(i) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(i).

(ii) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(ii)(A).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iii).

(iv) * * *

(A) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471-4T(d)(7)(iv)(B).

(8) [Reserved]. For further guidance, see § 1.1471-4T(d)(8).

(9) * * *

Example 3. [Reserved]. For further guidance, see § 1.1471-4T(d)(9).

Example 3.

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Example 5. [Reserved]. For further guidance, see § 1.1471-4T(d)(9).

Example 5.

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Example 7. [Reserved]. For further guidance, see § 1.1471-4T(d)(9).

Example 7.

(e) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(e)(1).

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-4T(e)(2)(ii).

* * * * *

(f) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471-4T(f)(4)(i).

(ii) [Reserved]. For further guidance, see § 1.1471-4T(f)(4)(ii).

(g) * * *

(1) [Reserved]. For further guidance, see § 1.1471-4T(g)(1).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1471-4T(g)(1)(ii).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471-4T(g)(2).

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■ **Par. 9.** Section 1.1471-4T is added to read as follows:

§ 1.1471-4T FFI Agreement (temporary).

(a) [Reserved]. For further guidance, see § 1.1471-4(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-4(a)(1) through (2).

(3) *Reporting.* A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in § 1.1474-1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in § 1.1471-4(d)(2)(ii)(F)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) through (7) [Reserved]. For further guidance, see § 1.1471-4(a)(4) through (7).

(b) [Reserved]. For further guidance, see § 1.1471-4(b).

(1) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after June 30, 2014, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of participating FFIs. See § 1.1471-2 for the exceptions to and special rules for withholding and the exclusion from the definitions of the terms *withholdable payment* and *foreign passthru payment* that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See § 1.1474-1(d)(4)(iii)

for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts. See § 1.1474–6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) *Withholding determination.* Except as otherwise provided under § 1.1471–2 and, with respect to certain preexisting accounts, under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made with respect to an obligation that is not an account, except as otherwise provided in § 1.1471–3(a)(3), the payee is the person to whom the payment is made. See § 1.1473–1(a) to determine when a payment is made in the case of a withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under § 1.1471–3(c)(7) or may apply the procedures provided in § 1.1474–2 when overwithholding occurs.

(3) *Satisfaction of withholding requirements.*

(i) *In general.* A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees.

(ii) *Withholding not required.* A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for a payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a

withholding certificate described in § 1.1471–3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See § 1.1471–2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also § 1.1471–3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§ 1.1471–2(a) and 1.1472–1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

(iii) *Election to withhold under section 3406.* A participating FFI may elect to satisfy its withholding obligation under paragraph (b)(1) of this section with respect to recalcitrant account holders that are also U.S. non-exempt recipients subject to backup withholding under section 3406 receiving withholdable payments, to the extent that the payments also constitute reportable payments, by applying withholding under section 3406 at the backup withholding rate to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 and section 3406. Nothing in this paragraph relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See § 1.1474–6(f) for the general rule that satisfying withholding requirements under chapter 4 will satisfy backup withholding requirements under section 3406 for a payment that is both a withholdable payment and a reportable payment.

(4) through (5)(ii) [Reserved]. For further guidance, see § 1.1471–4(b)(4) through (b)(5)(ii).

(6) *Special rule for dormant accounts.* A participating FFI that makes a withholdable payment not otherwise subject to withholding under chapter 3 or backup withholding under section 3406 to a recalcitrant account holder of a dormant account that it maintains must withhold on the account for purposes of chapter 4. However, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account

ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this paragraph (b)(6) may not delegate the responsibility to escrow withheld tax to the withholding agent from which it is receiving payment. Once a dormant account escheats irrevocably to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is no longer required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) [Reserved]. For further guidance, see § 1.1471–4(b)(7).

(c) [Reserved]. For further guidance, see § 1.1471–4(c).

(1) through (4)(iii)(B) [Reserved]. For further guidance, see § 1.1471–4(c)(1) through (c)(4)(iii)(B).

(5) [Reserved]. For further guidance, see § 1.1471–4(c)(5).

(i) through (iii)(C) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(i) through (c)(5)(iii)(C).

(iv) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(A).

(B) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B).

(1) through (1)(vii) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(1) through (c)(5)(iv)(B)(1)(vii).

(2) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(2).

(i) through (v) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(2)(i) through (v).

(vi) *Standing instructions to pay amounts.* If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and either a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) or a written reasonable explanation (as defined in § 1.1441–7(b)(12)) establishing the account holder's status as a foreign person.

(vii) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(B)(2)(vii).

(C) through (D)(4)(vi) [Reserved]. For further guidance, see § 1.1471–4(c)(5)(iv)(C) through (c)(5)(iv)(D)(4)(vi).

(E) Exception for preexisting individual accounts previously documented as held by foreign individuals. A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for such account. Additionally, a participating FFI with a U.S. payor as its paying agent is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for an account for which its paying agent that is a U.S. payor has previously obtained documentation to establish the account holder's status as a foreign individual under chapter 61. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(2) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(1) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI (or its paying agent that is a U.S. payor) has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year that was properly reported in that year. In the case of a participating FFI that is a QI, WP, or WT, the participating FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation and reporting requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

(6) through (7) [Reserved]. For further guidance, see § 1.1471–4(c)(6) through (7).

(d) [Reserved]. For further guidance, see § 1.1471–4(d).

(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts. See chapter 61 for reporting requirements that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See § 301.1474–1(a) for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) [Reserved]. For further guidance, see § 1.1471–4(d)(2).

(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vi) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is responsible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report

under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to foreign reportable amounts and for transitional rules for participating FFIs to report certain foreign reportable amounts paid to accounts held by nonparticipating FFIs, see § 1.1471–4(d)(2)(ii)(F).

(ii) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii).

(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (F) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (d)(3), or (d)(5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under § 1.1474–1(d)(4)(iii).

(B) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii)(B).

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

(2) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of an entity that is treated as a passive NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under § 1.1471–3(c)(3)(iii)(G). The participating FFI shall be treated as having satisfied these reporting requirements if it reports with respect to each such specified U.S. person or

substantial U.S. owner of a passive NFFE either—

(i) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section (except account number); or

(ii) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section (except account number and account balance or value).

(C) through (D) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(ii)(C) through (D).

(E) *Requirement to identify the GIIN of a branch that maintains an account.* A participating FFI may report under paragraph (d)(3) or (d)(5) of this section either with respect to all of its U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). A participating FFI shall include the GIIN assigned to the participating FFI or its branches to identify the jurisdiction of the FFI or branch that maintains the accounts subject to reporting under paragraph (d)(3) or (d)(5) of this section. Additionally, a participating FFI shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(F) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).*

Except as otherwise provided in the instructions to Form 8966, “FATCA Report,” if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI or registered deemed-compliant FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI or registered deemed-compliant FFI must report on Form 8966 the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account

holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI's account by the participating FFI during the calendar year. In addition, the participating FFI must retain the account statements related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), (v), (vi) and (vii) of this section for rules relating to reporting on recalcitrant account holders. Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates.

(iii) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(iii).

(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) shall be treated as having satisfied the chapter 4 reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts, or accounts held by owner-documented FFIs, if the participating FFI reports with respect to each such account either—

(1) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section; or

(2) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section. However, such participating FFI that is required to report on such accounts under chapter 61 is not relieved of that obligation.

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

(1) through (4) [Reserved]. For further guidance, see § 1.1471–4(d)(2)(iii)(B)(1) through (4).

(C) *Special reporting rules for U.S. branches not treated as U.S. persons.* A U.S. branch of a registered deemed-compliant FFI or limited FFI that is not treated as a U.S. person shall be treated as having satisfied the reporting

requirements described in paragraph (d)(2)(i) of this section if it reports the information described in paragraph (d)(2)(iii)(B)(1) through (4) of this section with respect to account holders of accounts that the U.S. branch is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

(3) [Reserved]. For further guidance, see § 1.1471–4(d)(3).

(i) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(ii).

(A) through (D) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(ii)(A) through (D).

(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) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iii)(A) through (E).

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iv) through (iv)(F) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(iv) through (d)(3)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1471–4(d)(3)(vii).

(4) through (4)(v) [Reserved]. For further guidance, see § 1.1471–4(d)(4) through (d)(4)(v).

(5) [Reserved]. For further guidance, see § 1.1471–4(d)(5).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–4(d)(5)(i) through (d)(5)(iv).

(v) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the end of the calendar year for which the election is made. A participating FFI may make an election under this paragraph (d)(5) either with respect to all of its U.S. accounts and recalcitrant accounts or, separately, with respect to any clearly identified group of accounts (such as by line of business or the

location where the account is maintained).

(vi) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) of this section (as a whole or with regard to any clearly identified group of accounts) by reporting the information described in paragraph (d)(3) of this section beginning on the first reporting date with respect to the calendar year that follows the calendar year for which it last reports an account under this paragraph (d)(5).

(vii) [Reserved]. For further guidance, see § 1.1471-4(d)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1471-4(d)(6).

(i) through (v) [Reserved]. For further guidance, see § 1.1471-4(d)(6)(i) through (v).

