

## HIGHLIGHTS OF THIS ISSUE

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

### SPECIAL ANNOUNCEMENT

#### **Rev. Proc. 2014-42, page 192.**

This revenue procedure provides guidance regarding a new, voluntary Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, certified public accountants (CPAs), or enrolled agents (EAs) to complete continuing education courses for the purpose of increasing their knowledge of the law relevant to federal tax returns. In addition, this revenue procedure modifies and supersedes Revenue Procedure 81-38, 1981-2 C.B. 592, regarding limited practice before the IRS by individuals who are not attorneys, CPAs or EAs. Except for section 6, this revenue procedure is effective as of June 30, 2014. Section 6 is effective for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

### INCOME TAX

#### **Rev. Proc. 2014-38, page 131.**

Revenue Procedure 2014-38 updates the FFI Agreement applicable to foreign financial institutions (FFIs) wishing to enter into an FFI Agreement with the IRS to be treated as a participating FFI under section 1471(b) of the Code. Rev. Proc. 2014-38 also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) on complying with the terms of the FFI Agreement, as modified by the Model 2 IGA. Rev. Proc. 2014-38 updates the FFI Agreement to reflect the temporary regulations released on February 20, 2014, under chapters 3, 4, and 61 of the Code, and section 3406. Rev. Proc. 2014-38 modifies and supersedes Rev. Proc. 2014-13.

#### **Rev. Proc. 2014-39, page 150.**

Revenue Procedure 2014-39 updates the Qualified Intermediary (QI) agreement published in Rev. Proc. 2000-12, 2000-1 C.B. 387 (as amended) applicable to foreign intermediaries that wish to enter into a QI withholding agreement with the IRS

under § 1.1441-1(e)(5). The QI agreement is being updated to reflect the enactment of Chapter 4 (§§ 1471-1474) of the Code, and the issuance of regulations under section 3406 and chapters 3, 4, and 61 of the Code. Rev. Proc. 2014-39 supersedes Rev. Proc. 2000-12 with respect to the requirements of a QI that apply on or after June 30, 2014, and is effective as of the date of public release. The effective date of this revenue procedure is June 27, 2014.

### EMPLOYEE PLANS

#### **T.D. 9671, page 124.**

This document amends regulations concerning the 90 day waiting period limitation as related to a bona fide employment based orientation period for group health coverage, under the Affordable Care Act.

### EMPLOYMENT TAX

#### **T.D. 9670, page 121.**

These final regulations extend exceptions/exemptions from FICA and FUTA taxes relating to services performed by certain employees for family members and for services performed by an employee for an employer where both are members of a qualifying religious sect to disregarded entities. These final regulations also clarify that the owner (and not the entity) is the party responsible for backup withholding and certain information reporting. These final regulations add the indoor tanning services excise tax to the list of excise taxes for which qualified subchapter S subsidiaries and disregarded entities are treated as separate entities. These final regulations also treat a single-owner eligible entity that is disregarded as an entity separate from its owner as a corporation with respect to the indoor tanning services excise tax. These regulations are effective on June 26, 2014.

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Finding Lists begin on page ii.  
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## **SELF-EMPLOYMENT TAX**

### **T.D. 9670, page 121.**

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## **EXCISE TAX**

### **T.D. 9670, page 121.**

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This document amends regulations concerning the 90 day waiting period limitation as related to a bona fide employment based orientation period for group health coverage, under the Affordable Care Act.

## **ADMINISTRATIVE**

### **Rev. Proc. 2014-42, page 192.**

This revenue procedure provides guidance regarding a new, voluntary Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, certified public accountants (CPAs), or enrolled agents (EAs) to complete continuing education courses for the purpose of increasing their knowledge of the law relevant to federal tax returns. In addition, this revenue procedure modifies and supersedes Revenue Procedure 81-38, 1981-2 C.B. 592, regarding limited practice before the IRS by individuals who are not attorneys, CPAs or EAs. Except for section 6, this revenue procedure is effective as of June 30, 2014. Section 6 is effective for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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

## Section 7701.— Definitions

26 CFR 1.1361-4: Effect of QSub election.

### TD 9670

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service 26 CFR Parts 1, 31, and 301

#### Disregarded Entities; Religious and Family Member FICA and FUTA Exceptions; Indoor Tanning Services Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax. These final regulations affect disregarded entities responsible for collecting the indoor tanning services excise tax and owners of those disregarded entities. The final regulations also relate to disregarded entities and certain exceptions from taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, as well as backup withholding rules and related information reporting requirements. These final regulations affect individual owners of disregarded entities. These regulations also affect the owners of disregarded entities subject to backup withholding rules.

DATES: *Effective Date:* These regulations are effective on June 26, 2014.

*Applicability Dates:* For dates of applicability, see §§ 1.1361-4(a)(8)(ii), 31.3121(b)(3)-1(e), 31.3127-1(c), 31.3306(c)(5)-1(e), 301.7701-2(e)(5), and 301.7701-2(e)(6)(iv).

#### FOR FURTHER INFORMATION

CONTACT: Regarding excise tax-related provisions, Michael H. Beker (202) 317-

6855; regarding employment tax-related provisions, Andrew Holubeck (202) 317-4770 (not toll free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code (Code), the Employment Tax Regulations (26 CFR part 31) under sections 3121, 3127, and 3306 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code.

##### *Indoor Tanning Services Excise Tax-Related Regulations*

On June 25, 2012, final and temporary regulations (TD 9596) were published in the **Federal Register** (77 FR 37806). The regulations treat disregarded entities (including qualified subchapter S subsidiaries) as separate entities for purposes of the indoor tanning services excise tax imposed by section 5000B.

Also on June 25, 2012, a notice of proposed rulemaking (REG-125570-11) was published by cross-reference to the temporary regulations in the **Federal Register** (77 FR 37838). The preamble to TD 9596 includes background information and an explanation of provisions regarding the regulations.

##### *Employment Tax-Related Regulations*

On November 1, 2011, final and temporary regulations (TD 9554) were published in the **Federal Register** (76 FR 67363). The regulations extend the exceptions or exemptions from taxes under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act under sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) to services performed in

the employ of certain entities that are generally disregarded as separate from their owners for federal tax purposes under § 301.7701-2(c). The regulations also clarify the existing rule that, in the case of an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701-2(c), the owner is subject to the withholding requirements imposed under section 3406 (backup withholding).

Also on November 1, 2011, a notice of proposed rulemaking (REG-136565-09) was published by cross-reference to the temporary regulations in the **Federal Register** (76 FR 67384). The preamble to TD 9554 includes background information and an explanation of provisions regarding the regulations.

##### *Combining the employment tax and excise tax provisions into this final regulation*

The IRS did not receive any written or electronic comments responding to either notice of proposed rulemaking and a public hearing was neither requested nor held. Accordingly, both sets of proposed regulations are adopted as amended by this Treasury decision without substantive change and both sets of corresponding temporary regulations are removed. The nonsubstantive revisions are discussed in the next section.

##### Explanation of Revisions

These final regulations reorganize and revise § 31.3121(b)(3)-1, § 31.3127-1, § 31.3306(c)(5)-1, and § 301.7701-2(c)(2)(iv) for clarity, and no substantive changes are intended to these provisions. In § 31.3121(b)(3)-1, concerning family employment, the general rule that applies to corporations was moved from § 31.3121(b)(3)-1(c) to § 31.3121(b)(3)-1(d), so that the rules for disregarded entities (which are treated as corporations for purposes of Subtitle C under § 301.7701-2(c)(2)(iv)(B)) would follow after the general corporate rule. Similarly, in § 31.3306(c)(5)-1, with respect to the provisions concerning family employment,

the general rule that applies to corporations was moved from § 31.3306(c)(5)–1(c) to § 31.3306(c)(5)–1(d), so that the rules for disregarded entities would follow after the general corporate rule. For clarity, § 31.3127–1(a) was reorganized into a list format and headings were added. In addition, §§ 31.3121(b)(3)–1(d), 31.3127–1(b), and 31.3306(c)(5)–1(d) were revised to provide that an entity that is treated as a corporation for purposes of Subtitle C under § 301.7701–2(c)(2)(iv)(B) is not treated as the employer for purposes of applying sections 3121(b)(3), 3127, and 3306(c)(5) and the regulations thereunder.

Section 301.7701–2(c)(2)(iv)(A) continues to provide that § 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C. Section 301.7701–2(c)(2)(iv)(B) also continues to provide that an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is treated as a corporation for purposes of taxes imposed under Subtitle C. The cross references that were formerly in § 301.7701–2(c)(2)(iv)(C) and were described as exceptions to § 301.7701–2(c)(2)(iv)(B) are now described as special rules and are added to § 301.7701–2(c)(2)(iv)(B). In addition, the language formerly of § 301.7701–2(c)(2)(iv)(A) regarding backup withholding has been moved to new § 301.7701–2(c)(2)(iv)(C)(1) to clarify that it is an exception to the general provisions of § 301.7701–2(c)(2)(iv)(A) and (B). Finally, the last two sentences that were formerly in § 301.7701–2(c)(2)(iv)(A) regarding taxes imposed under Subtitle A, including Chapter 2, Tax on Self Employment Income, have been moved to new § 301.7701–2(c)(2)(iv)(C)(2) to put all the special clarifying rules and exceptions in one paragraph.

### 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 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regula-

tions, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations that preceded these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and no comments were received.

### Drafting Information

The principal authors of these regulations are Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries), and Andrew Holubeck, Office of the Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are amended as follows:

#### PART 1—INCOME TAX

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

#### § 1.1361–4 [Amended]

Par. 2. Section 1.1361–4 is amended as follows:

1. In paragraph (a)(8)(i)(A) the language “and 38” is removed and “38, and 49” is added in its place.

2. In paragraph (a)(8)(i)(B) the language “Chapter 33” is removed and “Chapters 33 and 49” is added in its place.

3. Paragraph (a)(8)(ii) is revised.

4. Paragraph (a)(8)(iii) is removed.

The revision reads as follows:

§ 1.1361–4 *Effect of QSub election.*

(a) \* \* \*

(8) \* \* \*

(ii) *Effective/applicability date.* (A) Except as provided in this paragraph (a)(8)(ii), paragraph (a)(8) of this section applies to liabilities imposed and actions

first required or permitted in periods beginning on or after January 1, 2008.

(B) References to Chapter 49 in paragraph (a)(8) of this section apply to taxes imposed on amounts paid on or after July 1, 2012.

(C) Paragraph (a)(8)(i)(E) of this section applies for periods after December 31, 2014.

\* \* \* \* \*

#### § 1.1361–4T [Removed]

Par. 3. Section 1.1361–4T is removed.

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

Par. 4. The authority citation for part 31 continues to read in part as follows:

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

Par. 5. Section 31.3121(b)(3)–1 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 31.3121(b)(3)–1 *Family employment.*

\* \* \* \* \*

(c) Services performed in the employ of a partnership are within the exception described in paragraph (a) of this section only if the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) Services performed in the employ of a corporation are not within the exception described in paragraph (a) of this section, except that services performed in the employ of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter may qualify for the exception if the requirements of the exception are otherwise met. An entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is not treated as the employer for purposes of applying section 3121(b)(3) and this section. For purposes of applying section 3121(b)(3) and this section, the owner of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is treated as the employer.

(e) Paragraphs (c) and (d) of this section apply to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

**§ 31.3121(b)(3)–1T [Removed]**

Par. 6. Section 31.3121(b)(3)–1T is removed.

Par. 7. Section 31.3127–1 is added to read as follows:

*§ 31.3127–1 Exemption for employers and their employees if both are members of religious faiths opposed to participation in Social Security Act programs.*

(a) *Exemption*—(1) *Employer*. Except as provided in paragraph (b) of this section, an employer is exempt from the taxes imposed by section 3111 on wages paid to an employee if—

(i) The employer (or if the employer is a partnership, each partner therein) and its employee are members of a recognized religious sect or division described in section 1402(g)(1);

(ii) Both the employer (or if the employer is a partnership, each partner therein) and the employee adhere to the tenets and teachings of that sect; and

(iii) Both the employer and the employee have filed and had approved applications under section 3127(b) for exemption from the taxes imposed by sections 3111 and 3101.

(2) *Employee*. If an employer is exempt from the taxes imposed by section 3111 under paragraph (a)(1) of this section, then each employee described in paragraph (a)(1) of this section is exempt from the taxes imposed by section 3101 on the wages received with respect to employment with that employer.

(b) *Corporation*. Services performed in the employ of a corporation are not within the exemption described in paragraph (a) of this section, except that services performed in the employ of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter may qualify for the exemption if the requirements of the exemption are otherwise met. An entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is not treated as the employer for purposes of applying section 3127 and this section. For purposes of applying section 3127 and paragraph (a) of this section, the owner of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is treated as the employer.

(c) *Effective/applicability date*. This section applies to wages paid on or after November 1, 2011. However, taxpayers may apply this section to wages paid on or after January 1, 2009.

**§ 31.3127–1T [Removed]**

Par. 8. Section 31.3127–1T is removed.

Par. 9. Section 31.3306(c)(5)–1 is amended by revising paragraphs (c), (d), and (e) to read as follows:

*§ 31.3306(c)(5)–1 Family Employment.*

\* \* \* \* \*

(c) Services performed in the employ of a partnership are within the exception described in paragraph (a) of this section only if the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) Services performed in the employ of a corporation are not within the exception described in paragraph (a) of this section, except that services performed in the employ of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter may qualify for the exception if the requirements of the exception are otherwise met. An entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is not treated as the employer for purposes of applying section 3306(c)(5) and this section. For purposes of applying section 3306(c)(5) and this section, the owner of an entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter is treated as the employer.

(e) Paragraphs (c) and (d) of this section apply to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

**§ 31.3306(c)(5)–1T [Removed]**

Par. 10. Section 3306(c)(5)–1T is removed.

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 11. The authority citation for part 301 continues to read in part as follows:

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

Par. 12. Section 301.7701–2 is amended as follows:

1. Paragraphs (c)(2)(iv)(A), (B), and (C) are revised.

2. Paragraph (c)(2)(v)(A)(I) is amended by removing the language “and 38” and adding “38, and 49” in its place.

3. Paragraph (c)(2)(v)(A)(2) is amended by removing the language “Chapter 33” and adding “Chapters 33 and 49” in its place.

4. Paragraph (c)(2)(vi) is removed.

5. Paragraph (e)(5) is revised.

6. Paragraph (e)(6)(iv) is added.

7. Paragraphs (e)(8) and (e)(9) are removed.

The revisions and addition read as follows:

*§ 301.7701–2 Business entities; definitions.*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(A) *In general*. Except as provided in paragraph (c)(2)(iv)(C) of this section, paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(B) *Treatment of entity*. Except as provided in paragraph (c)(2)(iv)(C) of this section, an entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code). For special rules regarding the application of certain employment tax exceptions, see §§ 31.3121(b)(3)–1(d), 31.3127–1(b), and 31.3306(c)(5)–1(d) of this chapter.

(C) *Special rules*. (1) Paragraphs (c)(2)(iv)(A) and (B) of this section do not apply to withholding requirements imposed by section 3406 (backup withholding). Thus, in the case of an entity that is disregarded as an entity separate from its owner for any purpose under this section, the owner is subject to the withholding requirements imposed by section 3406 (backup withholding).

(2) Paragraph (c)(2)(i) of this section applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self Employment Income. Thus, the owner of an entity that is treated in the same manner as a sole proprietorship under paragraph (a) of this section is subject to tax on self-employment income.

\* \* \* \* \*

(e) \* \* \*

(5)(i) Except as provided in this paragraph (e)(5), paragraph (c)(2)(iv) of this section applies with respect to wages paid on or after January 1, 2009.

(ii) Paragraph (c)(2)(iv)(B) applies with respect to wages paid on or after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(iii) Paragraph (c)(2)(iv)(C)(I) of this section applies with respect to wages paid on or after November 1, 2011. For rules that apply before November 1, 2011, see 26 CFR part 301, revised as of April 1, 2011. However, taxpayers may apply paragraph (c)(2)(iv)(C)(I) of this section with respect to wages paid on or after January 1, 2009.

(6) \* \* \*

(iv) References to Chapter 49 in paragraph (c)(2)(v) of this section apply to taxes imposed on amounts paid on or after July 1, 2012.

\* \* \* \* \*

#### § 301.7701–2T [Removed]

Par. 13. Section 301.7701–2T is removed.

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

Approved: February 7, 2014

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

(Filed by the Office of the Federal Register on June 25, 2014, 8:45 a.m., and published in the issue of the Federal Register for June 26, 2014, 79 F.R. 36204)

## Section 9815.—Additional Market Reforms

26 CFR 54.9815–2708: *Prohibition on waiting periods that exceed 90 days*

### TD 9671

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service 26 CFR Part 54

#### DEPARTMENT OF LABOR Employee Benefits Security Administration 29 CFR Part 2590

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES 45 CFR Part 147

### Ninety-Day Waiting Period Limitation

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Final rules.

**SUMMARY:** These final regulations clarify the maximum allowed length of any reasonable and bona fide employment-based orientation period, consistent with the 90-day waiting period limitation set forth in section 2708 of the Public Health Service Act, as added by the Patient Protection and Affordable Care Act (Affordable Care Act), as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code.

**DATES:** *Effective date.* These final regulations are effective on August 24, 2014.

*Applicability date.* These final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015.

#### FOR FURTHER INFORMATION

**CONTACT:** Amy Turner or Elizabeth Schumacher, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 317-6846; or Cam Moultrie Clemmons, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786-1565.

*Customer service information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor’s website ([www.dol.gov/ebsa](http://www.dol.gov/ebsa)). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) website ([www.cciio.cms.gov/](http://www.cciio.cms.gov/)) and information on health reform can be found at [www.HealthCare.gov](http://www.HealthCare.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Patient Protection and Affordable Care Act, Pub. L. 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Pub. L. 111–152, was enacted on March 30, 2010. (They are collectively known as the “Affordable Care Act”.) The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term “group health plan” includes both insured and self-insured group health plans.<sup>1</sup> The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans.

<sup>1</sup>The term “group health plan” is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term “health plan,” as used in other provisions of title I of the Affordable Care Act. The term “health plan” does not include self-insured group health plans.

The PHS Act sections incorporated by these references are sections 2701 through 2728.

PHS Act section 2708, as added by the Affordable Care Act and incorporated into ERISA and the Code, provides that a group health plan or health insurance issuer offering group health insurance coverage shall not apply any waiting period (as defined in PHS Act section 2704(b)(4)) that exceeds 90 days. PHS Act section 2704(b)(4), ERISA section 701(b)(4), and Code section 9801(b)(4) define a waiting period to be the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the plan. In 2004 regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) portability provisions (2004 HIPAA regulations), the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments<sup>2</sup>) defined a waiting period to mean the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.<sup>3</sup> PHS Act section 2708 does not require an employer to offer coverage to any particular individual or class of individuals, including part-time employees. PHS Act section 2708 prevents an otherwise eligible individual from being required to wait more than 90 days before coverage becomes effective. PHS Act section 2708 applies to both grandfathered and non-grandfathered group health plans and group health insurance coverage for plan years beginning on or after January 1, 2014.

On February 9, 2012, the Departments issued guidance<sup>4</sup> outlining various approaches under consideration with respect to both the 90-day waiting period limitation and the employer shared responsibility provisions under Code section 4980H (February 2012 guidance) and requested public comment. On August 31, 2012, following their review of the comments on the February 2012 guidance, the De-

partments provided temporary guidance,<sup>5</sup> to remain in effect at least through the end of 2014, regarding the 90-day waiting period limitation, and described the approach they intended to propose in future rulemaking (August 2012 guidance). After consideration of all of the comments received in response to the February 2012 guidance and August 2012 guidance, the Departments issued proposed regulations on March 21, 2013 (78 FR 17313). After consideration of comments on the proposed regulations, the Departments published final regulations on February 24, 2014 (79 FR 10295).

Under the final regulations, a group health plan and a health insurance issuer offering group health insurance coverage may not apply any waiting period that exceeds 90 days. The regulations define “waiting period” as the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective. Being otherwise eligible to enroll in a plan means having met the plan’s substantive eligibility conditions (such as, for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan’s terms, or satisfying a reasonable and bona fide employment-based orientation period).

Contemporaneous with the publication of the final regulations, the Departments published proposed regulations (79 FR 10319) to address orientation periods under the 90-day waiting period limitation of PHS Act section 2708 and solicit comment before promulgation of final regulations on this specific issue. The proposed regulations provided that one month would be the maximum allowed length of any reasonable and bona fide employment-based orientation period. The Departments stated that, during an orientation period, they envisioned that an employer and employee could evaluate whether the employment situation was satisfactory for each party, and standard orientation and training pro-

cesses would begin. Under the proposed regulations, if a group health plan conditions eligibility on an employee’s having completed a reasonable and bona fide employment-based orientation period, the eligibility condition would not be considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period did not exceed one month and the maximum 90-day waiting period would begin on the first day after the orientation period.

Many commenters were generally supportive of the proposed rule. Commenters agreed that a limitation on the length of an orientation period of one month was appropriate and also agreed with the proposal that determining whether an orientation period is “reasonable” and “bona fide” should be a facts and circumstances analysis. Some commenters urged the Departments to clarify the interplay between the 90-day waiting period provision and the employer shared responsibility provisions.

After consideration of the comments and feedback received from stakeholders, the Departments are publishing these final regulations that incorporate the proposed regulations without any substantive changes.

## II. Overview of the Final Regulations

The final regulations implementing PHS Act section 2708 set forth rules governing the relationship between a plan’s eligibility criteria and the 90-day waiting period limitation. Specifically, the final regulations provide that being otherwise eligible to enroll in a plan means having met the plan’s substantive eligibility conditions (for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan’s terms, or satisfying a reasonable and bona fide employment-based orientation period). Under the final regulations, after an individual is determined to be otherwise eligible for coverage under the terms of the plan, any waiting period may

<sup>2</sup>Note, however, that in the Economic Analysis and Paperwork Burden section of this preamble, in sections under headings listing only two of the three Departments, the term “Departments” generally refers only to the two Departments listed in the heading.

<sup>3</sup>26 CFR 54.9801-3(a)(3)(iii), 29 CFR 2590.701-3(a)(3)(iii), and 45 CFR 146.111(a)(3)(iii).

<sup>4</sup>Department of Labor Technical Release 2012-01, IRS Notice 2012-17, and HHS FAQs issued February 9, 2012.

<sup>5</sup>Department of Labor Technical Release 2012-02, IRS Notice 2012-59, and HHS FAQs issued August 31, 2012.



not extend beyond 90 days, and all calendar days are counted beginning on the enrollment date, including weekends and holidays.<sup>6</sup>

Orientation periods are commonplace and the Departments do not intend to call into question the reasonableness of short, bona fide orientation periods. The danger of abuse increases, however, as the length of the period expands. Accordingly, the final regulations provide that one month is the maximum allowed length of an employment-based orientation period. The creation of a clear maximum prevents abuse and facilitates compliance.

During an orientation period, the Departments envision that an employer and employee will evaluate whether the employment situation is satisfactory for each party, and standard orientation and training processes will begin. For any period longer than one month that precedes a waiting period, the Departments refer back to the general rule, which provides that the 90-day period begins after an individual is otherwise eligible to enroll under the terms of a group health plan. While a plan may impose substantive eligibility criteria, such as requiring the worker to fit within an eligible job classification or to achieve job-related licensure requirements, it may not impose conditions that are mere subterfuges for the passage of time.

Under these final regulations, one month would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage. For example, if an employee's start date in an otherwise eligible position is May 3, the last permitted day of the orientation period is June 2. Similarly, if an employee's start date in an otherwise eligible position is October 1, the last permitted day of the orientation period is October 31. If there is not a corresponding date in the next calendar month upon adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month. For example, if the employee's start date is January 30, the last permitted

day of the orientation period is February 28 (or February 29 in a leap year). Similarly, if the employee's start date is August 31, the last permitted day of the orientation period is September 30. If a group health plan conditions eligibility on an employee's having completed a reasonable and bona fide employment-based orientation period, the eligibility condition is not considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period does not exceed one month and the maximum 90-day waiting period begins on the first day after the orientation period.

Compliance with these final regulations is not determinative of compliance with section 4980H of the Code, under which an applicable large employer may be subject to an assessable payment if it fails to offer affordable minimum value coverage to certain newly-hired full-time employees by the first day of the fourth full calendar month of employment. For example, an applicable large employer that has a one-month orientation period may comply with both PHS Act section 2708 and Code section 4980H by offering coverage no later than the first day of the fourth full calendar month of employment. However, an applicable large employer plan may not be able to impose the full one-month orientation period and the full 90-day waiting period without potentially becoming subject to an assessable payment under Code section 4980H. For example, if an employee is hired as a full-time employee on January 6, a plan may offer coverage May 1 and comply with both provisions. However, if the employer is an applicable large employer and starts coverage May 6, which is one month plus 90 days after date of hire, the employer may be subject to an assessable payment under Code section 4980H.

These final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2015. Until these final rules are applicable, as stated in the preamble to the proposed rules, the Departments will consider compliance with the proposed regulations to constitute compliance with PHS

Act section 2708. See 79 FR 10320, 10321 (February 24, 2014).

### **III. Economic Impact and Paperwork Burden**

#### *A. Executive Order 12866 and 13563 – Department of Labor and Department of Health and Human Services*

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires Federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives.

Under Executive Order 12866, a regulatory action deemed "significant" is subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

These final regulations are not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order.

<sup>6</sup>The final regulations also note that a plan or issuer that imposes a 90-day waiting period may, for administrative convenience, choose to permit coverage to become effective earlier than the 91<sup>st</sup> day if the 91<sup>st</sup> day is a weekend or holiday.

Therefore, OMB has reviewed these final regulations, and the Departments<sup>7</sup> have provided the following assessment of their impact.

### 1. Summary

As stated earlier in this preamble, these final regulations provide that one month is the maximum allowed length of any reasonable and bona fide employment-based orientation period. The final regulations generally apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015.

The Departments have crafted these final regulations to secure the protections intended by Congress in an economically efficient manner. The Departments lack sufficient data to quantify the regulations' economic cost or benefits. The preamble to the proposed rules implementing PHS Act section 2708, published<sup>8</sup> in the Federal Register on February 24, 2014 provided a qualitative discussion of economic impacts of clarifying the maximum allowed length of any reasonable and bona fide orientation period and requested detailed comment and data that would allow for quantification of the costs, benefits, and transfers associated with the term. The Departments received no comments providing additional data that would help it estimate the economic impacts of the final regulations.

### 2. Estimated Number of Affected Entities

The Departments estimate that 4.1 million new employees receive group health insurance coverage through private sector employers and 1.0 million new employees receive group health insurance coverage through public sector employers annually.<sup>9</sup> The 2013 Kaiser Family Foundation and Health Research and Education Trust Employer Health Benefits Annual Survey (the "2013 Kaiser Survey") finds that

30 percent of covered workers were subject to waiting periods of three months or more.<sup>10</sup> If 30 percent of new employees receiving health care coverage from their employers are subject to a waiting period of three months or more, then 1.5 million new employees (5.1 million  $\times$  0.30) would potentially be affected by these regulations.<sup>11</sup> However, it is unlikely that the survey defines the term "waiting period" in the same manner as the final regulations. For example, the term "waiting period" may have been defined by reference to an employee's start date, not matching the definition in the final regulations.

### 3. Benefits

The final regulations implementing PHS Act section 2708<sup>12</sup> set forth rules governing the relationship between a plan's eligibility criteria and the 90-day waiting period limitation. Specifically, the final regulations provide that being otherwise eligible to enroll in a plan means having met the plan's substantive eligibility conditions (such as, for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan's terms, or satisfying a reasonable and bona fide employment-based orientation period). These final regulations provide that one month is the maximum allowed length of any reasonable and bona fide employment-based orientation period. This period of no longer than one month is intended to provide plan sponsors with flexibility to continue the common practice of utilizing a probationary or trial period to determine whether a new employee will be able to handle the duties and challenges of the job, while providing protections against excessive waiting periods for such employees. Under these final regulations, the plan's waiting period must begin once the new employee satisfies the maximum one month orientation period requirement and the waiting period may not exceed 90 days.

### 4. Costs

These final regulations extend the maximum amount of time between an employee beginning work and obtaining health care coverage relative to the time before the issuance of the final regulations implementing PHS Act section 2708 and these final regulations. If employees delay health care treatment until the expiration of the orientation period and waiting period, detrimental health effects could result, especially for low-wage employees and their dependents and those requiring higher levels of health care, such as those with chronic conditions. This could lead to lower work productivity and missed school days. However, the Departments anticipate that such effects may be limited because few employees are likely to be affected and it is anticipated that the inclusion of an orientation period will not result in most employees facing a full additional month between being hired and obtaining coverage.

### 5. Transfers

The possible transfers associated with these final regulations would arise when employers begin to pay their portion of premiums or contributions later than they did before the issuance of these final regulations. Recipients of the transfer would be employers who implement an orientation period in addition to the 90-day waiting period, thus delaying having to pay premiums. The source of the transfers would be covered employees who, after these final regulations become applicable, would have to wait longer between being employed and obtaining health coverage. During this period, affected employees might obtain an individual health insurance policy, purchase COBRA continuation coverage, or forgo health coverage—which could, depending on the policy, have higher out-of-pocket costs for their healthcare expenditures.

<sup>7</sup>In section III of this preamble, some subsections have a heading listing one or two of the three Departments. In those subsections, the term "Departments" generally refers only to the Departments listed in the heading.

<sup>8</sup>79 FR 10321.

<sup>9</sup>This estimate is based upon internal Department of Labor calculations derived from the 2009 Medical Expenditure Panel Survey.

<sup>10</sup>See e.g., Kaiser Family Foundation and Health Research and Education Trust, *Employer Health Benefits 2013 Annual Survey* (2013) available at <http://ehbs.kff.org/pdf/2013/8345.pdf>

<sup>11</sup>Approximately 1.2 million private sector employees and 287,000 State and local public sector employees.

<sup>12</sup>79 FR 10295 (February 24, 2014).

The Departments expect these transfers to be minimal because under these final regulations, only a small number of employers would further effectively extend start date for coverage to their employees. That is because a relatively small fraction of workers have waiting periods that exceed three months; this rule does not create an incentive that is not in the system already.

#### *B. Regulatory Flexibility Act – Department of Labor and Department of Health and Human Services*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions. In accordance with the RFA, the Departments prepared an initial regulatory flexibility analysis at the proposed rule stage and requested comments on the analysis. No comments were received. Below is the Department's final regulatory flexibility analysis and its certification that these final regulations do not have a significant economic impact on a substantial number of small entities.

The Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. The Departments lack data to focus only on the impacts on small business. However, the Departments believe that by providing small businesses with flexibility to design reasonable and bona fide employment-based orientation periods, consistent with the 90-day waiting period limitation set forth in PHS Act section 2708, the final regulations reduce the burden on such businesses to comply with the provision. Based on the foregoing, the Departments hereby certify that these final regulations

will not have a significant economic impact on a substantial number of small entities.