(vi) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. 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 Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(vii) [Reserved]. For further guidance, see § 1.1471-4(d)(6)(vii).

(7) *Special reporting rules with respect to the 2014 and 2015 calendar years*

(i) *In general.* If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2015, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that it is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2014 and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii).

(A) *Reporting with respect to the 2014 calendar year.* With respect to accounts maintained during the 2014 calendar year—

(1) through (3) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(A)(1) through (3).

(B) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(B).

(1) through (2) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(ii)(B)(1) through (2).

(iii) *Participating FFIs that report under § 1.1471-4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(1) and (3) of this section for its 2014 calendar year. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) [Reserved]. For further guidance, see § 1.1471-4(d)(7)(iv).

(A) *In general.* Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vi) of this section. Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) *Special determination date and timing for reporting with respect to the 2014 calendar year.* With respect to the 2014 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on July 1, 2014. Reporting for the 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 61 with respect to the 2014 calendar year.

(8) *Reporting requirements of QIs, WPs, and WTs.* In general, the reporting requirements with respect to the U.S. accounts maintained by a participating FFI that is a QI, WP, or WT will be consistent with the reporting requirements with respect to such accounts of a participating FFI that is not a QI, WP, or WT. See the QI, WP, or WT agreement for the coordination of the chapter 4 reporting obligations of a participating FFI that also is a QI, WP, or WT.

(9) [Reserved]. For further guidance, see § 1.1471-4(d)(9).

Example 1. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 1.*

Example 2. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 2.*

Example 3. U.S. owned foreign entity. FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See § 1.1473-1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(v) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

Example 4. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 4.*

Example 5. Owner-documented FFI. DC, an owner-documented FFI under § 1.1471-3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in § 1.1471-3(d)(6)(iv)(A)(1) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 6. [Reserved]. For further guidance, see § 1.1471-4(d)(9), *Example 6.*

Example 7. Sponsored FFI. DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under § 1.1471-5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under § 1.1471-5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) [Reserved]. For further guidance, see § 1.1471-4(e).

(1) *In general.* Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI

status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to its limited branches and its affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) [Reserved]. For further guidance, see § 1.1471-4(e)(2).

(i) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(i)(A) through (C).

(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 that is otherwise regulated under the laws of a country as separate from other offices, units, or branches of the FFI and also includes an entity that is disregarded as an entity separate from an FFI (including branches maintained by such disregarded entity). For purposes of this section, a branch includes a unit, business, or office of an FFI located in a country in which it is resident, and a unit, business, or office of an FFI located in the country in which the FFI is created or organized. All units, businesses, and offices of a participating FFI located in a single country, and all entities disregarded as entities separate from a participating FFI and located in a single country, shall be treated as a single branch and may use the same GIIN. An account will be treated as maintained by a branch or disregarded entity if the rights and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch or disregarded entity.

(iii) through (v) [Reserved]. For further guidance, see § 1.1471-4(e)(2)(iii) through (v).

(3) through (4) [Reserved]. For further guidance, see § 1.1471-4(e)(3) through (4).

(f) [Reserved]. For further guidance, see § 1.1471-4(f).

(1) through (3)(iv)(C) [Reserved]. For further guidance, see § 1.1471-4(f)(1) through (f)(3)(iv)(C).

(4) [Reserved]. For further guidance, see § 1.1471-4(f)(4).

(i) *General inquiries*. The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, may request additional information with respect to the information reported on the forms or may request the account statements described in paragraph (d)(4)(v) of this section. The IRS may request additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance*. If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the participating FFI may not have substantially complied with the requirements of its FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement. The IRS may make these requests to a sponsoring entity with respect to any sponsored FFI.

(g) [Reserved]. For further guidance, see § 1.1471-4(g).

(1) *Defined*. An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following—

(i) [Reserved]. For further guidance, see § 1.1471-4(g)(1)(i).

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;

(iii) through (ix) [Reserved]. For further guidance, see § 1.1471-4(g)(1)(iii) through (ix).

(2) *Notice of event of default*.

Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within a specified time period. The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. A participating FFI may request, within a reasonable period of time, reconsideration of a notice of default or notice of termination by written request to the Deputy Commissioner (International), LB&I.

(3) [Reserved]. For further guidance, see § 1.1471-4(g)(3).

(h) through (j) [Reserved]. For further guidance, see § 1.1471-4(h) through (j).

(k) *Expiration date*. The applicability of this section expires on February 28, 2017.

■ **Par. 10.** Section 1.1471-5 is amended:

■ 1. By removing paragraphs (a)(3)(ii) (b)(3)(v)(B)(3), and (b)(3)(vi)(B)(3).

■ 2. By redesignating paragraphs (a)(3)(iii) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(v) and paragraph (j) as paragraph (l).

■ 3. By adding paragraphs

(f)(1)(i)(F)(3)(vii), (f)(2)(v), (j), and (k).

■ 4. By revising paragraphs (a)(3)(i), (a)(4)(i), (b)(1)(iii)(B)(2), (b)(3)(iv), (b)(3)(v)(A), (b)(3)(v)(B)(1) through (2), (b)(3)(vi), (c), (e)(1)(v)(A), (e)(3)(ii), (e)(4)(v) *Example 7* through *Example 8*, (e)(5)(i)(A)(3), (e)(5)(i)(B) introductory text, (e)(5)(i)(B)(1), (e)(5)(i)(C), (e)(5)(i)(D)(1)(iv) through (v), (e)(5)(iv)(B), (f)(1)(i)(A)(6), (f)(1)(i)(B)(1), (f)(1)(i)(B)(3), (f)(1)(i)(C)(2), (f)(1)(i)(D)(4) through (6), (f)(1)(i)(D)(7) introductory text, (f)(1)(i)(E), (f)(1)(i)(F)(1)(ii), (f)(1)(i)(F)(3)(v) through (vi), (f)(1)(i)(F)(5), (f)(1)(ii)(B), (f)(2) introductory text, (f)(2)(i)(B), (f)(2)(iii) through (iv), (f)(4)(i), (g)(3)(i)(D), and (i).

The additions and revisions read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(a)(3)(i).

* * * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(a)(4)(i).

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(2) [Reserved]. For further guidance, see § 1.1471–5T(b)(1)(iii)(B)(2).

* * * * *

(3) * * *

(iv) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(iv).

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(A).

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(B)(1).

(2) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(v)(B)(2).

(vi) [Reserved]. For further guidance, see § 1.1471–5T(b)(3)(vi) through (b)(3)(vi)(B)(2).

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(c) [Reserved]. For further guidance, see § 1.1471–5T(c).

* * * * *

(e) * * *

(1) * * *

(v) * * *

(A) [Reserved]. For further guidance, see § 1.1471–5T(e)(1)(v)(A).

* * * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–5T(e)(3)(ii).

* * * * *

(4) * * *

(v) * * *

Example 7. [Reserved]. For further guidance, see § 1.1471–5T(e)(4)(v), *Example 7.*

Example 8. [Reserved]. For further guidance, see § 1.1471–5T(e)(4)(v), *Example 8.*

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(5) * * *

(i) * * *

(A) * * *

(3) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(A)(3).

(B) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(B).

(1) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(B)(1).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(C).

(D) * * *

(1) * * *

(iv) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(D)(1)(iv).

(v) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(i)(D)(1)(v).

* * * * *

(iv) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(e)(5)(iv)(B).

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) * * *

(6) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(A)(6).

* * * * *

(B) * * *

(1) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(B)(1).

* * * * *

(3) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(B)(3).

(C) * * *

(2) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(C)(2).

* * * * *

(D) * * *

(4) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(4).

(5) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(5).

(6) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(6).

(7) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(D)(7).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(E). through (f)(1)(i)(E)(2).

(F) * * *

(1) * * *

(ii) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(1)(ii).

* * * * *

(3) * * *

(v) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(3)(v).

(vi) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(3)(vi).

(vii) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(3)(vii).

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(5) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(i)(F)(5).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(f)(1)(ii)(B).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1471–5T(f)(2).

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(i)(B).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iii) through (f)(2)(iii)(E).

(iv) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iv) through (f)(2)(iv)(E).

(F) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(iv)(F).

(v) [Reserved]. For further guidance, see § 1.1471–5T(f)(2)(v) through (f)(2)(v)(B).

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(4) * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(f)(4)(i).

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(g) * * *

(3) * * *

(i) * * *

(D) [Reserved]. For further guidance, see § 1.1471–5T(g)(3)(i)(D).

* * * * *

(i) [Reserved]. For further guidance, see § 1.1471–5T(i) through (i)(10).

(j) [Reserved]. For further guidance, see § 1.1471–5T(j).

(k) [Reserved]. For further guidance, see § 1.1471–5T(k).

■ **Par. 11.** Section 1.1471–5T is added to read as follows:

§ 1.1471–5T Definitions applicable to section 1471 (temporary).

(a) [Reserved]. For further guidance, see § 1.1471–5(a).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–5(a)(1) through (2).

(3) [Reserved]. For further guidance, see § 1.1471–5(a)(3).

(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the *account holder* is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraph (a)(3)(ii) of this

section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701-2(c)(2)(i), the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471-6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

(ii) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(iii).

(iv) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(iv).

(v) [Reserved]. For further guidance, see § 1.1471-5(a)(3)(v).

(4) [Reserved]. For further guidance, see § 1.1471-5(a)(4).

(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this paragraph (a)(4)(i), the term U.S. account shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed \$50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iii) and (b)(4) of this section.

(ii) [Reserved]. For further guidance, see § 1.1471-5(a)(4)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(a)(4)(iii).

(b) [Reserved]. For further guidance, see § 1.1471-5(b).

(1) [Reserved]. For further guidance, see § 1.1471-5(b)(1).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii).

(A) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B).

(1) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B)(1).

(2) The return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity's expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

(3) through (4) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(B)(3) through (4).

(C) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iii)(C) through (b)(1)(iii)(C)(2).

(iv) [Reserved]. For further guidance, see § 1.1471-5(b)(1)(iv).

(2) [Reserved]. For further guidance, see § 1.1471-5(b)(2) through (b)(2)(vi).

(3) [Reserved]. For further guidance, see § 1.1471-5(b)(3).

(i) through (iii) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(i) through (b)(3)(iii)(B)(3).

(iv) *Regularly traded on an established securities market.* To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472-1(c)(1)(i)(A)(2)(i) and (ii) shall apply with respect to the interests, and the principles of § 1.1472-1(c)(1)(i)(B)(1) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472-1(c)(1)(i)(C) for the definition of an established securities market. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder's interest is registered prior to July 1, 2014, on the books of the investment entity.

(v) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(v).

(A) *Equity interest.* The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(B) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(v)(B).

(1) Debt is convertible into equity interests in a U.S. person; or

(2) The return earned on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of a U.S. person or equity interests in a U.S. person.

(vi) *Return earned on the interest (including upon a sale, exchange, or redemption) determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs.*

(A) *Equity interest.* The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(B) *Debt interest.* The return earned on a debt interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if—

(1) Debt is convertible into equity interests in one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group; or

(2) The return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to profits or assets of, or equity interests in, one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(vii) [Reserved]. For further guidance, see § 1.1471-5(b)(3)(vii) through (b)(3)(vii)(D)(3).

(4) through (5) [Reserved]. For further guidance, see § 1.1471-5(b)(4) through (5).

(c) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* means any foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473-1(b)). See § 1.1473-1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and

indirect ownership in an entity, see § 1.1473–1(b)(2).

(d) [Reserved]. For further guidance, see § 1.1471–5(d).

(e) [Reserved]. For further guidance, see § 1.1471–5(e).

(1) [Reserved]. For further guidance, see § 1.1471–5(e)(1).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(i) through (iv).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(v).

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, specified insurance company, or investment entity described in paragraphs (e)(4)(i)(B) or (C) of this section; or

(B) [Reserved]. For further guidance, see § 1.1471–5(e)(1)(v)(B).

(2) [Reserved]. For further guidance, see § 1.1471–5(e)(2) through (e)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471–5(e)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(e)(3)(i) through (e)(3)(i)(B).

(ii) *Income attributable to holding financial assets and related financial services.* For purposes of this paragraph (e)(3), the term *income attributable to holding financial assets and related financial services* means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

(iii) [Reserved]. For further guidance, see § 1.1471–5(e)(3)(iii).

(4) [Reserved]. For further guidance, see § 1.1471–5(e)(4).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471–5(e)(4)(i) through (e)(4)(iv)(B).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(4)(v).

Example 1 through Example 6 [Reserved]. For further guidance, see § 1.1471–5(e)(4)(v), *Example 1 through Example 6*.

Example 7. Individual introducing broker. IB, an individual introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB

provides services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an individual, notwithstanding that IB primarily conducts certain investment-related activities, IB is not an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is not an investment entity under paragraph (e)(4)(i)(B) of this section because Entity is managed by IB, an individual.

Example 8. Entity introducing broker. IB, a foreign entity introducing broker, primarily conducts a business of providing advice to clients, has discretionary authority to manage clients' assets, and uses the services of a foreign entity to conduct and execute trades on behalf of clients. IB provides its services as an investment advisor and manager to Entity, a foreign corporation. Entity has earned 50% or more of its gross income for the past three years from investing, reinvesting, or trading in financial assets. Because IB is an entity that primarily conducts certain investment-related activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section. Further, Entity is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by IB, an investment entity that performs certain of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of Entity.

(5) [Reserved]. For further guidance, see § 1.1471–5(e)(5).

(i) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i).

(A) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(A).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(A)(1) through (2).

(3) The entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes. For purposes of determining whether an entity was formed in connection with or availed of by such an arrangement or investment vehicle, any entity that existed at least six months prior to its acquisition by such arrangement or investment vehicle and that, prior to the acquisition, regularly conducted activities in the ordinary course of business will not be considered to have been formed in connection with or availed of by the arrangement or investment vehicle, in the absence of other facts suggesting the existence of an investment strategy described in the prior sentence.

(B) *Nonfinancial group.* An expanded affiliated group defined in § 1.1471–

5(i)(2) is a *nonfinancial group* if, taking into account the application of this section—

(1) For the three-year period (or the period during which the expanded affiliated group has been in existence, if shorter) ending on December 31 of the year preceding the year in which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section and income derived from transactions between members of the expanded affiliated group) consists of passive income (as defined in § 1.1472–1(c)(1)(iv)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFI's (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section and assets resulting from transactions between related members of the expanded affiliated group) are assets that produce or are held for the production of passive income; and

(2) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(B)(2).

(C) *Holding company.* For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group. A partnership or any other non-corporate entity shall be treated as a holding company if substantially all the activities of such partnership (or other entity) consist of holding more than 50 percent of the voting power and value of the stock of one or more common parent corporation(s) of one or more expanded affiliated group(s). If a partnership or other non-corporate entity owns more than 50 percent of the voting power and value of the stock of more than one common parent corporation of an expanded affiliated group, each common parent corporation's expanded affiliated group will be treated as a separate expanded affiliated group for purposes of applying the rules of this section unless a non-corporate entity is treated as the common parent entity of the expanded affiliated group in accordance with § 1.1471–5(i)(10).

(D) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D).

(1) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(1).

(i) through (iii) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(1)(i) through (iii).

(iv) Managing the working capital of the expanded affiliated group (or any member thereof) such as by pooling the cash balances of affiliates (including both positive and deficit cash balances) or by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(v) Acting as a financing vehicle for the expanded affiliated group (or any member thereof).

(2) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(2).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(D)(2)(i) through (ii).

(E) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(i)(E).

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(ii) through (iii).

(iv) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv).

(A) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv)(A).

(B) The entity does not hold an account (other than a depository account in the country in which the entity is operating to pay for expenses in that country) with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) through (D) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(iv)(C) through (D).

(v) [Reserved]. For further guidance, see § 1.1471–5(e)(5)(v) through (e)(5)(vi)(D).

(6) [Reserved]. For further guidance, see § 1.1471–5(e)(6).

(f) [Reserved]. For further guidance, see § 1.1471–5(f).

(1) [Reserved]. For further guidance, see § 1.1471–5(f)(1).

(i) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i).

(A) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A).

(1) through (5) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A)(1) through (5).

(6) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent with those set forth for a participating FFI under § 1.1471–4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI

is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under § 1.1471–4(b) and (d) if the FFI were a participating FFI.

(7) through (9) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(A)(7) through (9).

(B) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(B).

(1) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(2) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(B)(2).

(3) By the later of June 30, 2014, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C).

(1) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C)(1).

(2) Each holder of record of direct debt interests in the FFI in excess of \$50,000, of any direct equity interests in the FFI (for example the holders of its units or global certificates), and of any other account holder of the FFI is a participating FFI, a registered deemed-compliant FFI, a retirement plan

described in § 1.1471–6(f), a non-profit organization described in paragraph (e)(5)(vi) of this section, a U.S. person that is not a specified U.S. person, a nonreporting IGA FFI, or an exempt beneficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term *U.S. person* for the terms *FFI* and *member*), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(3) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(C)(3).

(D) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D).

(1) through (3) [Reserved]. For further guidance, see § 1.1471–5(f)(1)(i)(D)(1) through (3).

(4) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(5) The FFI ensures that by the later of December 31, 2014, or six months after the date the FFI registers as a

deemed-compliant FFI, each agreement entered into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(3) of this section, terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of the notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(3) of this section within six months of the distributor's change in status.

(6) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in § 1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals. An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in § 1.1471-4(c) applicable to accounts other than preexisting accounts. By the later of December 31, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, the FFI will be required to certify to the IRS either that it did not identify any U.S. account or account held by a nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, with withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI.

(7) By the later of June 30, 2014, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in § 1.1471-4(c) to ensure that it either—
(i) through (ii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D)(7)(i) through (ii).

(8) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(D)(8).

(E) *Qualified credit card issuers and servicers.* An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(1) The FFI is an FFI solely because it is an issuer or servicer of credit cards that accepts deposits, on its own behalf or, in the case of a servicer, on behalf of a credit card issuer, only when a customer makes a payment in excess of a balance due with respect to the credit card account and the overpayment is not immediately returned to the customer.