#### *C. Special Analyses—Department of the Treasury*

For purposes of the Department of the Treasury, it has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and, because these final regulations do not impose a collection of information requirement on small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to Code section 7805(f), the proposed rule was submitted to the Small Business Administration for comment on its impact on small business.

#### *D. Paperwork Reduction Act*

This final rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. section 3501 et seq.), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

#### *E. Congressional Review Act*

These final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and will be transmitted to the Congress and the Comptroller General for review.

#### *F. Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these final regulations do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector, of \$100 million or more adjusted for inflation.

#### *G. Federalism Statement—Department of Labor and Department of Health and Human Services*

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these final regulations have federalism implications, because they have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of ERISA section 731 and PHS Act section 2724 (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be “construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement” of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the “narrowest” preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.)

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to “prevent the application of” the Affordable Care Act, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

Guidance conveying this interpretation was published in the **Federal Register** on April 8, 1997 (62 FR 16904), and December 30, 2004 (69 FR 78720), and these final rules would clarify and implement the statute’s minimum standards and would not significantly reduce the discretion given the States by the statute.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending conferences of the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis.

Throughout the process of developing these final regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments have attempted to balance the States’ interests in regulating health insurance issuers, and Congress’ intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments’ view that they have complied with the requirements of Executive Order 13132.

#### IV. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public

Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor’s Order 3–2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

\* \* \* \* \*

### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

##### 26 CFR Chapter I

Accordingly, 26 CFR Part 54 is amended as follows:

#### PART 54 – PENSION EXCISE TAXES

Paragraph 1. The authority citation for Part 54 continues to read in part as follows:

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

Section 54.9815–2708 is also issued under 26 U.S.C. 9833.

\* \* \* \* \*

Par. 2. Section 54.9815–2708 is amended by adding paragraph (c)(3)(iii) and a new Example 11 in paragraph (f) to read as follows:

#### § 54.9815–2708 Prohibition on waiting periods that exceed 90 days.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) *Limitation on orientation periods.* To ensure that an orientation period is not used as a subterfuge for the passage of time, or designed to avoid compliance with the 90-day waiting period limitation, an orientation period is permitted only if it does not exceed one month. For this purpose, one month is determined by adding one calendar month and subtracting one calendar day, measured from an employee’s start date in a position that is otherwise eligible for coverage. For example, if

an employee’s start date in an otherwise eligible position is May 3, the last permitted day of the orientation period is June 2. Similarly, if an employee’s start date in an otherwise eligible position is October 1, the last permitted day of the orientation period is October 31. If there is not a corresponding date in the next calendar month upon adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month. For example, if the employee’s start date is January 30, the last permitted day of the orientation period is February 28 (or February 29 in a leap year). Similarly, if the employee’s start date is August 31, the last permitted day of the orientation period is September 30.

\* \* \* \* \*

(f) \* \* \*

*Example 11. (i) Facts.* Employee *H* begins working full time for Employer *Z* on October 16. *Z* sponsors a group health plan, under which full time employees are eligible for coverage after they have successfully completed a bona fide one-month orientation period. *H* completes the orientation period on November 15.

(ii) *Conclusion.* In this *Example 11*, the orientation period is not considered a subterfuge for the passage of time and is not considered to be designed to avoid compliance with the 90-day waiting period limitation. Accordingly, plan coverage for *H* must begin no later than February 14, which is the 91st day after *H* completes the orientation period. (If the orientation period was longer than one month, it would be considered to be a subterfuge for the passage of time and designed to avoid compliance with the 90-day waiting period limitation. Accordingly it would violate the rules of this section.)

\* \* \* \* \*

John Dalrymple,  
*Deputy Commissioner  
for Services and Enforcement,  
Internal Revenue Service.*

Approved: June 18, 2014.

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

Signed this 18<sup>th</sup> day of June, 2014

Phyllis C. Borzi,  
*Assistant Secretary,  
Employee Benefits  
Security Administration,  
Department of Labor.*

Dated: June 19, 2014.

Marilyn Tavenner,  
*Administrator,  
Centers for Medicare  
& Medicaid Services.*

Dated: June 19, 2014.

Sylvia Burwell,  
*Secretary,  
Department of Health  
and Human Services.*

(Filed by the Office of the Federal Register on June 20, 2014, 4:15 p.m., and published in the issue of the Federal Register for June 25, 2014, 79 F.R. 35942)

# Part III. Administrative, Procedural, and Miscellaneous

## Rev. Proc. 2014–38

### SECTION 1. PURPOSE

This revenue procedure updates the agreement entered into by a foreign financial institution (FFI) with the Internal Revenue Service (IRS) to be treated as a participating FFI under section 1471(b) of the Internal Revenue Code (Code) and § 1.1471–4 of the Income Tax Regulations (the FFI agreement) to be treated as a participating FFI and that is published in Revenue Procedure 2014–13 (2014–3 I.R.B. 419). The agreement is being updated to make it consistent with the temporary regulations under chapter 4 of the Code, chapters 3 and 61 of the Code, and section 3406, which were released on February 20, 2014. This revenue procedure also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of the FFI agreement, as modified by the Model 2 IGA. A reporting Model 2 FFI should apply the FFI agreement by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout the FFI agreement, except in cases where the FFI agreement explicitly refers to a reporting Model 2 FFI. The FFI agreement in section 5 of this revenue procedure shall apply to an FFI that has submitted a FATCA registration with the IRS to be treated as a participating FFI (including a reporting Model 2 FFI) and that has received a global intermediary identification number (GIIN), regardless of whether the FFI receives a GIIN before or after the effective date of this revenue procedure. See section 3 of this revenue procedure for information about FATCA registration. This revenue procedure modifies and supercedes Revenue Procedure 2014–13.

### SECTION 2. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147, added chapter 4 of Subtitle A (chapter 4 or FATCA) to the Code, comprised of sections 1471 through 1474. On January 28, 2013, the Department of

the Treasury (Treasury Department) and the IRS published final regulations under chapter 4 in the Federal Register (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (collectively, the final chapter 4 regulations). The final chapter 4 regulations provide comprehensive guidance to withholding agents and FFIs, including the substantive requirements applicable to participating FFIs under the FFI agreement, which are contained in the regulations under § 1.1471–4. On January 13, 2014, the Treasury Department and the IRS issued Revenue Procedure 2014–13, which provides the terms of the FFI agreement and substantially incorporates the provisions of § 1.1471–4 of the final chapter 4 regulations, as modified by Notice 2013–43 (2013–31 I.R.B. 113) (*e.g.*, to reflect revised timelines for FATCA implementation).

On February 20, 2014, the Treasury Department and the IRS released two sets of temporary regulations. One set of temporary regulations (T.D. 9657) provides clarifications and modifications to the final chapter 4 regulations (temporary chapter 4 regulations). A second set of temporary regulations (T.D. 9658) primarily provides rules under chapters 3, 61, and section 3406 of the Code to coordinate with the requirements provided in the final and temporary chapter 4 regulations (temporary coordination regulations).

In the preamble to the temporary chapter 4 regulations, the Treasury Department and the IRS announced that the FFI agreement published in Rev. Proc. 2014–13 would be updated consistent with the temporary chapter 4 regulations and the temporary coordination regulations. Section 5 of this revenue procedure provides the updated FFI agreement.

### SECTION 3. FATCA REGISTRATION FOR PARTICIPATING FFI OR REPORTING MODEL 2 FFI STATUS

An FFI may register on Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, via the FATCA registration website available at <http://www.irs.gov/fatca> to enter into the FFI agreement on behalf of one or more of its branches so that each of such branches

may be treated as a participating FFI and receive a global intermediary identification number (GIIN). A reporting Model 2 FFI may also register on the FATCA registration website on behalf of one or more of its branches to obtain a GIIN and to agree to comply with the terms of the FFI agreement, as modified by an applicable Model 2 IGA. A branch of such FFIs that cannot, under the laws of the jurisdiction in which such branch is located, satisfy all of the terms of the FFI agreement will be treated as a limited branch (as defined in the FFI agreement) and will be subject to withholding under section 1471 as a non-participating FFI.

In general, the FFI agreement does not apply to a reporting Model 1 FFI, or any branch of such an FFI, unless the reporting Model 1 FFI has registered a branch located outside of a Model 1 IGA jurisdiction so that such branch may be treated as a participating FFI or reporting Model 2 FFI. In such a case, the terms of the applicable FFI agreement apply to the operations of such branch. With respect to an FFI (or branch of an FFI) that agrees to the requirements of a participating FFI (including a reporting Model 2 FFI) and that has entered into a Qualified Intermediary (QI) agreement, Withholding Foreign Partnership (WP) agreement, or Withholding Foreign Trust (WT) agreement, the QI, WP, or WT agreement, as applicable, will apply in addition to the requirements of the FFI agreement, unless specifically modified by the QI, WP, or WT agreement.

### SECTION 4. AMENDMENTS TO THE FFI AGREEMENT

Section 5 of this revenue procedure sets forth the FFI agreement, which has been updated consistent with the temporary chapter 4 regulations, and provides further clarification to certain of the requirements in the prior FFI agreement. For instance, citations to relevant regulations under chapter 3, 4, or 61 have been amended consistent with the citations used in the temporary chapter 4 regulations. Several definitions in section 2 of the FFI agreement are updated. For example, the terms chapter 4 withholding rate

pool (including the U.S. payee pool) and chapter 4 reporting pool have been redefined and are further clarified.

Section 3.02 of the FFI agreement is revised to incorporate the allowance for treating an obligation held by an entity that is issued, opened, or executed on or after July 1, 2014, and before January 1, 2015 as a preexisting obligation for purposes of applying the due diligence procedures under chapter 4 and the regulations thereunder, except that an FFI may not apply the documentation exception under § 1.1471-4(c)(3)(iii), as provided in Notice 2014-33, 2014-21 I.R.B. 1033.

Sections 4.01(D), 4.02(B), 6.05(A)(2), 6.07, and 9.02(B) of the FFI agreement are also updated to reflect that a participating FFI may elect under § 1.1471-4(b)(3)(iii) to backup withhold under section 3406 rather than to withhold under chapter 4 on a withholdable payment that is a reportable payment (as defined in § 1.1471-1(b)(113)) made to certain U.S. non-exempt recipients only if the participating FFI complies with the information reporting rules under chapter 61 with respect to payments made to such account holders.

In addition, section 5.02 of the FFI agreement (regarding tax withheld and set aside in escrow with respect to withholdable payments to certain dormant accounts) is revised to conform to the temporary chapter 4 regulations for when the tax must be deposited.

Section 11.02(B) of the FFI agreement is revised to clarify that the responsibilities of a lead FI are only with respect to members of the FFI group (as defined in section 2.26 of the FFI agreement) that have designated the participating FFI to act as lead FI on their behalf. Additionally, if an FFI group has a consolidated compliance program, the participating FFI that is also the compliance FI (as defined in section 2.15 of the FFI agreement) for the members of the FFI group that are included in such compliance program must act as the lead FI for each such member of the FFI group.

Section 9.01 of the FFI agreement is revised to remove an incorrect reference to § 1.1471-3(d)(4)(iii), and section 9.02(B) is revised to remove an incorrect reference to § 1.6049-4(b)(6). Section 9.02(B) of the FFI agreement also is re-

vised to allow a participating FFI that receives a withholdable payment that is allocable to an account holder of the FFI that is a passive NFFE with one or more substantial U.S. owner(s) (or, in the case of a reporting Model 2 FFI, with one or more controlling persons as defined under the applicable IGA) to certify on a withholding statement provided to the withholding agent that the FFI is reporting the account holder as a U.S. account under the terms of the FFI agreement. When finalizing the temporary chapter 4 regulations, the Treasury Department and the IRS intend to amend the regulations to allow a withholding agent to rely on such a certification provided by a participating FFI, reporting Model 2 FFI, or reporting Model 1 FFI, which, absent a reason to know that the certificate is incorrect or unreliable, would relieve the withholding agent of its obligation to obtain and report information about a passive NFFE with substantial U.S. owners under section 1472. This amendment is intended to eliminate duplicative reporting of substantial U.S. owners (or controlling persons) of passive NFFEs required under section 1472 as well as under the U.S. account reporting requirements of a participating FFI, reporting Model 2 FFI, or reporting Model 1 FFI under chapter 4 or an applicable IGA.

Section 9.02(B) is also revised to provide that a participating FFI may allocate a portion of a withholdable payment to a group of documented account holders (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required under chapter 3, 4, or 61. For example, a participating FFI may allocate a payment of bank deposit interest to a pool of documented foreign account holders rather than providing specific information and a valid withholding certificate or other appropriate documentation for each such payee. The Treasury Department and the IRS intend to amend the regulations to incorporate this change when the temporary chapter 4 regulations are finalized.

## **SECTION 5. FFI AGREEMENT**

The text of the FFI agreement is set forth below. The IRS will not provide signed copies of the FFI agreement.

### **Section 1. PURPOSE AND SCOPE** **Section 2. DEFINITIONS**

### **Section 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NON-PARTICIPATING FFI PAYEES**

### **Section 4. WITHHOLDING REQUIREMENTS**

### **Section 5. DEPOSIT REQUIREMENTS**

### **Section 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS**

### **Section 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING**

### **Section 8. COMPLIANCE PROCEDURES**

### **Section 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE**

### **Section 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS**

### **Section 11. FFI GROUP**

### **Section 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT**

### **Section 13. MISCELLANEOUS PROVISIONS**

## **SECTION 1. PURPOSE AND SCOPE.**

*.01 Purpose.* THIS AGREEMENT is made under, and in pursuance of, section 1471(b) and § 1.1471-4:

**WHEREAS**, an FFI has completed and submitted a Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, in accordance with its instructions, which registration indicated that one or more of its branches seeks to be treated as a participating FFI, and has represented that such branches are eligible to, and will comply with, the terms of the FFI agreement;

**WHEREAS**, this agreement establishes the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI under sections 1471 through 1474 and §§ 1.1471-1 through 1.1474-6;

**NOW THEREFORE**, the terms of this agreement are as follows:

*.02 General Obligations.* An FFI that agrees to comply with the terms of this agreement applicable to one or more of its

branches will be treated as a participating FFI with respect to such branches, and such participating FFI branches will not be subject to withholding under section 1471. An FFI (or branch of an FFI) must act in its capacity as a participating FFI with respect to all of the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement. A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located must meet the conditions described in § 1.1471-4(e)(2)(iii) to be treated as a limited branch and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting Model 2 FFI may comply with the requirements of the FFI agreement, including with respect to due diligence, reporting, and withholding, by applying the rules set forth in this agreement (applied by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout the FFI agreement, except where the provisions of the FFI agreement explicitly refer to a reporting Model 2 FFI).

## SECTION 2. DEFINITIONS

### *01. Scope of Definitions.*

**(A) In General.** Unless specifically modified in this agreement, all terms used in this agreement have the same meaning as provided in sections 1471 through 1474, including the regulations thereunder. See § 1.1471-1(b) for a comprehensive list of chapter 4 terms and definitions.

**(B) Reporting Model 2 FFIs.** A reporting Model 2 FFI must use the definitions set forth in the applicable Model 2 IGA with respect to the accounts that it maintains in the Model 2 IGA jurisdiction, unless the Model 2 IGA jurisdiction permits the use of a definition provided in this agreement or § 1.1471-1(b) in lieu of a definition set forth in the applicable Model 2 IGA, and such application does not frustrate the purposes of the Model 2 IGA.

*.02 Account/Financial account.* “Account” or “financial account” means an account described in § 1.1471-1(b)(1).

*.03 Account holder.* “Account holder” has the meaning set forth in § 1.1471-1(b)(2).

*.04 Account maintained by a participating FFI.* “Account maintained by a participating FFI” means an account that a participating FFI is treated as maintaining under § 1.1471-5(b)(5).