(2) By the later of June 30, 2014, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of \$50,000 or to ensure that any customer deposit in excess of \$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F).

(1) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(1).

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(1)(i).

(ii) An entity, other than a nonparticipating FFI, has agreed with the FFI to act as a sponsoring entity for the FFI.

(2) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(2) through (f)(1)(i)(F)(2)(iii).

(3) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(3).

(i) through (iv) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(3)(i) through (iv).

(v) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1;

(vi) Performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3);

(vii) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(viii) Has not had its status as a sponsoring entity revoked.

(4) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(i)(F)(4).

(5) A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(ii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii)(A).

(B) Have its responsible officer certify every three years to the IRS, either individually or collectively for the FFI's expanded affiliated group, that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registers as a deemed-compliant FFI or June 30, 2014;

(C) through (D) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(ii)(C) through (D).

(iii) [Reserved]. For further guidance, see § 1.1471-5(f)(1)(iii).

(2) *Certified deemed-compliant FFIs.* A *certified deemed-compliant FFI* means an FFI described in any of paragraphs (f)(2)(i) through (v) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471-3(d)(6) applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI also includes a nonreporting FFI under a Model 1 IGA and a nonreporting FFI treated as a certified deemed-compliant FFI under a Model 2 IGA. A certified deemed-compliant FFI is not required to register with the IRS.

(i) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1471-5(f)(2)(i)(A) through (f)(2)(i)(A)(2).

(B) The FFI's business consists primarily of receiving deposits from and making loans to, with respect to a bank, retail customers that are unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no

such member has a greater than 5 percent interest in such credit union or cooperative credit organization. For purposes of this paragraph (f)(2)(i)(B), a customer is related to a bank if the customer and the bank have a relationship described in section 267(b). For purposes of determining whether a member has a greater than 5 percent interest in a credit union or cooperative credit organization, the member must aggregate the ownership or beneficial interests in the credit union or cooperative credit organization that are owned or held by a related member. A member of a credit union or cooperative credit organization is related to another member if the relationship of such members is described in section 267(b).

(C) through (F) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(i)(C) through (F).

(ii) [Reserved]. For further guidance, see § 1.1471–5(f)(2)(ii) through (f)(2)(ii)(C).

(iii) *Sponsored, closely held investment vehicles.* Subject to the provisions of paragraph (f)(2)(iii)(F) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (D) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QL, WP, or WT.

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(D) The sponsoring entity complies with the following requirements—

(1) The sponsoring entity has registered with the IRS as a sponsoring entity;

(2) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(3) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required

under §§ 1.1471–4(d)(2)(ii)(C) and 1.1474–1;

(4) Performs the verification procedures required under § 1.1471–4(f) on behalf of the FFI, including the certification required under § 1.1471–4(f)(3);

(5) Performs the verification procedures required under paragraphs (j) and (k) of this section; and

(6) The sponsoring entity has not had its status as a sponsor revoked.

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under this paragraph (f)(2)(iii)(E) with respect to any sponsored FFI. A sponsoring entity is not liable for any failure to comply with the obligations contained in this paragraph (f)(2)(iii)(E) unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to the payment made to the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in this paragraph (f)(2)(iii)(E) that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made to the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

(iv) *Limited life debt investment entities (transitional).* An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements.

(A) The FFI is an investment entity that issued one or more classes of debt or equity interests to investors pursuant to a trust indenture or similar agreement and all of such interests were issued on or before January 17, 2013.

(B) The FFI was in existence as of January 17, 2013, and has entered into a trust indenture or similar agreement that requires the FFI to pay to investors holding substantially all of the interests in the FFI, no later than a set date or period following the maturity of the last asset held by the FFI, all amounts that such investors are entitled to receive from the FFI.

(C) The FFI was formed and operated for the purpose of purchasing or acquiring specific types of debt instruments or interests therein and holding those assets subject to

reinvestment only under prescribed circumstances to maturity.

(D) Substantially all of the assets of the FFI consist of debt instruments or interests therein.

(E) All payments made to the investors of the FFI (other than holders of a de minimis interest) are either cleared through a clearing organization or custodial institution that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a transfer agent that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(F) The FFI's trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations of a participating FFI under § 1.1471–4 and no other person has the authority to fulfill the obligations of a participating FFI under § 1.1471–4 on behalf of the FFI.

(v) *Investment advisors and investment managers.* An FFI is described in this paragraph (f)(2)(v) if the FFI meets the following requirements:

(A) The FFI is a financial institution solely because it is described in § 1.1471–5(e)(4)(i)(A).

(B) The FFI does not maintain financial accounts.

(3) [Reserved]. For further guidance, see § 1.1471–5(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(i).

(ii) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(ii).

(A) through (E) [Reserved]. For further guidance, see § 1.1471–5(f)(3)(ii)(A) through (E).

(4) [Reserved]. For further guidance, see § 1.1471–5(f)(4).

(i) The distributor provides investment services to at least 30 customers unrelated to each other and fewer than half of the distributor's customers are related to each other. For purposes of this paragraph (f)(4)(i), customers are related to each other if they have a relationship with each other described in section 267(b).

(ii) through (viii) [Reserved]. For further guidance, see § 1.1471–5(f)(4)(ii) through (viii).

(g) [Reserved]. For further guidance, see § 1.1471–5(g).

(1) through (2) [Reserved]. For further guidance, see § 1.1471–5(g)(1) through (g)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1471–5(g)(3).

(i) [Reserved]. For further guidance, see § 1.1471–5(g)(3)(i).

(A) through (C) [Reserved]. For further guidance, see § 1.1471–5(g)(3)(i)(A) through (C).

(D) *Preexisting accounts that become high-value accounts.* With respect to a

calendar year beginning after December 31, 2015, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to § 1.1471-4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following end of the calendar year in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1471-5(g)(3)(ii) through (iii).

(4) [Reserved]. For further guidance, see § 1.1471-5(g)(4).

(h) [Reserved]. For further guidance, see § 1.1471-5(h) through (h)(2).

(i) *Expanded affiliated group—Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see § 1.1471-4(e).

(1) [Reserved]. For further guidance, see § 1.1471-5(i)(1).

(2) *Expanded affiliated group defined.* Except as otherwise provided in this paragraph (i), an *expanded affiliated group* is defined in accordance with the principles of section 1504(a) to mean one or more chains of members connected through ownership by a common parent entity if the common parent entity directly owns stock or other equity interests meeting the requirements of paragraph (i)(4) of this section in at least one of the other members (for purposes of this paragraph (i), the constructive ownership rules of section 318 do not apply). Generally, only a corporation shall be treated as the common parent entity of an expanded affiliated group, unless the taxpayer elects to follow the approach described in paragraph (i)(10).

(3) *Member of expanded affiliated group.* The term *member of an expanded affiliated group* means a corporation or any entity other than a corporation (such as a partnership or trust) with respect to which the ownership requirements of paragraph (i)(4) of this section are met, regardless of whether such entity is a U.S. person or a foreign person, but excluding corporations described in paragraphs (1), (4), (6), (7), or (8) of section 1504(b).

(4) *Ownership test.* The ownership requirements of this paragraph (i)(4) are met if—

(i) *Corporations.* For purposes of paragraph (i)(2) of this section, a

corporation (except the common parent entity) will be considered owned by another member entity or by the common parent entity if more than 50 percent of the total voting power of the stock of such corporation and more than 50 percent of the total value of the stock of such corporation is owned directly by one or more other members of the group (including the common parent entity).

(A) *Stock not to include certain preferred stock.* For purposes of this paragraph (i)(4), the term *stock* does not include any stock which is described in section 1504(a)(4).

(B) *Valuation.* For purposes of section 1471(e) and this section, all shares of stock within a single class are considered to have the same value in determining the ownership percentage. Thus, control premiums and minority blockage discounts within a single class are not taken into account.

(ii) *Partnerships.* For purposes of paragraph (i)(2) of this section, a partnership will be considered owned by another member entity (including the common parent entity) if more than 50 percent (by value) of the capital or profits interest in the partnership is owned directly by one or more other members of the group (including the common parent entity).

(iii) *Trusts.* For purposes of paragraph (i)(2) of this section, a trust will be considered owned by another member entity or by the common parent entity if more than 50 percent (by value) of the beneficial interest in such trust is owned directly by one or more other members of the group (including the common parent entity). A beneficial interest in a trust includes an interest held by an entity treated as a grantor or other owner of the trust under sections 671 through 679 and a beneficial trust interest.

(5) *Treatment of warrants, options, and obligations convertible into equity for determining ownership.* For purposes of paragraph (i)(4) of this section, ownership of warrants, options, obligations convertible into the equity of a corporation or entity other than a corporation, and other similar interests is not considered for purposes of determining whether an entity is a member of an expanded affiliated group, except as follows:

(i) Ownership of a warrant, option, obligation convertible into stock, or other similar instrument creating an interest in a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that the common parent or member of the expanded affiliated group that holds such instrument also maintains voting rights with respect to such corporation.

However, interests described in § 1.1504-4(d)(2) will not be treated as options.

(ii) Ownership of a warrant, option, obligation convertible into an equity interest, or other similar instrument creating an interest in a corporation or entity other than a corporation will be considered for purposes of paragraph (i)(4) of this section to the extent that such instrument is reasonably certain to be exercised, based on all of the facts and circumstances and in accordance with the principles set forth in § 1.1504-4(g).

(6) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to investors that do not have a relationship with each other described in section 267(b);

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(6)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(6)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(7) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment,

avoiding an artificially high expense to return ratio, or similar purposes.

(8) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(4) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(8), a change in voting rights includes a separation of voting rights and value.

(9) *Exception for limited life debt investment entities.* Notwithstanding paragraphs (i)(2) and (i)(4) of this section, an entity that meets the requirements of § 1.1471-5(f)(2)(iv), including the requirements to have been in existence as of January 17, 2013, and to have issued interests in the entity on or before January 17, 2013, will not be considered a member of an expanded affiliated group as a result of any member of such expanded affiliated group owning interests in such entity.

(10) *Partnerships, trusts, and other non-corporate entities.* For purposes of determining the composition of an expanded affiliated group, an entity other than a corporation may elect to be treated as the common parent entity. Taxpayers following this approach may not, in a later year, follow the rule described in paragraph (i)(2) without the approval of the Commissioner. See also § 1.1471-5(e)(5)(i)(C).

(j) *Sponsoring entity verification.* [Reserved].

(k) *Sponsoring entity event of default.* [Reserved].

(l) [Reserved]. For further guidance, see § 1.1471-5(l).

(m) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 12.** In § 1.1471-6, revise paragraphs (d)(1), (d)(4), (f)(2)(iii)(B) through (C), (f)(3)(ii) through (iii), (f)(5) through (6), (g), and (h)(2) to read as follows:

§ 1.1471-6 Payments beneficially owned by exempt beneficial owners.

* * * * *

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1471-6T(d)(1).

* * * * *

(4) [Reserved]. For further guidance, see § 1.1471-6T(d)(4).

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) [Reserved]. For further guidance, see § 1.1471-6T(f)(2)(iii)(B).

(C) [Reserved]. For further guidance, see § 1.1471-6T(f)(2)(iii)(C).

* * * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1471-6T(f)(3)(ii).

(iii) [Reserved]. For further guidance, see § 1.1471-6T(f)(3)(iii).

* * * * *

(5) [Reserved]. For further guidance, see § 1.1471-6T(f)(5).

(6) [Reserved]. For further guidance, see § 1.1471-6T(f)(6).

* * * * *

(g) [Reserved]. For further guidance, see § 1.1471-6T(g).

(h) * * *

(2) [Reserved]. For further guidance, see § 1.1471-6T(h)(2) through (h)(2)(iii).

* * * * *

■ **Par. 13.** Section 1.1471-6T is added to read as follows:

§ 1.1471-6T Payments beneficially owned by exempt beneficial owners (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1471-6(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1471-6(d).

(1) *In general.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *foreign central bank of issue* means an institution that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such an institution is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) through (3) [Reserved]. For further guidance, see § 1.1471-6(d)(2) through (3).

(4) *Income on certain transactions.* Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on cash and securities, including cash and securities held as collateral or securities held in connection with a securities lending transaction, held by the foreign central bank of issue in the ordinary course of its operations as a central bank of issue.

(e) [Reserved]. For further guidance, see § 1.1471-6(e).

(f) [Reserved]. For further guidance, see § 1.1471-6(f).

(1) [Reserved]. For further guidance, see § 1.1471-6(f)(1).

(2) [Reserved]. For further guidance, see § 1.1471-6(f)(2).

(i) through (ii) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(i) through (ii).

(iii) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii).

(A) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii)(A).

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), from retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or from other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this paragraph (f) or in an applicable Model 1 or Model 2 IGA), or penalties apply to distributions or withdrawals made before such specified events; or

(D) [Reserved]. For further guidance, see § 1.1471-6(f)(2)(iii)(D).

(3) [Reserved]. For further guidance, see § 1.1471-6(f)(3).

(i) [Reserved]. For further guidance, see § 1.1471-6(f)(3)(i).

(ii) The fund is sponsored by one or more employers and each of these employers are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other retirement plans described in paragraph (f)(1) of this section, from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA) are limited by reference to earned income and compensation of the employee, respectively;

(iv) through (v) [Reserved]. For further guidance, see § 1.1471-6(f)(3)(iv) through (v).

(4) [Reserved]. For further guidance, see § 1.1471-6(f)(4).

(5) *Investment vehicles exclusively for retirement funds.* A fund established exclusively to earn income for the benefit of one or more retirement funds described in paragraphs (f)(1) through (5) of this section or in an applicable

Model 1 or Model 2 IGA, accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

(6) *Pension fund of an exempt beneficial owner.* A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section or an exempt beneficial owner (other than a fund that qualifies as an exempt beneficial owner) described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

(7) [Reserved]. For further guidance, see § 1.1471–6(f)(7).

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment entity is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity), an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA.

(h) [Reserved]. For further guidance, see § 1.1471–6(h).

(1) [Reserved]. For further guidance, see § 1.1471–6(h)(1).

(2) *Limitation.* Paragraph (h)(1) of this section will not apply to a foreign central bank of issue as described in paragraph (d) if—

(i) The entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

(iii) The entity only maintains financial accounts that are depository accounts for current or former employees of the entity (and the spouses

and children of such employees) or financial accounts for exempt beneficial owners.

(i) [Reserved]. For further guidance, see § 1.1471–6(i).

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 14.** Section 1.1472–1 is amended:

■ 1. By redesignating paragraph (f) as paragraph (h).

■ 2. By adding paragraphs (c)(1)(vi) through (vii), (c)(3) through (5), (f), and (g).

■ 3. By revising paragraphs (b)(1) introductory text, (b)(2), (c)(1) introductory text, (c)(1)(i) introductory text, (c)(1)(ii) through (iii), (c)(1)(iv) introductory text, (c)(1)(iv)(C), (c)(1)(v), (c)(2), and (d)(1) through (2).

The additions and revisions read as follows:

§ 1.1472–1 Withholding on NFFEs.

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(b)(1).

* * * * *

(2) [Reserved]. For further guidance, see § 1.1472–1T(b)(2).

(c) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(c)(1).

(i) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(i).

* * * * *

(ii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iii).

(iv) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv).

* * * * *

(C) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(iv)(C).

(v) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(v).

(vi) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vi).

(vii) [Reserved]. For further guidance, see § 1.1472–1T(c)(1)(vii).

(2) [Reserved]. For further guidance, see § 1.1472–1T(c)(2).

(3) [Reserved]. For further guidance, see § 1.1472–1T(c)(3).

(4) [Reserved]. For further guidance, see § 1.1472–1T(c)(4).

(5) [Reserved]. For further guidance, see § 1.1472–1T(c)(5) through (c)(5)(iv).

(d) * * *

(1) [Reserved]. For further guidance, see § 1.1472–1T(d)(1).

(2) [Reserved]. For further guidance, see § 1.1472–1T(d)(2).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1472–1T(f).

(g) [Reserved]. For further guidance, see § 1.1472–1T(g).

* * * * *

■ **Par. 15.** Section 1.1472–1T is added to read as follows:

§ 1.1472–1T Withholding on NFFEs (temporary).

(a) [Reserved]. For further guidance, see § 1.1472–1(a).

(b) [Reserved]. For further guidance, see § 1.1472–1(b).

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraphs (c)(1) or (2) of this section (providing exceptions for payments to an excepted NFFE or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is a NFFE unless—

(i) through (iii) [Reserved]. For further guidance, see § 1.1472–1(b)(1)(i) through (iii).

(2) *Transitional relief.* For any withholdable payment made prior to July 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when the NFFE has failed to provide the owner certification as required under § 1.1471–3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under § 1.1474–1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) [Reserved]. For further guidance, see § 1.1472–1(c).

(1) *Payments to an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as made to a payee that is an excepted NFFE. For purposes of this paragraph, the term *excepted NFFE* means a payee that the withholding agent may treat as a NFFE that is a QI, WP, or WT. Additionally, the term *excepted NFFE* means, with respect to the payment, a NFFE

described in paragraphs (c)(1)(i) through (vii) of this section to the extent the withholding agent may treat the NFFE as the beneficial owner of the payment.

(i) *Publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(i) if it is a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) through (C) [Reserved]. For further guidance, see § 1.1472-1(c)(1)(i)(A) through (c)(1)(i)(C)(3).

(ii) *Certain affiliated entities related to a publicly traded corporation.* A NFFE is described in this paragraph (c)(1)(ii) if it is a corporation that is a member of the same expanded affiliated group (as defined in § 1.1471-5(i)) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) *Certain territory entities.* A NFFE is described in this paragraph (c)(1)(iii) if it is a territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized. The term *bona fide resident of a U.S. territory* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937-1.

(iv) *Active NFFEs.* A NFFE is described in this paragraph (c)(1)(iv) if it is an entity (an *active NFFE*) and less than 50 percent of its gross income for the preceding taxable year (*i.e.*, calendar or fiscal) is passive income and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are held for the production of passive income, as determined after the application of paragraph (c)(1)(iv)(B) of this section (passive assets).