*.05 Active NFFE.* In the case of a reporting Model 2 FFI, “active NFFE” means an active NFFE as defined in the applicable Model 2 IGA.

*.06 Backup withholding.* “Backup withholding” has the meaning set forth in § 1.1471-1(b)(7).

*.07 Branch.* “Branch” has the meaning set forth in § 1.1471-1(b)(10).

*.08 Branch that maintains the account.* A branch maintains an account if the rights and obligations of the participating FFI and the account holder with regard to such account (including any assets held in the account) are governed by the laws of the jurisdiction in which the branch is located. See § 1.1471-5(b)(5) for when an FFI is treated as maintaining an account.

*.09 Certified deemed-compliant FFI.* “Certified deemed-compliant FFI” has the meaning set forth in § 1.1471-1(b)(14).

*.10 Change in circumstances.* For a participating FFI, a “change in circumstances” has the meaning described in § 1.1471-4(c)(2)(iii). In the case of a reporting Model 2 FFI that applies the procedures of Annex I of the applicable Model 2 IGA with respect to an account, a change of circumstances has the meaning that such term has under Annex I of the applicable Model 2 IGA.

*.11 Chapter 4 reportable amount.* “Chapter 4 reportable amount” has the meaning set forth in § 1.1471-1(b)(18).

*.12 Chapter 4 reporting pool.* “Chapter 4 reporting pool” means a chapter 4 withholding rate pool of account holders and payees (as defined in section 2.14 of this Agreement) associated with a withholdable payment that is within a particular income code (as provided in the instructions to Form 1042-S) reported on Form 1042-S and for which a separate Form 1042-S is required to be filed.

*.13 Chapter 4 status.* “Chapter 4 status” has the meaning set forth in § 1.1471-1(b)(19).

*.14 Chapter 4 withholding rate pool.* “Chapter 4 withholding rate pool” means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in § 1.1471-

3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. “Chapter 4 withholding rate pool” also means a pool of payees that are described in paragraph (A) or (B) that is provided on an FFI withholding statement (as described in § 1.1471-3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated:

(A) A pool of payees consisting of each class of recalcitrant account holders described in § 1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders without the need to subdivide into each class of recalcitrant account holders described in § 1.1471-4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or

(B) A pool of payees that are U.S. persons as described in § 1.1471-3(c)(3)(iii)(B)(2).

*.15 Compliance FI.* “Compliance FI” means a financial institution described in § 1.1471-4(f)(2)(ii)(A).

*.16 Custodial institution.* “Custodial institution” has the meaning set forth in § 1.1471-1(b)(25).

*.17 Deemed-compliant FFI.* “Deemed-compliant FFI” has the meaning set forth in § 1.1471-1(b)(27).

*.18 Depository institution.* “Depository institution” has the meaning set forth in § 1.1471-1(b)(30).

*.19 Effective date of the FFI agreement.* The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch. For a participating FFI that receives a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

*.20 Entity account.* “Entity account” has the meaning set forth in § 1.1471-1(b)(40).

*.21 Entity payee.* “Entity payee” means a payee that is an entity and that is not an account holder.

*.22 Excepted NFFE.* “Excepted NFFE” has the meaning set forth in § 1.1471-1(b)(41).

*.23 Exempt beneficial owner.* “Exempt beneficial owner” has the meaning set forth in § 1.1471-1(b)(42).



.24 *Exempt recipient*. “Exempt recipient” has the meaning set forth in § 1.1471-1(b)(43).

.25 *Financial institution (FI)*. “Financial institution” or “FI” has the meaning set forth in § 1.1471-1(b)(50).

.26 *FFI group*. “FFI group” means an expanded affiliated group (as defined in § 1.1471-5(i)) that includes one or more participating FFIs or, in the case of a reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

.27 *FFI member*. “FFI member” means an FFI that is a member of an FFI group.

.28 *FFI withholding statement*. “FFI withholding statement” means a withholding statement provided by a participating FFI or registered deemed-compliant FFI that meets the requirements of section 9.02 of this agreement.

.29 *Foreign financial institution (FFI)*. “Foreign financial institution” or “FFI” has the meaning set forth in § 1.1471-1(b)(47).

.30 *Foreign reportable amount*. “Foreign reportable amount” means a payment of foreign source amounts described in § 1.1471-4(d)(2)(ii)(F).

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

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

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

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

.35 *Form 8957*. “Form 8957” means IRS Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, and includes the online version of the form on the FATCA registration website available at <http://www.irs.gov/fatca>.

.36 *Form 8966*. “Form 8966” means IRS Form 8966, FATCA Report, and includes the FATCA Report XML.

.37 *GIIN*. “GIIN” or “global intermediary identification number” has the meaning set forth in § 1.1471-1(b)(57).

.38 *Grandfathered obligation*. “Grandfathered obligation” has the meaning set forth in § 1.1471-2(b)(2)(i).

.39 *Individual account*. “Individual account” has the meaning set forth in § 1.1471-1(b)(64).

.40 *Intergovernmental Agreement (IGA)*. “Intergovernmental Agreement” or “IGA” has the meaning set forth in § 1.1471-1(b)(67).

.41 *IRS FFI List*. “IRS FFI List” has the meaning set forth in § 1.1471-1(b)(73).

.42 *Lead FI*. “Lead FI” means an FFI or U.S. financial institution that is designated by one or more members of the FFI group to initiate and manage FATCA registration via the FATCA registration website for such FFI members of the FFI group and that agrees to the responsibilities described in section 11.02 of this agreement.

.43 *Limited branch*. “Limited branch” has the meaning set forth in § 1.1471-1(b)(76).

.44 *Limited FFI*. “Limited FFI” has the meaning set forth in § 1.1471-1(b)(77).

.45 *Model 1 IGA*. “Model 1 IGA” has the meaning set forth in § 1.1471-1(b)(78).

.46 *Model 2 IGA*. “Model 2 IGA” has the meaning set forth in § 1.1471-1(b)(79).

.47 *New account*. “New account” means an account other than a preexisting account.

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

.49 *Non-exempt recipient*. “Non-exempt recipient” has the meaning set forth in § 1.1471-1(b)(81).

.50 *Non-financial foreign entity (NFFE)*. “Non-financial foreign entity” or “NFFE” has the meaning set forth in § 1.1471-1(b)(80).

.51 *Nonparticipating FFI*. “Nonparticipating FFI” has the meaning set forth in § 1.1471-1(b)(82).

.52 *Nonqualified intermediary (NQI)*. “Nonqualified intermediary” or “NQI” has the meaning set forth in § 1.1471-1(b)(85).

.53 *Non-U.S. account*. “Non-U.S. account” has the meaning set forth in § 1.1471-1(b)(84).

.54 *Non-U.S. payor*. “Non-U.S. payor” means a payor other than a U.S. payor.

.55 *Nonwithholding foreign partnership (NWP)*. “Nonwithholding foreign partnership” or “NWP” has the meaning set forth in § 1.1471-1(b)(86).

.56 *Nonwithholding foreign trust (NWT)*. “Nonwithholding foreign trust” or “NWT” has the meaning set forth in § 1.1471-1(b)(87).

.57 *Offshore obligation*. “Offshore obligation” has the meaning set forth in § 1.1471-1(b)(88).

.58 *Owner-documented FFI*. “Owner-documented FFI” has the meaning set forth in § 1.1471-1(b)(90).

.59 *Participating FFI*. “Participating FFI” means an FFI, or branch of an FFI, that has registered with the IRS to comply with the terms of, and to enter into, this agreement with the IRS, and to obtain a GIIN. See also the definition of reporting Model 2 FFI.

.60 *Passive NFFE*. “Passive NFFE” means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, other than an active NFFE).

.61 *Payee*. “Payee” has the meaning set forth in § 1.1471-1(b)(96).

.62 *Preexisting account*. “Preexisting account” means an account described in § 1.1471-1(b)(101).

.63 *Qualified intermediary*. “Qualified intermediary” or “QI” has the meaning set forth in § 1.1471-1(b)(107).

.64 *Recalcitrant account holder*. “Recalcitrant account holder” has the meaning set forth in § 1.1471-1(b)(110).

.65 *Registered deemed-compliant FFI*. “Registered deemed-compliant FFI” means an FFI described in § 1.1471-5(f)(1), and includes a reporting Model 1 FFI, a QI branch of a U.S. financial institution that is a reporting Model 1 FFI, and an FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

.66 *Reporting Model 1 FFI*. “Reporting Model 1 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model

1 IGA and that has registered with the IRS to obtain a GIIN.

.67 *Reporting Model 2 FFI*. “Reporting Model 2 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 2 IGA and that has registered with the IRS to comply with the terms of this agreement, as modified by an applicable Model 2 IGA.

.68 *Reportable payment*. “Reportable payment” has the meaning set forth in § 1.1471–1(b)(113).

.69 *Responsible officer*. “Responsible officer” has the meaning set forth in § 1.1471–1(b)(116).

.70 *Specified insurance company*. “Specified insurance company” has the meaning set forth in § 1.1471–1(b)(119).

.71 *Territory FI*. “Territory FI” or “territory financial institution” has the meaning set forth in § 1.1471–1(b)(130).

.72 *U.S. account*. “U.S. account” has the meaning set forth in § 1.1471–1(b)(134).

.73 *U.S. branch treated as a U.S. person*. “U.S. branch treated as a U.S. person” has the meaning set forth in § 1.1471–1(b)(135).

.74 *U.S. payor*. “U.S. payor” has the meaning set forth in § 1.1471–1(b)(140).

.75 *U.S. source FDAP income*. “U.S. source FDAP income” has the meaning set forth in § 1.1471–1(b)(142).

.76 *Withholdable payment*. “Withholdable payment” has the meaning set forth in § 1.1471–1(b)(145).

.77 *Withholding agent*. “Withholding agent” has the meaning set forth in § 1.1471–1(b)(147).

.78 *Withholding certificate*. “Withholding certificate” has the meaning set forth in § 1.1471–1(b)(148) and includes a Form W–8BEN–E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), and Form W–8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

.79 *Withholding foreign partnership (WP)*. “Withholding foreign partnership” or “WP” has the meaning set forth in § 1.1471–1(b)(149).

.80 *Withholding foreign trust (WT)*. “Withholding foreign trust” or “WT” has

the meaning set forth in § 1.1471–1(b)(151).

### SECTION 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NONPARTICIPATING FFI PAYEES

.01 *In General*. The due diligence procedures described in this section 3 generally apply to a participating FFI (other than a U.S. branch treated as a U.S. person). The participating FFI must perform the due diligence procedures described in this section 3 to determine which of the accounts that it maintains are (i) U.S. accounts, (ii) accounts held by recalcitrant account holders, (iii) accounts held by nonparticipating FFIs, or (iv) non-U.S. accounts. A participating FFI that makes a withholdable payment to a payee other than an account holder must also perform due diligence procedures described in this section 3 to determine if withholding is required under section 4 of this agreement.

(A) **Reporting Model 2 FFIs**. A reporting Model 2 FFI must apply the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model 2 FFI maintains within the Model 2 IGA jurisdiction unless the reporting Model 2 FFI elects to apply the due diligence procedures of this agreement, as described in this section 3. A reporting Model 2 FFI may apply the due diligence procedures described in section 3.02 of this agreement separately for each section of Annex I (for example, preexisting entity accounts) with respect to all accounts or with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained). Except for the two year period following the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement with respect to certain accounts must continue to apply these procedures consistently to these accounts in all subsequent years unless there has been a material modification to section 3.02 of this agreement or § 1.1471–4(c). With respect to the two-year period beginning

on the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI may apply either the due diligence procedures described in section 3.02 of this agreement or those described in Annex 1 of the applicable Model 2 IGA with respect to any clearly identified group of accounts, without being bound to a particular set of due diligence rules, so long as the application does not frustrate the purpose of the Model 2 IGA. A reporting Model 2 FFI must apply the due diligence procedures of section 3.02(B) of this agreement with respect to an entity payee that is receiving a withholdable payment.

(B) **U.S. Branch of a Participating FFI treated as a U.S. Person**. A U.S. branch of a participating FFI that is treated as a U.S. person (as described in § 1.1471–1(b)(135)) is required to apply the due diligence requirements described in § 1.1471–3 to determine the chapter 4 status of entity account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 (as applicable) with respect to individual account holders. See section 4.02(C) of this agreement for special withholding rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

.02 *Due Diligence Procedures*.

(A) **Identification and Documentation of Account Holders**. A participating FFI is required to determine the chapter 4 status of each holder of an account maintained by the participating FFI and to identify each account that is a U.S. account, non-U.S. account, account held by a recalcitrant account holder, or account held by a nonparticipating FFI. For this purpose, the participating FFI is required to apply the due diligence procedures for accounts to the extent, and in the manner, required under § 1.1471–4(c) within the applicable time periods described in § 1.1471–4(c)(3), (c)(4), and (c)(5). However, as provided in Notice 2014–33, an obligation held by an entity that is opened, issued, or executed on or after July 1, 2014, and before January 1, 2015, may be treated as a preexisting obligation for purposes of implementing the applicable due diligence procedures. A participating FFI that is unable to reliably associate valid documentation with an account holder to determine the chapter 4 status of such

account holder under such required procedures must apply the presumption rules of section 3.04 of this agreement. See also § 1.1471-4(d)(2) for other account holders to which a participating FFI's due diligence requirements apply (e.g., account holders of a territory FI, sponsored FFI, or owner-documented FFI).

**(B) Identification and Documentation of Certain Payees other than Account Holders.** For determining when withholding is required under section 4 of this agreement, a participating FFI is, prior to payment, required to reliably associate the payment with documentation that meets the requirements of section 3.03(B) of this agreement when making a withholdable payment to an entity payee. If an account holder receives a withholdable payment and is not treated as the payee of the payment, in addition to documenting the chapter 4 status of the account holder, the participating FFI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding is required under section 4 of this agreement. See, however, § 1.1471-3(e)(4)(vi) for when a participating FFI may rely on the chapter 4 status of a payee provided by another participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity with respect to the payee. Except as otherwise provided in section 4.02(A) of this agreement and Notice 2014-33, a participating FFI must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee if, prior to the time of payment, it cannot reliably associate the payment with documentation meeting the requirements of section 3.03(B) of this agreement. See, however, § 1.1471-3(c)(7) for requirements that apply for documentation received after the date of a payment. With respect to a preexisting account, a participating FFI must, to the extent required under § 1.1471-4(c), determine the chapter 4 status of the payee within the applicable time period described in § 1.1471-4(c)(3) or, if unable to do so, must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee.

*.03 Additional Requirements for Identification and Documentation of Account Holders and Payees.*

**(A) In General.** To the extent that the participating FFI is required to retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee, the participating FFI must do so in accordance with the requirements of § 1.1471-4(c)(2). The participating FFI must also institute procedures that meet the requirements of § 1.1471-4(c)(2) to ensure that any change in circumstances (described in section 2 of this agreement) is identified with respect to an account.

**(B) Requirements for Documentation.**

**(1) In General.** To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence to document an account holder or payee, such documentation must meet the requirements set forth in § 1.1471-3(c). Sections 1.1471-3(c)(3) through (5) provide the requirements of valid withholding certificates, written statements, and documentary evidence. Section 1.1471-3(c)(6) provides other applicable rules for withholding certificates, written statements, and documentary evidence, including their periods of validity and electronic transmission requirements. Sections 1.1471-3(c)(8) and (9) provide requirements related to the sharing of documentation and reliance by a participating FFI on documentation collected by another person. A participating FFI must obtain the documentation specified in § 1.1471-3(d) to establish the chapter 4 status of an entity account holder or an entity payee. A participating FFI may rely on documentation that meets the requirements of § 1.1471-3(c) until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. If the participating FFI is unable to obtain the required documentation within 90 days of a change in circumstances, the participating FFI must apply the presumption rules of section 3.04 of this agreement with respect to the account or payee until valid documentation is obtained upon which the FFI is permitted to rely.

**(2) Requirements for Reporting Model 2 FFIs.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to an account, such documentation must meet the requirements described in the applicable Model 2 IGA, and the reporting Model 2 FFI may rely on such documentation until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. Upon the expiration of the documentation or a change in circumstances, the reporting Model 2 FFI must obtain new or additional documentation or must redetermine the status of the account in accordance with the due diligence procedures described in Annex I of the applicable Model 2 IGA. If an account holder of a new account (as defined in the applicable Model 2 IGA) has a change in circumstances that would cause such account to be treated as a U.S. account and the account holder refuses to provide consent for such account to be reported, the reporting Model 2 FFI must report the account as a non-consenting U.S. account as described in section 6.03(B) of this agreement.

*.04 Presumption Rules in Absence of Valid Documentation.* If the participating FFI is required to, but is unable to, obtain documentation (or a record of documentation) that meets the requirements of this section 3 within the applicable time period described in section 3.02 of this agreement, or if the participating FFI knows or has reason to know that documentation provided for an account holder or payee is unreliable or incorrect, as determined applying the standards of knowledge described in § 1.1471-4(c)(2), or as determined under Annex I of the applicable Model 2 IGA in the case of a reporting Model 2 FFI that applies such procedures with respect to an account, the FFI is required to apply the presumption rules described in this section 3.04 until valid documentation is provided for the account holder or payee upon which the FFI is permitted to rely. However, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely

on such documentation until the earlier of 90 days following the change in circumstances or the date new documentation is obtained upon which the participating FFI may rely to document the chapter 4 status of the account holder or payee. See, however, § 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), to the extent a withholdable payment that is also a reportable amount (as defined in § 1.1441-1(c)(22)) is made to the account holder or payee.

**(A) Entity Payee or Account Held by an Entity.** With respect to a withholdable payment made to an entity payee, a participating FFI must apply the presumption rules of § 1.1471-3(f). The presumption rules of § 1.1471-3(f) also apply to an account held by an entity. However, in the case of an account held by a passive NFFE that provides the documentation described in § 1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners required under § 1.1471-3(d)(12)(iii), the participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471-5(g)(2)(iv).

**(B) Account Held by an Individual.** With respect to an account held by an individual, a participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471-5(g) and classify the type of recalcitrant account holder in accordance with the pools described in § 1.1471-4(d)(6).

**(C) Presumption Rules for Reporting Model 2 FFIs.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, such FFI must apply the procedures of Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or non-consenting U.S. account. A reporting Model 2 FFI that applies the due diligence procedures described in section 3.02 of this agreement with respect to an account must treat an account that would otherwise be treated as held by a recalcitrant account holder as a non-consenting U.S. account to the extent required under the applicable Model 2 IGA. With respect to a withholdable payment made to an entity

payee, a reporting Model 2 FFI must apply the presumption rules of § 1.1471-3(f).

## **SECTION 4. WITHHOLDING REQUIREMENTS.**

### *.01 Withholding Requirements.*

**(A) In General.** A participating FFI is generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to an account maintained by such participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. A participating FFI is also generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI with respect to an offshore obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2017 and therefore this requirement is not addressed in this agreement. See section 7.03 of this agreement for the requirements of a participating FFI that is prohibited by law from withholding as required under this section 4.01.

**(B) Modification of Withholding Requirements for a Reporting Model 2 FFI.** Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model 2 FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model 2 IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model 2 FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts in accordance with section 4.02 of this agreement. In addition, a reporting Model 2 FFI is required to withhold in accordance with section 4.02 of this agreement on any withholdable payment made to a nonparticipating FFI that is an account holder or a payee other than an account holder.

**(C) Special Withholding Requirements of U.S. Branch of a Participating FFI treated as a U.S. Person.** A U.S.

branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts it maintains that are held by U.S. non-exempt recipients (or presumed U.S. non-exempt recipients) will be treated as satisfying its withholding requirements under this section 4 and § 1.1471-4(b) with respect to such account holders. For all other payees of a withholdable payment, a U.S. branch of a participating FFI must withhold to the extent required under sections 1471(a) and 1472. See section 3.01(B) of this agreement for special due diligence rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

**(D) Election to Withhold under Section 3406 on Recalcitrant Account Holders.** With respect to a recalcitrant account holder that receives a withholdable payment and that is also subject to backup withholding under section 3406, to the extent that the payment also constitutes a reportable payment, a participating FFI (including a U.S. branch of a participating FFI that is not treated as a U.S. person) may elect to satisfy its withholding obligation under this section 4 and § 1.1471-4(b) by applying backup withholding under section 3406 to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 with respect to payments to which backup withholding applies. Nothing in this section 4 or § 1.1471-4(b) relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not withholdable payments (e.g., payments with respect to grandfathered obligations). See section 4.04(D) of this agreement for the coordination of backup withholding under section 3406 for a participating FFI that does not make the election described in this section 4.01(D) and that withholds under section 1471(b) with respect to a withholdable payment that is also a reportable payment made to a recalcitrant account holder that is subject to backup withholding under section 3406.

### *.02 General Rules for Withholding.*

**(A) Withholding Determination in General.** A participating FFI that makes a

withholdable payment is required to determine whether withholding under this section 4 applies at the time the withholdable payment is made by applying the requirements of § 1.1471-4(b) to determine the payee of the payment and to reliably associate the payment with valid documentation to establish the payee's chapter 4 status. The exceptions to withholding described in § 1.1471-2, including the exceptions for payments made under a grandfathered obligation and payments made to certain excepted accounts, apply for purposes of determining whether withholding is required under this section 4. A participating FFI is not required to withhold under this section 4 on payments made to an account holder of a preexisting account prior to the expiration of the applicable time period described in section 3.02(A) of this agreement for identifying the account (or applying the presumption rules), unless the account is documented as held by a nonparticipating FFI.

**(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT.** A participating FFI that is an NQI, NWP, or NWT is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary when it provides its withholding agent with an FFI withholding statement that includes sufficient information for such withholding agent to establish the portion of the payment (if any) that is allocable to recalcitrant account holders (in each of the chapter 4 withholding rate pools described in section 9.02(B) of this agreement), to payees that are nonparticipating FFIs, and to payees that are U.S. persons (U.S. payee pool) in accordance with § 1.1471-4(b)(3). If a participating FFI elects to backup withhold under section 3406 with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must provide its withholding agent with an FFI withholding statement that includes sufficient information for such withholding agent to report the payments made to the account holders in accordance with chapter 61 and to apply backup withholding. See § 1.1471-3(c)(3)(iii) and section 9 of this agreement for the requirements applicable to a participating FFI's withholding cer-

tificate, withholding statement, and associated documentation. If the withholdable payment is exempt from chapter 4 withholding, the information provided by the participating FFI to the withholding agent must also include the payee's chapter 4 status when specific payee information is required for purposes of chapter 3. A participating FFI must also provide the withholding agent with information regarding any account holders or payees of an intermediary or flow-through entity that hold an account with the participating FFI, other than a QI, WP, or WT.

A participating FFI is required to withhold under § 1.1471-4(b)(3) when it fails to provide sufficient information to its withholding agent or when it knows or has reason to know that the withholding agent has not withheld to the extent required under § 1.1471-2(a)(i) with respect to its account holders. For example, if a participating FFI provides the documentation described in § 1.1471-3(c)(3)(iii) to its withholding agent and, based on the amount of the payment that it receives from the withholding agent, it knows or has reason to know that the withholding agent has underwithheld on the payment, it is required to deduct and withhold tax from the payment to the extent of the underwithheld tax. A participating FFI is also required to withhold when it applies the dormant account procedures described in section 5.02 of this agreement.

**(C) Withholding Requirements with Respect to Limited Branches and Limited FFIs.** A participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under § 1.1471-4(b)(5), including when a participating FFI has reason to know that a withholdable payment was made to a limited branch of a participating FFI or registered deemed-compliant FFI. A participating FFI making a withholdable payment to another participating FFI or to a registered deemed-compliant FFI will have reason to know that a withholdable payment is made to a limited branch of such other FFI when the participating FFI is directed to make the payment to an address of such other FFI in a jurisdiction other than that 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. For example, if a participating FFI identifies 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 participating FFI to which the withholding certificate was provided to make the payment to an address of the FFI in Jurisdiction B, then the participating FFI making the withholdable payment will have reason to know that the payment is made to a limited branch, unless the participating FFI making the withholdable payment obtains documentation that allows it to treat the payment made to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. See § 1.1471-3(e)(3)(i).

**.03 Liability for Failure to Withhold.** A participating FFI that fails to withhold any tax under chapter 4 as required under section 4.02 of this agreement is liable for the amount of tax not withheld and any interest, additions to tax, and penalties that may apply under a relevant provision of the Code.

**.04 Coordination with Other Withholding Provisions.**

**(A) In General.** A participating FFI is a withholding agent for purposes of chapter 4, a withholding agent under chapter 3 with respect to a payment subject to withholding under § 1.1441-2(a) or under sections 1445 or 1446, and a payor for purposes of withholding under section 3406. Except to the extent provided in this section 4.04, no provision of this agreement otherwise limits the requirement of a participating FFI to withhold as a withholding agent for purposes of chapters 3 and 4 or as a payor for purposes of backup withholding under section 3406 to the extent required.

**(B) Coordination of Withholding under Sections 1471(a) and 1472(a).** A participating FFI that complies with the withholding requirements of this agreement is deemed to satisfy its chapter 4 withholding obligations under sections 1471(a) and 1472(a) with respect to its account holders and entity payees.

**(C) Coordination with Withholding under Chapter 3.** In the case of a withholdable payment that is also subject to

withholding under section 1441, 1442, or 1443, a participating FFI may credit the tax withheld under section 4.02 of this agreement against its liability under section 1441, 1442, or 1443 as described in § 1.1474–6(b). In the case of a withholdable payment that is also subject to withholding under section 1445, withholding under section 1445 applies to the payment to the extent described under § 1.1474–4(6)(c), and withholding is not required under section 4.02 of this agreement. In the case of a withholdable payment that is also subject to withholding under section 1446, withholding under section 1446 applies to the extent described under § 1.1474–6(d), and withholding is not required under section 4.02 of this agreement.

**(D) Coordination with Backup Withholding.** In the case of a withholdable payment that is also a reportable payment made by the participating FFI to a recalcitrant account holder, withholding under section 3406 will not apply to the reportable payment if tax is withheld on the payment under section 4.02 of this agreement, unless the participating FFI elects to apply backup withholding under section 3406 to a payment made to a recalcitrant account holder as described in section 4.01(D) of this agreement.

## SECTION 5. DEPOSIT REQUIREMENTS.

*.01 In General.* A participating FFI that withholds tax as required under this agreement must deposit amounts withheld within the time period provided in § 1.1474–1(b)(1) or, for amounts withheld under the election described in section 4.01(D) of this agreement, § 31.6302–4. See § 1.1471–2(a)(5)(ii) for an optional escrow procedure when a withholding agent is unable to determine at the time of payment whether such payment is a withholdable payment.

*.02 Dormant Accounts.* If a participating FFI receives a withholdable payment not otherwise subject to backup withholding under section 3406, or withholding under chapter 3, on behalf of a dormant account held by a recalcitrant account holder, 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 dor-

mant account. The tax withheld in escrow becomes due on the date that is 90 days following the date that the account ceases to be a dormant account. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this section 5.02 may not delegate the responsibility to escrow withheld tax to the withholding agent from which it receives the payment. See section 6.05(C) of this agreement for the reporting requirements and section 9 of this agreement for the requirements of an FFI withholding statement when the participating FFI applies the escrow rule for dormant accounts described in this section 5.02. Sections 1.1471–4(d)(6)(ii) and (iii) provide the rules for determining when the participating FFI must treat an account as dormant and when an account will no longer be treated as a dormant account.

## SECTION 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS.

*.01 In General.* Under section 1471(c) and § 1.1471–4(d), a participating FFI is required to report annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information described in section 6.03 of this agreement with respect to its recalcitrant account holders classified in accordance with the pools described in § 1.1471–4(d)(6) and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts classified in accordance with the pools described in § 1.1471–4(d)(6). A participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs as described in section 6.04 of this agreement. A participating FFI may also be required under section 6.05 of this agreement to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. If a participating FFI is required to file information returns under section 6.05 of this agreement, the participating FFI is also required under 6.06(A)

of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such amounts. A participating FFI must file information returns about its account holders or payees for purposes of chapter 4 (Forms 8966, 1099, 1042–S) on magnetic media (as defined in § 301.1474–1(d)(1)). See section 6.06(B) of this agreement for the income tax return filing requirements of a U.S. branch of a participating FFI that makes withholdable payments. See also section 7 of this agreement for the requirements of a participating FFI that is prohibited by law from reporting its U.S. accounts as required under this section 6. 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 that is identified as a specified U.S. person.

*.02 U.S. Account Reporting.*

### (A) Accounts for which Reporting is Required.

(1) *In General.* On a calendar-year basis, a participating FFI must report each U.S. account that it maintains in the manner described in section 6.02(B) of this agreement. The participating FFI is also required to report accounts held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471–3(d)(6) to the extent required under this section 6.02.

(2) **Special Reporting of Account Holders of Territory FIs.** If a participating FFI maintains an account held by a territory FI that acts as an intermediary with respect to a withholdable payment, and the territory FI does not agree to be treated as a U.S. person with respect to the payment, the participating FFI is required to report each specified U.S. person and each substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary to the extent that the territory FI provides the participating FFI with sufficient information to report such account. See § 1.1471–4(d)(2)(ii)(B)(2) for the information required to be reported for an account or payee of a territory FI.

(3) **Additional U.S. Account Reporting Requirement for a Trustee of a Trustee-Documented Trust.** In addition to the accounts required to be reported under section 6.02(A)(1) of this agreement,

a participating FFI that is the trustee of a trustee-documented trust (as defined in an applicable Model 1 or Model 2 IGA) must report each U.S. account maintained by the trust as if the participating FFI maintained the account.

**(B) General Reporting Requirements of a Participating FFI (other than its U.S. Branch treated as a U.S. Person).** A participating FFI (other than its U.S. branch treated as a U.S. person) may report its U.S. accounts on Form 8966 in the manner described in § 1.1471-4(d)(3). Alternatively, to the extent allowed under § 1.1471-4(d)(5), a participating FFI may elect to perform chapter 61 reporting as modified in section 6.02(B)(1) of this agreement, in lieu of reporting in the manner described in § 1.1471-4(d)(3). A participating FFI may elect to perform chapter 61 reporting with respect to all its U.S. accounts or with respect to any clearly identified group of U.S. accounts (such as by line of business or the location where the account is maintained) in the manner described in section 6.02(B)(1) of this agreement. With respect to a cash value insurance contract or annuity contract held by a specified U.S. person, a participating FFI may also elect to report under section 6047(d) in the manner described in § 1.1471-4(d)(5)(i)(B) and section 6.07 of this agreement.

**(1) Modified Chapter 61 Reporting.** A participating FFI (including a U.S. branch that is not treated as a U.S. person) that elects to perform chapter 61 reporting must report the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049 and must report payments made to an account subject to reporting under the applicable section. A participating FFI that is a non-U.S. payor, however, must determine the payments subject to reporting under the applicable section as if it were a U.S. payor.