(A) through (B) [Reserved]. For further guidance, see § 1.1472-1(c)(1)(iv)(A) through (c)(1)(B)(2)(ii).

(C) *Methods of measuring assets.* For purposes of this paragraph (c)(1)(iv), the value of a NFFE's assets is determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet (as determined under either a U.S. or an international financial accounting standard).

(v) *Excepted nonfinancial entities.* A NFFE is described in this paragraph (c)(1)(v) if it is an entity described in § 1.1471-5(e)(5) (referring to holding companies, treasury centers, and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating or emerging from bankruptcy; and non-profit organizations).

(vi) *Direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vi) if it meets the requirements described in

§ 1.1472-1(c)(3) to be treated as a direct reporting NFFE.

(vii) *Sponsored direct reporting NFFEs.* A NFFE is described in this paragraph (c)(1)(vii) if it meets the requirements described in § 1.1472-1(c)(5) to be treated as a sponsored direct reporting NFFE.

(2) *Payments made to an exempt beneficial owner.* A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may treat the payment as made to an exempt beneficial owner.

(3) *Definition of direct reporting NFFE.* A *direct reporting NFFE* means a NFFE that elects to report information about its direct or indirect substantial U.S. owners to the IRS and meets the following requirements—

(i) The NFFE must register on Form 8957, “FATCA Registration,” (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS;

(ii) The NFFE must report directly to the IRS on Form 8966, “FATCA Report,” (or such other form as the IRS may prescribe) the following information for each calendar year (or, may be required by the IRS to certify on Form 8966, or in such other manner as the IRS may prescribe, that the NFFE has no substantial U.S. owners):

(A) The name, address, and TIN of each substantial U.S. owner (as defined in § 1.1473-1(b)) of such NFFE;

(B) The total of all payments made to each substantial U.S. owner (including the gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the NFFE during the calendar year, which include payments in redemption or liquidation (in whole or part) of the substantial U.S. owner's equity interest in the NFFE);

(C) The value of each substantial U.S. owner's equity interest in the NFFE determined by applying the rules described in § 1.1471-5(b)(4)

(substituting the term *equity* for the terms *account* and *financial account*);

(D) The name, address, and GIIN of the NFFE, and

(E) Any other information as required by Form 8966 (or such other form as the IRS may prescribe) and its accompanying instructions;

(iii) The NFFE must obtain a written certification (contained on a withholding certificate or in a written statement) from each person that would be treated as a substantial U.S. owner of the NFFE if such person were a specified U.S. person. Such written

certification must indicate whether the person is a substantial U.S. owner of the NFFE, and if so, the name, address and TIN of the person. If the NFFE has reason to know that such written certification is unreliable or incorrect, it must contact the person and request a revised written certification. If no revised written certification is received, the NFFE must treat the person as a substantial U.S. owner and report on Form 8966 the information required under paragraph (c)(3)(ii) of this section. The NFFE has reason to know that such a written certification is unreliable or incorrect if the certification is inconsistent with information in the NFFE's possession, including information that the NFFE provides to a financial institution in order for the financial institution to meet its AML or other account identification due diligence procedures with respect to the NFFE's account, information that is publicly available, and U.S. indicia as described in § 1.1441-7(b) and for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in § 1.1441-7(b)(8) has not been obtained.

(iv) The NFFE must keep records that it produces in the ordinary course of its business that summarize the activity (including the gross amounts described in paragraph (c)(3)(ii)(B) that are paid or credited to each of its substantial U.S. owners) relating to its transactions with respect to the equity of the NFFE held by each of its substantial U.S. owners for any calendar year in which the owner was required to be reported under paragraph (c)(3)(ii) of this section. The records must be retained for the longer of six years or the retention period under the NFFE's normal business procedures. A NFFE may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period;

(v) The NFFE must respond to requests made by the IRS for additional information with respect to any substantial U.S. owner that is subject to reporting by the NFFE or with respect to the records described in paragraphs (c)(3)(iii) or (iv) of this section;

(vi) The NFFE must make a periodic certification to the IRS within each six-month period following the end of each certification period relating to its compliance with respect to the election described in paragraphs (c)(3) and (4) of this section. The first certification period begins on the date a GIIN is issued and ends at the close of the third full calendar year following that date. Each subsequent certification period is the three calendar year period following

the close of the previous certification period. The certification will require an officer of the NFFE to certify to the following statements—

(A)(1) The NFFE has not had any events of default described in paragraph (c)(4)(v) of this section; or

(2) If there are any events of default, appropriate measures were taken to remediate such failures and to prevent such failures from recurring; and

(B) With respect to any failure to report to the extent required under paragraph (c)(3)(ii), the NFFE has corrected such failure by filing the appropriate information returns; and

(vii) The NFFE has not had its status as a direct reporting NFFE revoked by the IRS.

(4) *Election to be treated as a direct reporting NFFE*—(i) *Manner of making election.* A NFFE may elect to be treated as a direct reporting NFFE by registering on Form 8957 (or such other form as the IRS may prescribe) with the IRS to obtain a GIIN pursuant to the procedures prescribed by the IRS.

(ii) *Effective date of election.* The election is effective upon the issuance of a GIIN to the NFFE.

(iii) *Revocation of election by NFFE.* The election may not be revoked by the NFFE without the consent of the Commissioner. The NFFE must notify its sponsoring entity (if applicable) and all relevant withholding agents if it revokes its election.

(iv) *Revocation of election by Commissioner.* The election may be revoked by the Commissioner upon an event of default described in paragraph (v) of this section.

(v) *Event of default.* An event of default occurs if a direct reporting NFFE fails to perform any of the obligations described in (c)(3)(i) through (vi) of this section. An event of default also includes any misrepresentation of a material fact to the IRS.

(vi) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the NFFE a notice of default specifying the event of default. The IRS will request that the NFFE remediate the event of default within a specified time period. The NFFE must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the NFFE does not agree that an event of default has occurred. If the NFFE does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice to the NFFE that its election to be treated as a direct reporting NFFE has been revoked. A NFFE may request, within 90 days of receipt,

reconsideration of a notice of default or notice of revocation by written request to the Deputy Commissioner (International), LB&L.

(vii) *Remediation of event of default.* A NFFE will be permitted to remediate an event of default to the extent it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the NFFE.

(5) *Election by a direct reporting NFFE to be treated as a sponsored direct reporting NFFE.*

(i) *Definition of sponsored direct reporting NFFE.* A NFFE is a *sponsored direct reporting NFFE* if the NFFE is a direct reporting NFFE and if another entity, other than a nonparticipating FFI, has agreed with the NFFE to act as its sponsoring entity, as described in paragraph (c)(5)(ii) of this section.

(ii) *Requirements for sponsoring entity of a sponsored direct reporting NFFE.* A sponsoring entity meets the requirements of this paragraph (c)(5)(ii) if the sponsoring entity—

(A) Is authorized to act on behalf of the NFFE;

(B) Has registered with the IRS as a sponsoring entity;

(C) Has registered the NFFE with the IRS as a sponsored direct reporting NFFE;

(D) Agrees to perform, on behalf of the NFFE, all due diligence, reporting, and other requirements that the NFFE would have been required to perform as a direct reporting NFFE;

(E) Identifies the NFFE in all reporting completed on the NFFE's behalf;

(F) Complies with the certification and other requirements in paragraphs (f) and (g) of this section;

(G) Has not had its status as a sponsoring entity revoked; and

(H) Agrees to notify all relevant withholding agents and the IRS if its status as a sponsoring entity is revoked, if it otherwise ceases to be the sponsoring entity of any of its sponsored direct reporting NFFEs (for example, if the sponsored direct reporting NFFE changes sponsors), or if the status of any of its sponsored direct reporting NFFEs has been revoked.

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (c)(5)(ii) of this section with respect to any sponsored direct reporting NFFE.

(iv) *Liability of sponsoring entity.* A sponsoring entity is not liable for any failure to comply with the obligations

contained in paragraph (c)(5)(ii) of this section. A sponsored direct reporting NFFE will remain liable for all of its chapter 4 obligations without regard to any failure of its sponsoring entity to comply with the obligations contained in paragraph (c)(5)(ii) of this section that the sponsoring entity has agreed to undertake on behalf of the NFFE.

(d) [Reserved]. For further guidance, see § 1.1472–1(d).

(1) *In general.* For purposes of this section, except in the case of a payee that is a QI, WP, or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under § 1.1471–3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE (other than a QI, WP, or WT) if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of § 1.1471–3(d).

(2) *Payments made to a NFFE that is a QI, WP, or WT.* A withholding agent may treat the payee of a withholdable payment as a NFFE that is a QI, WP, or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as such under the rules of § 1.1471–3(b)(3) and (d).

(3) through (5) [Reserved]. For further guidance, see § 1.1472–1(d)(3) through (5).

(e) [Reserved]. For further guidance, see § 1.1472–1(e) through (e)(2).

(f) *Sponsoring entity verification.* [Reserved].

(g) *Sponsoring entity event of default.* [Reserved].