A participating FFI that elects to perform chapter 61 reporting must treat each account holder that is a specified U.S. person, U.S.-owned foreign entity, or owner-documented FFI as if it were an account holder who is an individual and citizen of the United States and must report each such account regardless of whether the account holder of such account qualifies as an exempt recipient.

With respect to each account holder of a U.S. account that is a specified U.S. person, the participating FFI must report on the appropriate Form 1099 the information described in § 1.1471-4(d)(5)(ii) and the accompanying instructions to the form. With respect to an account held by an entity treated as a passive NFFE with substantial U.S. owners or held by an owner-documented FFI with specified U.S. persons identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2), the participating FFI must report on Form 8966 the U.S. owner information described in § 1.1471-4(d)(5)(ii) and (iii) and the accompanying instructions to the form.

A participating FFI that reports an account under this section 6.02(B)(1) must report such account for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year. In such a case and with respect to a specified U.S. person, the appropriate form is Form 1099-MISC, Miscellaneous Income. For example, with respect to a custodial account, the participating FFI is required to file a Form 1099-MISC even if no reportable payments were paid or credited to the account with respect to any financial instrument, investment, or contract held in such account. A participating FFI that reports accounts under this section 6.02(B)(1) may decide at a later time to report the accounts in the manner described in § 1.1471-4(d)(3) beginning on the first reporting date for the calendar year following the calendar year for which it last reports an account under this section 6.02(B)(1).

**(2) Transitional Reporting Rules.** For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471-4(d)(3) is only required to report the account information specified in § 1.1471-4(d)(7)(ii) for its U.S. accounts. For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471-4(d)(5) is only required to report the account information specified in § 1.1471-4(d)(7)(iii) with respect to its U.S. accounts.

**(3) Time and Manner of Filing.** The participating FFI must file Form 8966 or Form 1099 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with

the requirements prescribed for such reporting on the form and its accompanying instructions.

**(C) Special Reporting Rules for U.S. Branches treated as U.S. Persons.** In the case of a U.S. branch of a participating FFI that is treated as a U.S. person, such branch must report under chapter 61 with respect to account holders that are U.S. non-exempt recipients (or presumed U.S. non-exempt recipients), including any account holders subject to backup withholding under section 3406, and under § 1.1474-1(i) with respect to entities treated as passive NFFEs with substantial U.S. owners and owner-documented FFIs with specified U.S. persons identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2).

*.03 Reporting with respect to Recalcitrant Account Holders.*

**(A) In General.** A participating FFI is required to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966 and in the manner described in § 1.1471-4(d)(6). Such reporting is required regardless of whether the participating FFI makes a withholdable payment to the account during the calendar year. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**(B) Reporting Model 2 FFIs' Reporting of Non-Consenting U.S. Accounts.** Instead of the reporting described in section 6.03(A) of this agreement, a reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting U.S. accounts classified in accordance with the pools described in § 1.1471-4(d)(6) and the accompanying instructions to the form. Such reporting is required regardless of whether the reporting Model 2 FFI makes a withholdable payment to the account during the calendar year. A reporting Model 2 FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates (unless otherwise specified in

the applicable Model 2 IGA) in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

*.04 Special Transitional Reporting of Payments to Nonparticipating FFIs.* For calendar years 2015 and 2016, the participating FFI must report on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the account holder and the participating FFI has not obtained such consent (i.e., the account holder is a non-consenting nonparticipating FFI), 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 to such non-consenting nonparticipating FFIs. In either case, the participating FFI may report all income, gross proceeds, and redemptions (regardless of source) paid to the nonparticipating FFI's account (or all non-consenting nonparticipating FFIs' accounts, as applicable) by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

*.05 Withholdable Payment Reporting and Reporting of Tax Withheld.*

**(A) In General.** Except as otherwise provided in this section 6.05(A) and section 6.05(B) of this agreement, a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts made during the year to payees that are recalcitrant account holders, nonparticipating FFIs, and, with respect to a non-U.S. payor, U.S. persons that are included in a U.S. payee pool (see section 9.02). Forms 1042-S must identify the foreign branch of the FFI maintaining the payee's

account using the GIIN assigned to such branch and the employer identification number (EIN) of the legal entity covered by this agreement. A U.S. branch of a participating FFI is required to file separate Forms 1042-S using the EIN assigned to such U.S. branch to report chapter 4 reportable amounts that it paid to its account holders and payees.

**(1) Allowance for Specific Payee or Pooled Reporting.** A participating FFI may report chapter 4 reportable amounts made to a specific recipient or to a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. A participating FFI that fails to file returns or furnish statements required by this agreement may be subject to penalties in accordance with sections 6721 through 6724.

**(i) Pooled Reporting.** A participating FFI may report on Form 1042-S chapter 4 reportable amounts made to recalcitrant account holders and nonparticipating FFIs in a chapter 4 reporting pool. With respect to recalcitrant account holders, a separate chapter 4 reporting pool is required for each class of recalcitrant account holders described in § 1.1471-4(d)(6). Additionally, a participating FFI that is a non-U.S. payor must report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool of U.S. payees. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. See also Form 1042-S and its accompanying instructions for the chapter 4 reporting pool codes for recipients and income codes.

**(ii) Specific Recipient Reporting.** As an alternative to reporting chapter 4 reportable amounts to a chapter 4 reporting pool of recalcitrant account holders and nonparticipating FFIs as described in section 6.05(A)(1)(i) of this agreement, a participating FFI may issue a Form 1042-S to a recalcitrant account holder or a nonparticipating FFI on a specific payee basis. Section 1.1474-1(d)(1)(i) specifies the information that is required to be included on Form 1042-S. See also section 10.04 of this agreement for the limitation on filing a collective refund claim on behalf of account holders or payees that are reported on a specific payee basis.

**(2) Reporting Required when Electing to Withhold under Section 3406 on Recalcitrant Account Holders.** A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders by backup withholding under section 3406 with respect such payments as described in section 4.01(D) of this agreement must report on the applicable Form 1099 in the manner required under chapter 61 with respect to payments to which backup withholding applies. Forms 1099 must be filed by the legal entity covered by this agreement and must exclude payments made by its U.S. branch, if any. A U.S. branch of a participating FFI that has not agreed to be treated as a U.S. person and makes the election described in section 4.01(D) of this agreement is required to file separate Forms 1099 using the EIN assigned to such U.S. branch.

**(3) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI (regardless of whether it is treated as a U.S. person) must report separately on Form 1042-S or 1099 with respect to amounts paid or received by the U.S. branch during the year on behalf of its account holders. A U.S. branch of a participating FFI that is not treated as a U.S. person is only required to report on Form 1042-S or Form 1099, however, to the extent described in section 6.05(B) of this agreement. See section 6.06(B) of this agreement for the requirement for a U.S. branch to file a separate Form 1042 or Form 945.

**(B) Special Reporting Rules when Withholding Agent Reports on Behalf of Participating FFI.** A participating FFI is not required to report on Form 1042-S or Form 1099 as described in section 6.05(A) of this agreement amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are U.S. persons to the extent that its withholding agent has correctly reported on a Form 1042-S or Form 1099, as the context requires, and withheld the correct amount of tax on such amounts. The participating FFI is required to report, however, when the participating FFI knows, or has reason to know, that the payment is not correctly reported on Form 1042-S or Form 1099, that less than the



required amount has been withheld on the payment, or that the amount of tax withheld is not correctly reported on Form 1042-S or Form 1099. In such a case, the participating FFI must report the payment on Form 1042-S or Form 1099 to the extent required under section 6.05(A) of this agreement. See section 9 of this agreement for the information that the participating FFI must include on its withholding statement to enable its withholding agent to report.

**(C) Dormant Accounts.** Notwithstanding section 6.05(B) of this agreement, a participating FFI is required to report a chapter 4 reportable amount made to a recalcitrant account holder that holds a dormant account for which the participating FFI sets aside the amount withheld in escrow, in lieu of depositing the tax withheld. See section 5.02 of this agreement for the requirements of the escrow procedure for dormant accounts. See also section 9 of this agreement for the withholding statement requirements with respect to dormant accounts and the instructions to Form 1042-S for reporting under this procedure.

**(D) U.S. Source FDAP Income Subject to Reporting under Chapter 3.** In a case in which a participating FFI reports under section 6.05(A) of this agreement a withholdable payment of U.S. source FDAP income subject to withholding under section 4 of this agreement, a separate Form 1042-S is not required to be filed for the same payment for chapter 3 reporting purposes under § 1.1461-1(c)(2). A participating FFI that is reporting U.S. source FDAP income that is not subject to withholding under section 4 of this agreement must include in its reporting an exemption code for chapter 4 purposes to the extent the participating FFI is required to report the amount under § 1.1461-1(c)(2).

**(E) Reporting of Withholdable Payments to Limited Branches and Limited FFIs.** A participating FFI must report (or provide sufficient information to its withholding agent, as described in section 6.05(B) of this agreement, to report) withholdable payments that it receives on behalf of a limited branch or limited FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a limited branch or limited FFI.

See Form 1042-S and its accompanying instructions for the other information that a participating FFI is required to report in such a case.

**(F) Time and Manner of Filing.** A participating FFI must file Forms 1042-S on magnetic media with the IRS on or before March 15 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions. A participating FFI must file the relevant Forms 1099, if applicable, on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

*.06 Tax Return Filing Requirements.*

**(A) In General.** If a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts, it must also file an income tax return on Form 1042 to report the chapter 4 reportable amounts paid to account holders and payees that the participating FFI is required to report on Form 1042-S. A participating FFI will also be required to report on Form 1042 the amount of tax withheld and the amount of tax deposited with respect to such payments for the calendar year, in addition to any other information required by the form and its accompanying instructions. If a participating FFI applies backup withholding, instead of withholding under chapter 4, with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must also file an income tax return on Form 945 to the extent the participating FFI withheld tax on withholdable payments that are reportable amounts paid to its account holders. See section 6.05(B) of this agreement for the rules on when Form 1042-S and Form 1099 are required to be filed.

Form 1042 or Form 945 must be filed by the legal entity covered by this agreement, and it must exclude payments made by any U.S. branch of such entity. Withholding certificates and other statements or information provided to the participating FFI should not be attached to the return. With respect to Form 1042, the information required for purposes of

chapter 4 is in addition to the information required to be provided on Form 1042 for purposes of chapter 3. A participating FFI must file Form 1042 with the IRS on or before March 15 of the year following the calendar year to which the form relates. A participating FFI must file Form 945 with the IRS on or before January 31 of the year following the calendar year to which the form relates.

**(B) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI that is required to report on Form 1042-S chapter 4 reportable amounts must file a separate Form 1042 to report the chapter 4 reportable amounts that it paid to account holders and payees. Form 1042 should include the information described in section 6.06(A) of this agreement. A U.S. branch of a participating FFI that is treated as a U.S. person may also be required to file an income tax return on Form 945 if such branch applied backup withholding under section 3406(a) with respect to reportable amounts paid to accounts held by U.S. non-exempt recipients. See section 4.02(C) of this agreement for the withholding requirements of a U.S. branch of a participating FFI that is treated as a U.S. person.

*.07 Coordination with Chapter 61 Reporting.* A non-U.S. payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a reportable payment made to a payee that is an account holder of the participating FFI and that is a U.S. non-exempt recipient if such participating FFI reports with respect to such an account holder pursuant to section 6.02 of this agreement (and must include the reporting of the account holder's TIN). See § 1.6049-4(c)(4). A participating FFI (regardless of whether the FFI is a U.S. payor or non-U.S. payor) will satisfy its Form 1099 reporting obligations with respect to a reportable payment made to a payee that is an account holder of the participating FFI and that is treated as a U.S. non-exempt recipient under the presumption rules of chapters 3 and 61 if such participating FFI reports with respect to such an account holder pursuant to section 6.03 of this agreement. See § 1.6049-4(c)(4). A participating FFI is required to report a payment on Form 1099, however, to the extent that backup withholding is

required under section 3406 with respect to the payment, or the participating FFI elects to apply backup withholding to the payment under section 4.01(D) of this agreement and another payor (as defined in § 1.6049-5(c)(5)) has not performed Form 1099 reporting with respect to the payment.

*.08 Retention Requirements.*

**(A) Account Statements.** A participating FFI is required to retain information that summarizes the account activity of its U.S. accounts and accounts held by recalcitrant account holders and nonparticipating FFIs to the extent required in § 1.1471-4(d).

**(B) Forms 1042-S.** A participating FFI 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.

## **SECTION 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING.**

*.01 In General.* If a participating FFI (or branch thereof) is prohibited by law from reporting its U.S. accounts as required under section 6.02 of this agreement or from withholding to the extent required under section 4 of this agreement, the participating FFI (or branch thereof) must comply with the requirements of section 7.02 or 7.03 of this agreement.

*.02 Prohibitions on Reporting U.S. Accounts.* A participating FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a U.S. account as required under section 6.02 of this agreement must satisfy the requirements of § 1.1471-4(i)(2) to request a valid and effective waiver of such law or otherwise close or transfer the account.

**(A) Reporting Model 2 FFI.** A reporting Model 2 FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a preexisting U.S. account as required under section 6.02 of this agreement must request consent to report such account and, if consent is not provided, must report certain aggregate information about such account with other non-

consenting U.S. accounts in accordance with section 6.03 of this agreement. With respect to a new account (as defined in the applicable Model 2 IGA), a reporting Model 2 FFI must obtain from each account holder of a U.S. account, as a condition of account opening, the consent required under domestic law in order for such reporting Model 2 FFI to report the account as required under section 6.02 of this agreement. Additionally, a reporting Model 2 FFI must request the account holder's consent to report, if required by domestic law, after account opening for any new account that is not identified as a U.S. account at account opening and that must subsequently be treated as a U.S. account due to a change in circumstances. If consent is not provided by the account holder, the reporting Model 2 FFI must treat the account as a non-consenting U.S. account and report the account as described in section 6.03(B) of this agreement.

*.03 Legal Prohibitions Preventing Withholding with Respect to Recalcitrant Account Holders and Nonparticipating FFIs.* To the extent a participating FFI is prohibited under domestic law from withholding with respect to recalcitrant account holders and nonparticipating FFIs as required under section 4 of this agreement, the participating FFI is required to satisfy the requirements of § 1.1471-4(i)(3) to block or transfer each account or offshore obligation held by such persons.

*.04 Limited Branches.*

**(A) In General.** If a participating FFI maintains one or more limited branches, the participating FFI must meet the requirements described in § 1.1471-4(e)(2)(iii). Such requirements include withholding on payments made or received on behalf of a limited branch as described in section 4.02(C) of this agreement and reporting such payments as described in section 6.05(E) of this agreement. After the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), a participating FFI with one or more limited branches will cease to be a participating FFI. If a limited branch maintained by a participating FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, the participating

FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date.

**(B) Limited Branch of a Reporting Model 2 FFI.** If a reporting Model 2 FFI maintains one or more limited branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each limited branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.02(C) of this agreement and to report such payments as described in section 6.05(E) of this agreement. If a branch maintained by the FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, a reporting Model 2 FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following such date that the branch will cease to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date. A reporting Model 2 FFI with one or more limited branches will continue to be a reporting Model 2 FFI after the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such branches.

## **SECTION 8. COMPLIANCE PROCEDURES.**

*.01 In General.* A participating FFI is required to adopt a compliance program under the authority of the responsible officer of the participating FFI or, in the case of a participating FFI that adopts a consolidated compliance program under the requirements of § 1.1471-4(f)(2)(ii), under the authority of the responsible officer of a compliance FI. A participating FFI's compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of this agreement. A participating FFI must also perform, or have

performed on its behalf, a review of its compliance with this agreement for the certification period (described in § 1.1471-4(f)(3)). The results of such review must be considered by the responsible officer in making the periodic certifications described in section 8.03 of this agreement. A participating FFI must also comply with the IRS review of compliance described in section 8.04 of this agreement.

*.02 Responsible Officer.* A participating FFI must appoint a responsible officer to establish, or to appoint one or more designees to establish, a compliance program that meets the requirements of section 8.01 of this agreement and to periodically review the sufficiency of such compliance program. The responsible officer must make the certifications described in section 8.03 of this agreement to the IRS regarding the FFI's compliance with this agreement.

*.03 Certifications of Compliance by Responsible Officer.*

**(A) Certification Regarding the Due Diligence Procedures.** No later than 60 days following the date that is two years after the effective date of this agreement, the responsible officer of the participating FFI must make the certification described in § 1.1471-4(c)(7) regarding the FFI's completion of the due diligence procedures for preexisting accounts required under section 3 of this agreement and regarding the absence of any formal or informal practices or procedures to assist account holders in the avoidance of chapter 4 as described in § 1.1471-4(c)(7).

**(B) Periodic Certification of Compliance.** On or before July 1 of the calendar year following the certification period defined in § 1.1471-4(f)(3)(i), the responsible officer of the participating FFI must make either the certification of effective internal controls described in § 1.1471-4(f)(3)(ii) or, when required, make the qualified certification under § 1.1471-4(f)(3)(iii). The responsible officer must consider the results of the participating FFI's periodic review in making the periodic certification of compliance.

**(C) Method of Making Certifications.** The participating FFI (or the compliance FI with respect to such FFI) must make the certifications of compliance in

such manner as the IRS may prescribe in future guidance or other instructions.

*.04 Review of Compliance.*

**(A) General Inquiries of FFI and Account Holder Compliance.** Based upon the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the IRS may request additional information with respect to the information reported or required to be reported on such forms described in section 6.06 of this agreement or may request the account statements described in § 1.1471-4(d)(4)(v). 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.

**(B) Inquiries of Reporting Model 2 FFIs.** In the case of a reporting Model 2 FFI, subject to the terms set forth in an applicable competent authority arrangement under the applicable Model 2 IGA, the U.S. Competent Authority may make an inquiry directly to a reporting Model 2 FFI regarding the information described in section 8.04(A) of this agreement. When the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting, the U.S. Competent Authority may make such an inquiry directly to a reporting Model 2 FFI. Additionally, if a reporting Model 2 FFI reports aggregate information regarding its non-consenting U.S. accounts and accounts held by non-participating FFIs as described in sections 6.03 and 6.04 of this agreement, the U.S. Competent Authority, consistent with the terms of the applicable competent authority arrangement under the applicable Model 2 IGA, may request information regarding the accounts underlying the aggregate information returns filed with respect to such accounts.

**(C) Inquiries regarding Substantial Non-Compliance.** Based on the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the certifications made by the responsible officer, or any other information related to a participating FFI's compliance with this agreement, the IRS may deter-

mine in its discretion that the participating FFI may not have substantially complied with the requirements of this agreement. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with this agreement or the performance of specified review procedures as described in § 1.1471-4(f)(4)(ii). If the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement, the IRS will notify the participating FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

**(D) Inquiries regarding Significant Non-Compliance for Reporting Model 2 FFIs.** Consistent with the terms of the applicable competent authority arrangement under the Model 2 IGA, the U.S. Competent Authority may request information necessary to verify a reporting Model 2 FFI's compliance with this agreement as described in § 1.1471-4(f)(4)(ii). If the U.S. Competent Authority determines that a reporting Model 2 FFI has failed to significantly comply with the requirements of this agreement, as modified by the applicable Model 2 IGA, the U.S. Competent Authority will notify the Competent Authority of the jurisdiction in which the reporting Model 2 FFI is located, and will also notify the reporting Model 2 FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

## SECTION 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE.

*.01 Participating FFI Withholding Certificate.* A participating FFI agrees to furnish a valid withholding certificate to each withholding agent from which it receives a withholdable payment and to each participating FFI or deemed-compliant FFI with whom the participating FFI holds an account. When a participating FFI receives a withholdable payment as a beneficial owner of the payment (as defined in § 1.1471-1(b)(7)) or otherwise holds an obligation or account for its own benefit, the withholding certificate to be furnished is a Form W-8BEN-E (or acceptable substitute form under § 1.1471-3(c)(6)(v)) that certifies that the participating FFI is the ben-

official owner and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI that is receiving the payment and the branch's GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and all of the other information required by § 1.1471-3(c)(3)(ii), the form, and its accompanying instructions. Alternatively, with respect to a payment made prior to January 1, 2017, or made with respect to an offshore obligation, the participating FFI may provide its GIIN and documentation to the extent required in § 1.1471-3(d)(4)(ii) or (iii). In such a case, the participating FFI will not be subject to withholding and will not be reported as a nonparticipating FFI with respect to withholdable payments it receives from a withholding agent to whom the participating FFI provided such documentation. If, however, the branch receiving the withholdable payment is a limited branch, the participating FFI must identify itself as a nonparticipating FFI on the Form W-8BEN-E that it provides to the withholding agent, and such payment will be subject to withholding and reporting for purposes of chapter 4. See § 1.1471-4(e)(2)(iv)(E) for rules applicable to a limited branch of a participating FFI.

When a participating FFI receives a withholdable payment of U.S. source FDAP income as an intermediary, holds an account with a participating or registered deemed-compliant FFI as an intermediary, or is a flow-through entity, the withholding certificate that the participating FFI must furnish to the withholding agent is a Form W-8IMY (or acceptable substitute form under § 1.1471-3(c)(6)(v)) that certifies that the participating FFI is a flow-through entity or is acting as an intermediary (as applicable) and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI receiving the payment and its GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and

includes all of the other information required by § 1.1471-3(c)(3)(iii), section 4.03(B) of this agreement, the form, and its accompanying instructions. In such a case, the participating FFI will not be subject to withholding (or reporting) as a nonparticipating FFI for purposes of chapter 4 that would otherwise apply based on its status as a participating FFI, though withholding for purposes of chapter 4 may apply to the extent that it receives payment on behalf of recalcitrant account holders or nonparticipating FFIs and fails to provide sufficient information for its withholding agent to withhold under chapter 4 with respect to such persons. Additionally, withholding for purposes of chapter 3 may apply with respect to payments of U.S. source FDAP income based on the status of persons for whom the participating FFI receives the payment. For the requirements of a withholding certificate provided by a foreign partnership or foreign trust receiving a chapter 3 reportable amount, see § 1.1441-5(c)(2) or § 1.1441-5(e)(5), respectively. For the requirements of a withholding certificate provided by a foreign intermediary that receives a chapter 3 reportable amount, see § 1.1441-1(e)(3).

#### *.02 Withholding Statement.*

**(A) In General.** A participating FFI agrees to provide an FFI withholding statement that includes the information described in section 9.02(B) of this agreement to each withholding agent from which it receives a withholdable payment of U.S. source FDAP income on behalf of its account holders or other persons (including its partners, beneficiaries, or owners for a participating FFI that is a flow-through entity). See section § 1.1471-3(c)(3)(iii)(B)(1) and (2) for the requirements of an FFI withholding statement. The withholding statement must be updated as often as necessary for the participating FFI to meet its withholding and reporting obligations under sections 4 and 6 of this agreement.

**(B) Allocation of Payment on Withholding Statement.** A participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement by providing payee specific information. A participating FFI may include, however, on the withholding statement in-

formation that indicates the portion of such withholdable payment that is allocated to each of its chapter 4 withholding rate pools (consisting of separate pools for each class of recalcitrant account holders, for nonparticipating FFIs, and for U.S. payees). If a participating FFI applies the escrow procedure for dormant accounts described in section 5.02 of this agreement, the participating FFI must indicate the portion of such payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts that the participating FFI (and not the withholding agent) will hold in escrow. A participating FFI must identify its pools of recalcitrant account holders in accordance with the chapter 4 reporting pools provided on Form 1042-S and its accompanying instructions. If, however, a participating FFI elects to apply backup withholding instead of withholding under chapter 4 with respect to a recalcitrant account holder that is described in section 4.01(D) of this agreement, the withholding statement provided to the withholding agent must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to the account holder and include the other information required under chapter 61 for the withholding agent to report with respect to the payment. See Form 1042-S and its accompanying instructions for information on the chapter 4 withholding rate pools applicable to recalcitrant account holders, nonparticipating FFIs, and U.S. payees.

If any portion of a withholdable payment is allocable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapters 3 or 61, see §§ 1.1441-1(e)(3)(iv), 1.1441-5(c)(3)(iv), 1.1441-5(e)(5)(iv), and 1.6049-5(d) for the additional requirements for allocating a payment to payees with regard to chapters 3 or 61 (including the requirements applicable to the withholding statement and the appropriate documentation to be provided with respect to each such payee). In addition to allocating the portion of the payment to each such payee, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042-S or Form 1099. Additionally, in a case in

which a withholdable payment is allocable to an account holder of the FFI that is a passive NFFE with one or more substantial U.S. owners (or controlling persons as defined in the applicable Model 2 IGA), the participating FFI may certify on the withholding statement that it is reporting the account holder as a U.S. account required under this agreement. See § 1.1471-3(c)(3)(iii)(B)(2) for the circumstances in which a participating FFI may allocate a withholdable payment to a chapter 4 withholding rate pool of U.S. payees on an FFI withholding statement, and see § 1.6049-4(c)(4)(iii) for when a participating FFI may also allocate reportable payments to a chapter 4 withholding rate pool of U.S. payees on an FFI withholding statement.

To the extent a payment is not subject to reporting by the withholding agent on Form 1042-S, Form 1099, or Form 8966, a participating FFI may allocate a portion of a withholdable payment to a group of documented account holders (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required (an exempt payee pool) instead of allocating the payment to each payee of the payment on its withholding statement. For example, a participating FFI can provide a withholding rate pool of exempt payees for a payment of U.S. bank deposit interest that is allocable to a group of documented foreign account holders. If a participating FFI has an account holder that is acting as an intermediary or is a flow-through entity with respect to a withholdable payment and that has provided the information described in § 1.1471-3(c)(2) necessary for the withholding agent to report the payment, the participating FFI must provide to its withholding agent the account holder information or pool reporting information provided to it by such other entity for determining the amount of withholding or the reporting required under chapter 4. See § 1.1471-3(e)(4)(vi)(B) providing that the participating FFI may rely on the determination of a payee's chapter 4 status that is provided by another participating FFI or registered deemed-compliant FFI unless the first-mentioned participating FFI knows or has reason to know that such information is incorrect or unreliable.

**(C) Procedure for Specific Recipient Reporting.** For payments that are received by a participating FFI that is acting as an intermediary or that is a flow-through entity and that are subject to withholding under chapter 4 or backup withholding under section 3406 (described in section 4.01(D) of this agreement), the participating FFI may provide specific recipient information instead of chapter 4 withholding rate pool information on the withholding statement regarding any (or all) recipients that are recalcitrant account holders or nonparticipating FFIs. In such a case, the withholding statement must include the information necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474-1(d) and the requirements of Form 1042-S or Form 1099 and its accompanying instructions. The participating FFI is not required to provide the withholding agent with the withholding certificate or other documentation for each recipient.

## SECTION 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS.

*.01 Adjustments for Overwithholding by Withholding Agent.* A participating FFI may request a withholding agent to make an adjustment for amounts paid to the participating FFI on which the withholding agent has overwithheld (as defined in § 1.1474-2(a)(2)) under chapter 4 by applying either the reimbursement procedure or the set-off procedure described in this section 10.01. Nothing in this section 10 requires a withholding agent to apply these procedures.

**(A) Reimbursement Procedure.** A participating FFI may request a withholding agent to repay the participating FFI for any amount overwithheld under chapter 4, and for the withholding agent to reimburse itself under the reimbursement procedures under § 1.1474-2(a)(3), by making a request to the withholding agent prior to the earlier of the due date for filing Form 1042 and Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding. In such a case, the participating FFI must provide the withholding agent with sufficient informa-

tion to determine the correct amount of withholding and to correctly report the payment as required under § 1.1474-1(d)(4). See section 4.02 of this agreement for the circumstances in which a withholding agent may withhold on behalf of the participating FFI with respect to its account holders or payees.

**(B) Set-off Procedure.** A participating FFI may request a withholding agent repay the participating FFI by applying the amount overwithheld under chapter 4 against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to the participating FFI under the set-off procedures of § 1.1474-2(a)(4). A participating FFI must make the request before the earlier of the due date for filing Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding.

*.02 Adjustments for Overwithholding by Participating FFI.* A participating FFI may make an adjustment for amounts paid to its account holders and payees for which it has overwithheld tax under chapter 4 (as defined in § 1.1474-2(a)) by applying either the reimbursement procedures or the set-off procedures described in § 1.1474-2(a)(3) or (4), respectively.

*.03 Repayment of Backup Withholding.* If a participating FFI erroneously withholds (as defined in § 31.6413(a)-3) an amount under section 3406 from an account holder or payee, such participating FFI may refund to such person the amount erroneously withheld as provided in § 31.6413(a)-3.

*.04 Collective Credit or Refund Procedures for Overpayments.* If there has been an overpayment of tax with respect to an account holder or a payee of a participating FFI resulting from tax withheld under chapter 4 on a payment made to such account holder or payee during a calendar year, and the amount withheld has not been recovered under the reimbursement or set-off procedures described under section 10.01 or 10.02 of this agreement, the participating FFI may request a credit or refund of the amount of tax overwithheld to the extent permitted under § 1.1471-4(h). The participating FFI must follow the procedures set forth under § 1.1471-4(h)(4) to request the credit or refund on

behalf of its account holders. No credit or refund will be allowed after the expiration of the statutory period of limitations for refunds under section 6511 with regard to the account holder or payee for whom the refund or credit is sought.

*.05 Adjustments for Underwithholding.* If a participating FFI knows that an amount should have been withheld under chapter 4 from a previous payment to an account holder or a payee but was not withheld, the participating FFI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property of such person over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of Form 1042 (without regard to extensions) for the calendar year in which the underwithholding occurred. A participating FFI's responsibilities will be met under this section 10.05 if it informs the withholding agent from whom the participating FFI received the payment of the underwithholding, and the withholding agent satisfies the underwithholding.

*.06 Underwithholding after Form 1042 Filed.* If, after Form 1042 has been filed for a calendar year (or the due date for filing Form 1042 if no Form 1042 was filed), a participating FFI or the IRS determines that the participating FFI has underwithheld tax for such year, the participating FFI must file an amended Form 1042 (or original Form 1042 if no Form 1042 was filed) to report and pay the underwithheld tax. A participating FFI must pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing such amended (or original) Form 1042. If a participating FFI fails to file a return (if required under section 6.06 of this agreement or this section 10.06), the IRS will make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## SECTION 11. FFI GROUP.

### *.01 FFI Group.*

**(A) In General.** Each FFI that is a member of an FFI group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, exempt beneficial

owner, or limited FFI as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI. In addition, the participating FFI and each FFI (other than a certified deemed-complaint FFI or exempt beneficial owner) that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. If the participating FFI is a member of an FFI group, the participating FFI will cease to be a participating FFI after the earlier of (1) the beginning of the third calendar quarter following the date that a member of the FFI group that was a limited FFI, ceases to be a limited FFI, unless the member becomes a participating or registered-deemed compliant FFI, or (2) the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(3)(iv), unless each limited FFI in the group becomes a participating or registered deemed-compliant FFI and no member of the FFI group (including the participating FFI) maintains a limited branch. An FFI and its FFI Group may register on the FATCA registration website.