(h) [Reserved]. For further guidance, see § 1.1472–1(h).

(i) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 16.** Section 1.1473–1 is amended by revising paragraphs (a)(2)(vi), (a)(3)(iii)(B)(4), (a)(4)(vi), (a)(5)(i) through (vi), and (b)(2)(v) and by adding new paragraph (a)(4)(vii) to read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(2)(vi).

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(4) [Reserved]. For further guidance, see § 1.1473–1T(a)(3)(iii)(B)(4).

* * * * *

(4) * * *

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(4)(vi).
 (vii) [Reserved]. For further guidance, see § 1.1473–1T(a)(4)(vii).

(5) * * *

(i) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(i).

(ii) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(ii).

(iii) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(iii).

(iv) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(iv).

(v) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(v).

(vi) [Reserved]. For further guidance, see § 1.1473–1T(a)(5)(vi).

* * * * *

(b) * * *

(2) * * *

(v) [Reserved]. For further guidance, see § 1.1473–1T(b)(2)(v).

* * * * *

■ **Par. 17.** Section 1.1473–1T is added to read as follows:

§ 1.1473–1T Section 1473 definitions (temporary).

(a) [Reserved]. For further guidance, see § 1.1473–1(a).

(1) [Reserved]. For further guidance, see § 1.1473–1(a)(1) through (a)(1)(ii).

(2) [Reserved]. For further guidance, see § 1.1473–1(a)(2).

(i) through (v) [Reserved]. For further guidance, see § 1.1473–1(a)(2)(i) through (v).

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates and is not part of a plan described in § 1.1441–3(b)(2)(ii).

(vii) [Reserved]. For further guidance, see § 1.1473–1(a)(2)(vii) through (a)(2)(vii)(B).

(3) [Reserved]. For further guidance, see § 1.1473–1(a)(3).

(i) through (ii) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(i) through (a)(3)(ii)(C).

(iii) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii).

(A) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(A).

(B) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B).

(1) through (3) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B)(1) through (3).

(4) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any

interest accrued between interest payment dates other than an amount described in paragraph (a)(2)(vi) of this section that is treated as U.S. source FDAP income; and

(5) [Reserved]. For further guidance, see § 1.1473–1(a)(3)(iii)(B)(4).

(4) [Reserved]. For further guidance, see § 1.1473–1(a)(4).

(i) through (v) [Reserved]. For further guidance, see § 1.1473–1(a)(4)(i) through (v).

(vi) *Offshore payments of U.S. source FDAP income prior to 2017*

(transitional). A payment with respect to an offshore obligation made prior to January 1, 2017, if such payment is U.S. source FDAP income and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentence shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under § 1.1471–2(a)(2)(ii), or in the case of payments made with respect to debt or equity issued by a U.S. person (excluding interest payments made by a foreign branch of a U.S. financial institution with respect to depository accounts it maintains for retail customers). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3 and does not include a person acting as an insurance broker with respect to premiums.

(vii) *Collateral arrangements prior to 2017 (transitional).* A payment made prior to January 1, 2017, by a secured party with respect to collateral securing one or more transactions under a collateral arrangement, provided that only a commercially reasonable amount of collateral is held by the secured party as part of the collateral arrangement. For purposes of this paragraph (a)(4)(vii), the term *transaction* generally includes a debt instrument, a derivative financial instrument (including a notional principal contract, future, forward, and option), and any securities lending transaction, sale-repurchase transaction, margin loan, or substantially similar transaction that is subject to a collateral arrangement.

(5) [Reserved]. For further guidance, see § 1.1473–1(a)(5).

(i) *In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat a payment of U.S. source FDAP income that is also a withholdable payment as having been paid by such entity to its

partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(i)(A).

(iii) *Simple trusts.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(ii).

(iv) *Complex trusts and estates.* An amount of U.S. source FDAP income that is also a withholdable payment is treated as being paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(iii).

(v) *Grantor trusts.* If an amount of U.S. source FDAP income that is also a withholdable payment is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) *Special rule for an NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income that is also a withholdable payment is treated as being paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) [Reserved]. For further guidance, see § 1.1473–1(a)(5)(vii).

(6) [Reserved]. For further guidance, see § 1.1473–1(a)(6).

(7) [Reserved]. For further guidance, see § 1.1473–1(a)(7).

(b) [Reserved]. For further guidance, see § 1.1473–1(b).

(1) [Reserved]. For further guidance, see § 1.1473–1(b)(1) through (b)(1)(iii)(B).

(2) [Reserved]. For further guidance, see § 1.1473–1(b)(2).

(i) through (iv) [Reserved]. For further guidance, see § 1.1473–1(b)(2)(i) through (iv).

(v) *Interests owned or held by a related person.* For purposes of determining whether a specified U.S. person is a substantial U.S. owner in a foreign entity described in paragraphs

(b)(2)(i) through (iv) of this section, if a specified U.S. person owns or holds, directly or indirectly, any interest in the foreign entity, that interest must be aggregated with any such interest in the foreign entity owned or held, directly or indirectly, by a related person. For purposes of the preceding sentence, a related person is a person or spouse of a person described in § 1.267(c)-1(a)(4), determined by reference to such specified U.S. person.

(3) through (7) [Reserved]. For further guidance, see § 1.1473-1(b)(3) through (7).

(c) through (f) [Reserved]. For further guidance, see § 1.1473-1(c) through (f).

(g) *Expiration date*. The applicability of this section expires on February 28, 2017.

■ **Par. 18.** Section 1.1474-1 is amended:

■ 1. By removing paragraphs (d)(1)(ii)(A)(1)(x), (d)(3)(iii), (d)(4)(ii)(C), and (i)(1)(iv) through (v).

■ 2. By redesignating paragraphs (d)(1)(ii)(A)(1)(x) through (xi) as (d)(1)(ii)(A)(1)(ix) through (xi), and paragraphs (d)(3)(iv) through (x) as (d)(3)(iii) through (ix).

■ 3. By revising paragraphs (d)(1)(i), (d)(1)(ii)(A)(1)(viii) through (ix), (d)(1)(ii)(B)(1)(i), (d)(1)(ii)(B)(1)(vi) through (vii), (d)(1)(ii)(B)(1)(ix), (d)(2)(i), (d)(4)(i)(B), (d)(4)(i)(E), (d)(4)(ii)(B), (d)(4)(iii), (i)(1) introductory text, (i)(1)(i) through (iii), (i)(2) introductory text, and (i)(2)(iii).

The additions and revisions read as follows:

§ 1.1474-1 Liability for withheld tax and withholding agent reporting.

(d) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(i).

(ii) * * *

(A) * * *

(1) * * *

(viii) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(A)(1)(viii).

(ix) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(A)(1)(ix).

* * * * *

(B) * * *

(1) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(1)(i).

* * * * *

(vi) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(1)(vi).

(vii) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(1)(vii).

* * * * *

(ix) [Reserved]. For further guidance, see § 1.1474-1T(d)(1)(ii)(B)(1)(ix).

* * * * *

(2) * * *

(i) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i).

(A) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(A).

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(B).

(C) [Reserved]. For further guidance, see § 1.1474-1T(d)(2)(i)(C).

* * * * *

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(i)(B).

* * * * *

(E) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(i)(E).

(ii) * * *

(B) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(ii)(B).

(C) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(ii)(C).

(iii) * * *

(A) [Reserved]. For further guidance, see § 1.1474-1T(d)(4)(iii) through (d)(4)(iii)(C).

* * * * *

(i) * * *

(1) [Reserved]. For further guidance, see § 1.1474-1T(i)(1).

(i) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(i).

(ii) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.1474-1T(i)(1)(iii) through (i)(1)(iii)(E).

(2) [Reserved]. For further guidance, see § 1.1474-1T(i)(2).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1474-1T(i)(2)(iii).

* * * * *

■ **Par. 19.** Section 1.1474-1T is added to read as follows:

§ 1.1474-1T Liability for withheld tax and withholding agent reporting (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1474-1(a) through (c)(3).

(d) [Reserved]. For further guidance, see § 1.1474-1(d).

(1) [Reserved]. For further guidance, see § 1.1474-1(d)(1).

(i) *In general*. Except as otherwise provided in paragraph (d)(4) of this section or in the instructions to Form 1042-S, every withholding agent must file an information return on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. Except as

otherwise provided in paragraphs (d)(4)(ii)(B) (certain unknown recipients) and (d)(4)(i)(B) and (d)(4)(iii)(A) of this section (describing payees includable in reporting pools of a participating FFI or registered deemed-compliant FFI), a separate Form 1042-S must be filed with the IRS for each recipient of an amount subject to reporting under paragraph (d)(2)(i) of this section and for each separate type of payment made to a single recipient in accordance with paragraph (d)(4)(i) of this section. The Form 1042-S shall be prepared in such manner as the form and its accompanying instructions prescribe. One copy of the Form 1042-S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the form. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042-S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) and to any intermediary or flow-through entity described in paragraph (d)(3)(vii) of this section on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates (determined as set forth in paragraph (c)(1) of this section). See paragraph (d)(4)(iii) of this section for the additional reporting requirements of participating FFIs and deemed-compliant FFIs.

(ii) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii).

(A) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A).

(1) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(1).

(i) through (vii) [Reserved]. For further guidance, see § 1.1474-1(d)(1)(ii)(A)(1)(i) through (vii).

(viii) An excepted NFFE and passive NFFE that also is not a flow-through entity and that is not acting as an agent or intermediary with respect to the payment;

(ix) A foreign person that is a partner or beneficiary in a flow-through entity that is a NFFE (looking through a partner or beneficiary that is a foreign intermediary or flow-through entity);

(x) through (xi) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(1)(x) through (xi).

(2) through (3) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(A)(2) through (3).

(B) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B).

(1) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(1).

(i) A certified deemed-compliant FFI that is an NQI, NWP, or NWT and that fails to provide its withholding agent with sufficient information to allocate the payment to its account holders and payees;

(ii) through (v) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(1)(ii) through (v).

(vi) An account holder or payee of a nonparticipating FFI except to the extent described in paragraph (d)(1)(ii)(A)(1)(x) of this section for an exempt beneficial owner;

(vii) Except as provided in paragraph (d)(1)(ii)(A)(1) of this section, an entity that is disregarded under § 301.7701–2(c)(2) as an entity separate from its owner;

(viii) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(1)(viii).

(ix) A passive NFFE or an excepted NFFE that is a flow-through entity or acts as an intermediary;

(2) through (3) [Reserved]. For further guidance, see § 1.1474–1(d)(1)(ii)(B)(2) through (3).

(2) [Reserved]. For further guidance, see § 1.1474–1(d)(2).

(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means each of the following amounts reportable on a Form 1042–S for purposes of chapter 4—

(A) An amount of a withholdable payment that is subject to withholding under chapter 4 paid after June 30, 2014;

(B) An amount of a withholdable payment of U.S. source FDAP income that is also reportable on Form 1042–S under § 1.1461–1(c)(2)(i); or

(C) A foreign passthru payment subject to withholding under chapter 4.

(ii) through (iii) [Reserved]. For further guidance, see § 1.1474–1(d)(2)(ii) through (iii).

(3) [Reserved]. For further guidance, see § 1.1474–1(d)(3) through (d)(3)(x).

(4) [Reserved]. For further guidance, see § 1.1474–1(d)(4).

(i) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i).

(A) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i)(A).

(B) *Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.* Except as otherwise provided in

this paragraph (d)(4)(i)(B), a U.S.

withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT must complete a Form 1042–S treating such FFI as the recipient. With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives an FFI withholding statement allocating the payment (or portion of the payment) to a chapter 4 withholding rate pool, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool identified on an FFI withholding statement, described in § 1.1471–3(c)(3)(iii)(B)(2). If, however, a participating FFI, deemed-compliant FFI, or QI (as applicable) has made an election under § 1.1471–4(b)(3)(iii), for the portion of the payment that the FFI allocates to each recalcitrant account holder that is subject to backup withholding under section 3406, the withholding agent must report on Form 1099 the amount of the payment and tax withheld in accordance with the form's requirements and accompanying instructions. See § 1.1471–2(a)(2)(i) for the requirement of a withholding agent to withhold on payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also § 1.1471–2(a)(2)(iii) in the case of payments made to a QI. See § 1.1461–1(c)(4)(A) for the extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042–S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under § 1.1461–1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) through (D) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(i)(C) through (d)(4)(i)(D)(3).

(E) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an excepted or passive NFFE shall

complete Forms 1042–S treating the NFFE as the recipient, except when the NFFE is a flow-through entity or acting as an intermediary and the partner or beneficiary is treated as the payee. In cases in which the chapter 4 reportable amount is also an amount of U.S. source FDAP income reportable on Form 1042–S (described in § 1.1441–2(a)), see also § 1.1461–1(c)(4)(A) for the extent to which reporting is required with respect to the partners, beneficiaries, or owners of such entities.

(ii) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(ii).

(A) [Reserved]. For further guidance, see § 1.1474–1(d)(4)(ii)(A).

(B) *Nonparticipating FFI that is a flow-through entity or intermediary.* If a withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary with regard to a payment or as a flow-through entity under rules described in § 1.1471–3(c)(3)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(1)(x) of this section (relating to an exempt beneficial owner), the withholding agent must report the recipient of the payment as an unknown recipient and report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient in accordance with the instructions to the Form 1042–S.

(iii) *Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs)—(A) In general.* Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and § 1.1471–4(d)(2)(ii)(F) (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI must complete a Form 1042–S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account

holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in § 1.1471-4(d)(6) and within a particular income code. Except as otherwise provided in § 1.1471-4(d)(2)(ii)(F), with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042-S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount paid to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) *Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3).* Except as otherwise provided in § 1.1471-4(d)(2)(ii)(F), a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 1042-S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042-S. Such FFI is required to report a payment, however, when the FFI knows, or has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042-S. In such case, the FFI must report on Form 1042-S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, § 1.1471-4(d)(6) for the requirement to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966, "FATCA Report," regardless of whether withholdable payments are made to such accounts.

(C) *Reporting by a U.S. branch of a participating FFI or registered deemed-*

compliant FFI treated as a U.S. person. A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must report amounts paid to recipients on Forms 1042-S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

(iv) through (vi) [Reserved]. For further guidance, see § 1.1474-1(d)(4)(iv) through (vi).

(e) through (h) [Reserved]. For further guidance, see § 1.1474-1(e) through (h).

(i) [Reserved]. For further guidance, see § 1.1474-1(i).

(1) *Reporting by certain withholding agents with respect to owner-documented FFIs.*

(i) Beginning on July 1, 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) makes a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471-3(d)(6), the withholding agent is required to report for July 1 through December 31, 2014, with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(ii) Beginning in calendar year 2015, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471-3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity the information described in paragraph (i)(1)(iii) of this section.

(iii) The information that a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471-4(d)) is required to report under paragraphs (i)(1)(i) and (i)(1)(ii) of this section must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2);

(C) For the period from July 1 through December 31, 2014, the total of all payments made to the owner-documented FFI and with respect to payments made after the 2014 calendar year the total of all payments made to the owner-documented FFI during the calendar year;

(D) The account balance or value of the account held by the owner-documented FFI; and

(E) Any other information required on Form 8966 and its accompanying instructions provided for purposes of such reporting.

(2) *Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs.* Beginning on July 1, 2014, in addition to the reporting on Form 1042-S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under § 1.1471-4(d)) that receives information about any substantial U.S. owners of a NFFE that is not an excepted NFFE as defined in § 1.1472-1(c) shall file a report with the IRS for the period from July 1 through December 31, 2014, and in each subsequent calendar year with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. 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 Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the form or instructions may require. The report must contain the following information—

(i) through (ii) [Reserved]. For further guidance, see § 1.1474-1(i)(2)(i) through (ii).

(iii) For the period from July 1, 2014 through December 31, 2014, the total of all payments made to the NFFE and, with respect to payments made after the 2014 calendar year, the total of all payments made to the NFFE during the calendar year; and

(iv) [Reserved]. For further guidance, see § 1.1474-1(i)(2)(iv).

(3) [Reserved]. For further guidance, see § 1.1474-1(i)(3).

(j) [Reserved]. For further guidance, see § 1.1474–1(j).

(k) *Expiration date.* The applicability of this section expires on February 28, 2017.

■ **Par. 20.** Section 1.1474–6 is amended by revising paragraph (b)(1), by redesignating paragraph (f) as (g), and by adding new paragraph (f) to read as follows:

§ 1.1474–6 Coordination of chapter 4 with other withholding provisions.

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see § 1.1474–6T(b)(1).

* * * * *

(f) [Reserved]. For further guidance, see § 1.1474–6T(f).

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■ **Par. 21.** Section 1.1474–6T is added to read as follows:

§ 1.1474–6T Coordination of chapter 4 with other withholding provisions (temporary).

(a) [Reserved]. For further guidance, see § 1.1474–6(a).

(b) [Reserved]. For further guidance, see § 1.1474–6(b).

(1) *In general.* In the case of a withholdable payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under § 1.1441–2(a), a withholding agent may credit the withholding applied under chapter 4 against its liability for any tax due under sections 1441, 1442, or 1443. See § 1.1474–1(c) and (d) for the income tax return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 that is also an amount subject to withholding under § 1.1441–2(a).

(2) through (3) [Reserved]. For further guidance, see § 1.1474–6(b)(2) through (3).

(c) through (e) [Reserved]. For further guidance, see § 1.1474–6(c) through (e).

(f) *Coordination with section 3406.* A participating FFI that makes a withholdable payment that is also a reportable payment (as defined in the

relevant sections of chapter 61) to a recalcitrant account holder that is a U.S. non-exempt recipient is not required to withhold under section 3406 if it withholds on the payment at a 30-percent rate in accordance with its withholding obligations under chapter 4. See, however, § 1.1471–4(b)(3)(iii) for the election to withhold on recalcitrant account holders that are non-exempt U.S. recipients under section 3406 instead of withholding under chapter 4.

(g) [Reserved]. For further guidance, see § 1.1474–6(g).

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: February 14, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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