**(B) Special Rule for a Reporting Model 2 FFI.** A reporting Model 2 FFI that has a limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a reporting Model 2 FFI solely due to the expiration of the transitional rule for limited branches or limited FFIs under § 1.1471-4(e)(2) or (3), respectively, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

**(C) Limited FFIs.** A participating FFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as nonparticipating FFIs for withholding and reporting purposes. See sections 4.02(C), 6.04, and 6.05(E) of this agreement for the participating FFI's requirements with respect to limited FFIs under this agreement.

### *.02 Lead FI.*

**(A) Designation of the Lead FI.** If the participating FFI designates a lead FI to initiate its FATCA registration, the participating FFI must authorize the lead FI to fulfill the responsibilities described in section 11.02(B) of this agreement. If an FFI group has in place a consolidated compliance program as described in § 1.1471-4(f)(2)(ii), the FI that is designed as the compliance FI for the FFI group must act as the lead FI for each member of the FFI group that participates in such consolidated compliance program.

**(B) Responsibilities of the Lead FI.** A participating FFI that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees to meet the following responsibilities with respect to such FFIs in addition to its other obligations under this agreement:

(1) Identify itself as the lead FI as part of the registration process and to delete its status as lead FI upon termination of such status;

(2) Identify all FFIs that have designated the participating FFI as their lead FI as part of the participating FFI's registration process;

(3) Monitor the information regarding members of the FFI group for which it is acting as a lead FI by accessing the FATCA registration website every six months to review the information provided and, if needed, update the information provided with respect to any members of the FFI group for which it is acting as a lead FI;

(4) Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group for which it is acting as a lead FI by updating the information on the FATCA registration website to add or delete such member;

(5) Inform the IRS within 90 days of a change affecting the chapter 4 status of any member of the FFI group for which it is acting as a lead FI, including when any member of the FFI group for which it is acting as a lead FI ceases to comply with (or that does not otherwise comply with) the requirements of either a participating FFI or a registered deemed-compliant FFI by updating such member FFI's chapter 4 status on the FATCA registration website; and

(6) Inform the IRS within the time period prescribed under § 1.1471-4(e)(3)(iv) that a

member of the FFI group for which it is acting as a lead FI ceases to be a limited FFI and designate on the FATCA registration website the status for which such member FFI will register.

## **SECTION 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT.**

*.01 Term of Agreement.* This agreement begins on its effective date and expires on December 31, 2016, unless terminated under section 12.03 of this agreement. This agreement may be renewed as provided in section 12.08 of this agreement.

*.02 Modification.* This agreement may be modified by the IRS before the expiration date indicated in section 12.01 of this agreement. This agreement will only be modified through published guidance. Any modification imposing additional requirements on participating FFIs will in no event become effective until the later of 120 days after the IRS issues published guidance of such modification or the beginning of the next calendar year following such published guidance. In no event will the IRS modify this agreement for any year before 2017 to expand the class of payments for which withholding or reporting is required under this agreement or to include additional requirements for a participating FFI.

*.03 Termination of Agreement.* This agreement may be terminated by either the IRS or the participating FFI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this agreement.

**(A) In General.** The IRS will not terminate this agreement unless there has been a significant change in circumstances (as defined in section 12.04 of this agreement) or an event of default (as defined in section 12.05 of this agreement), and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this agreement. The IRS will not terminate this agreement in the event of default if the participating FFI can establish to the satisfaction of the IRS that all events of default for which it has received a notice (described in section 12.06 of this agree-

ment) have been cured within the specified time period agreed to with the IRS.

**(B) Reporting Model 2 FFI.** In the case of a reporting Model 2 FFI, the reporting Model 2 FFI will not be treated as a nonparticipating FFI unless the U.S. Competent Authority has provided the Competent Authority of a Model 2 IGA jurisdiction in which the reporting Model 2 FFI is located notice of significant non-compliance with the terms of this agreement, as modified by the applicable Model 2 IGA, and the matter is not resolved within the 12-month period following the notice of significant non-compliance.

*.04 Significant Change in Circumstances.* For purposes of this agreement, a significant change in circumstances includes—

**(A)** An acquisition of all, or substantially all, of a participating FFI's assets in any transaction in which the participating FFI is not the surviving legal entity;

**(B)** A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this agreement, materially affects the provisions contained in this agreement, or materially affects the participating FFI's ability to perform its obligations under this agreement;

**(C)** A ruling of any court that materially affects the validity of any provision of this agreement;

**(D)** A case in which a participating FFI (other than a reporting Model 2 FFI) maintains a limited branch that cannot fulfill the requirements for participating FFI or deemed-compliant FFI status after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(2)(v) or a participating FFI (other than a reporting Model 2 FFI) is a member of an expanded affiliated group that includes a limited FFI after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(3)(iv); and

**(E)** A significant change in a participating FFI's business practices that materially affects the participating FFI's ability to meet its obligations under this agreement.

*.05 Event of Default.* For purposes of this agreement, an event of default occurs if a participating FFI fails to perform any material duty or obligation required under

this agreement or if the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement. In addition to the occurrences enumerated in § 1.1471-4(g)(1), an event of default also includes the occurrence of the following:

**(A)** The participating FFI fails to inform the IRS within 90 days of any significant change in circumstances; or

**(B)** If the participating FFI is designated by one or more FFIs that are members of an FFI group as a lead FI, the FFI fails, without reasonable cause, to inform the IRS within 90 days of an acquisition, sale, or change affecting the chapter 4 status of an FFI in the FFI group for which it is acting as lead FI, including that such FFI ceases to comply with (or does not otherwise comply with) the requirements to maintain its status as a participating or registered deemed-compliant FFI.

*.06 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 and requesting that the participating FFI remediate the event of default as described in § 1.1471-4(g)(2). See § 1.1471-4(g)(3) for the remediation process for an event of default.

*.07 Termination Procedures.*

**(A) Procedure to Appeal Notice of Termination.** If a participating FFI receives a notice of termination of this agreement from the IRS, the participating FFI may appeal the determination within 90 days by sending to the address specified in section 13.05 of this agreement a written notice explaining why this agreement should not be terminated. If a participating FFI appeals the notice of termination, this agreement will not terminate until the appeal is decided. If a participating FFI does not provide a notice of appeal within 90 days, this agreement will terminate on the date specified in the notice of termination.

**(B) Termination of Agreement.** If the participating FFI seeks to terminate this agreement, it is required to provide notice to the IRS through the FATCA registration website. If the FFI's status as a participating FFI is terminated, the FFI must send notice of the termination within 30 days after the date of termination to all

withholding agents and FFIs to which it has provided a withholding certificate pursuant to section 9.01 of this agreement. Shortly after receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List.

**(C) Termination of Status as Compliance FI or Lead FI.**

(1) If a participating FFI seeks to terminate its status as either a compliance FI or lead FI, it is required to provide notice of termination on the FATCA registration website in accordance with its instructions or as provided in later published guidance. A lead FFI's notice of termination of its lead FI status will require designation of a new lead FI on the FATCA registration website in accordance with its instructions or as provided in later published guidance.

(2) A compliance FI that terminates its status as a compliance FI will still be required to serve as the point of contact for the IRS with respect to the certification periods (as defined in § 1.1471-4(f)(3)(i)) during which the FFI acted as a compliance FI unless the FFI designates another FI that will act as the compliance FI for such periods and that has full access to the information that relates to such periods.

.08 *Renewal.* If a participating FFI intends to renew this agreement, it may do so via the FATCA registration website available at [www.irs.gov/fatca](http://www.irs.gov/fatca) in accordance with its instructions or as otherwise provided in later published guidance. This agreement will be renewed only upon the agreement of both the participating FFI and the IRS and is subject to modifications to this agreement as the IRS prescribes pursuant to procedures described in section 12.02 of this agreement.

.09 *Treatment of Reporting Model 2 FFIs.* Notwithstanding anything to the contrary in this agreement, a reporting Model 2 FFI is not entering into a binding agreement by agreeing to comply with the terms of this agreement, except to the extent that such an FFI is entering into an agreement on behalf of one or more of its branches in order for each such branch to be treated as a participating FFI. For the avoidance of doubt, compliance with the terms of this agreement requires compliance with the requirement to recertify on the FATCA registration website that the reporting Model 2 FFI shall comply with the terms of any renewed agreement, in-

cluding any modified terms pursuant to section 12.02 of this agreement.

**SECTION 13. MISCELLANEOUS PROVISIONS.**

.01 *Waiver.* Any waiver of a provision of this agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this agreement or the same provision at a later date.

.02 *Governing Law.* This agreement is governed by the laws of the United States. Any legal action brought under this agreement will be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, the participating FFI agrees to submit to the jurisdiction of such United States court.

.03 *Notices.* Except as otherwise provided on the FATCA registration website, notices provided under this agreement are to be mailed via registered, first class airmail. All notices sent to the IRS must include the participating FFI's name and GIIN and the name of the participating FFI's responsible officer. Such notices should be directed as follows:

To the IRS:  
Internal Revenue Service  
Office of Foreign Payments  
290 Broadway  
New York, New York 10007

To the participating FFI:  
The participating FFI's responsible officer (or the responsible officer of the compliance FI for issues related to the participating FFI's compliance with this agreement). Such notices should be sent to the address indicated in the FFI's registration (as may be amended).

**SECTION 6. EFFECTIVE DATE**

The effective date of this revenue procedure is June 24, 2014.

**SECTION 7. EFFECT ON OTHER DOCUMENTS**

Revenue Procedure 2014-13 is modified and superseded.

**SECTION 8. PAPERWORK REDUCTION ACT**

This revenue procedure refers to a collection of information in the following sections of the FFI agreement (set forth in section 5 of this revenue procedure): section 3 regarding the due diligence requirements for account holder and nonparticipating FFI payee identification and documentation; section 4 regarding withholding requirements; section 5 regarding deposit requirements; section 6 regarding information reporting and tax return obligations; section 7 regarding the legal prohibitions on reporting U.S. accounts and on withholding; section 8 regarding compliance procedures; section 9 regarding the participating FFI withholding certificate; and section 10 regarding adjustments for overwithholding and underwithholding and refunds. Responses to these collections of information are required for an FFI to comply with the terms of its FFI agreement and not be subject to withholding under section 1471. The likely respondents are individuals, businesses, other for-profit institutions, and certain non-profit institutions.

The estimated information collection burden referred to in this revenue procedure will be reflected in the Forms 8957, W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, W-9, 1040NR, 1042, 1042-S, 1120-F, 1099, and 8966, as well as Form 843 and various income tax returns filed for purposes of claiming a refund of tax. The information collection burden relating to the section 8 compliance procedures will be reflected in future IRS guidance.

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 assigned by the Office of Management and Budget.

Books or 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 section 6103.



## SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Tara N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Ferris or Kamela Nelan at (202) 317-6942 (not a toll free number).

## Rev. Proc. 2014-39

### SECTION 1. PURPOSE AND SCOPE

*.01 Purpose.* This revenue procedure provides guidance for entering into a qualified intermediary (QI) withholding agreement with the Internal Revenue Service (IRS) under § 1.1441-1(e)(5)<sup>1</sup>. Section 2 of this revenue procedure provides background on the withholding and reporting requirements of chapters 3, 4, and 61 and section 3406, and provides a highlight of changes to the existing QI agreement (included in Revenue Procedure 2000-12, 2000-1 C.B. 387 (as amended)). Section 3 of this revenue procedure provides the application procedures for becoming a QI and renewing a QI agreement. Section 4 of this revenue procedure provides the final qualified intermediary withholding agreement (QI agreement), and provides that such agreement is not intended to be modified by a rider. The objective of the QI agreement is to allow a foreign intermediary to assume the withholding and reporting obligations for payments of income (including interest, dividends, royalties, and gross proceeds) made to its account holders or payees through one or more foreign intermediaries or flow-through entities.

*.02 Entities Eligible to Execute a QI Agreement.* A QI agreement may be entered into by persons described in § 1.1441-1(e)(5)(ii) (foreign financial institutions (FFIs), foreign clearing organizations, and foreign branches of U.S. financial institutions or U.S. clearing organizations). With respect to an FFI, as defined in § 1.1471-5(d), the FFI may apply to enter into a QI agreement if the FFI is able to and agrees to satisfy the

requirements and obligations of (1) a participating FFI (including a reporting Model 2 FFI), (2) a registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), (3) a registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the QI agreement), or (4) for a transitional period, a limited FFI. See § 1.1471-1(b)(91), (111), and (77). An FFI that is a certified deemed-compliant FFI (including a nonreporting IGA FFI (as defined in § 1.1471-1(b)(83)) may enter into a QI agreement if the FFI meets and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI or a nonreporting Model 2 FFI treated as registered deemed-compliant), or a registered deemed-compliant Model 1 IGA FFI with respect to all accounts that it maintains (even if the FFI does not intend to designate an account as one for which it will act as a QI). A central bank of issue may enter into a QI agreement provided that it meets and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI) with respect to any account that it maintains and that is held in connection with a commercial financial activity described in § 1.1471-6(h) and for which it receives a withholdable payment (as defined in § 1.1471-1(b)(145)). A foreign branch of a U.S. financial institution may also apply to enter into a QI agreement provided that either it is a reporting Model 1 FFI, or it agrees to assume the requirements and obligations of a participating FFI (including a reporting Model 2 FFI). See § 1.1441-1(e)(5)(ii).

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

The QI agreement described in section 4 of this revenue procedure may apply to a foreign corporation that is a non-financial foreign entity (NFFE, as defined

in § 1.1471-1(b)(80)) described in § 1.1441-1(e)(5)(ii)(C) seeking to become a QI to, for example, present claims of benefits under an income tax treaty on behalf of its shareholders or other persons (other than an FFI) for which the foreign corporation acts as an intermediary and that the IRS accepts as a qualified intermediary pursuant to § 1.1441-1(e)(5)(ii)(D). An NFFE that enters into a QI agreement to act on behalf of its shareholders must meet and agree to assume the obligations of, and to be treated as, a direct reporting NFFE under § 1.1472-1(c)(3). An NFFE that enters into a QI agreement to act on behalf of persons other than its shareholders will be required to satisfy the withholding and reporting requirements of §§ 1.1472-1(a) and 1.1474-1(i) with respect to any NFFE that is a beneficial owner for whom the QI is acting with respect to a withholdable payment. The QI agreement does not apply to a foreign partnership or foreign trust. A foreign partnership or foreign trust may seek to qualify as a withholding foreign partnership or withholding foreign trust. See §§ 1.1441-5(c)(2)(ii) and 1.1441-5(e)(5)(v).

*.03 Effective Date of QI Agreement.* The QI agreement provided in section 4 of this revenue procedure applies to a QI agreement with an effective date on or after June 30, 2014. An FFI, an NFFE acting as a QI on behalf of its shareholders, or an NFFE that is a sponsoring entity that applies for QI status before June 30, 2014 and is issued a GIIN before such date will have a QI agreement with an effective date of June 30, 2014. An FFI, an NFFE acting as a QI on behalf of its shareholders, or an NFFE that is a sponsoring entity that applies for QI status on or after June 30, 2014 will have a QI agreement with an effective date on the date it is issued a GIIN.

A QI that is an NFFE that is not acting on behalf of its shareholders and is not a sponsoring entity and that renews its QI agreement on or before June 30, 2014 will have a QI agreement with an effective date of June 30, 2014, and, if it renews after June 30, 2014, the effective date of the QI agreement will be the date of renewal provided in the IRS approval no-

<sup>1</sup>Unless otherwise provided, all citations in this revenue procedure and the QI agreement are to the Internal Revenue Code of 1986 and to the Income Tax Regulations thereunder.

tice. An NFFE that is not acting on behalf of its shareholders, that is not a sponsoring entity, and that is applying to obtain QI status will have a QI agreement with an effective date on the date it is issued a QI-EIN.

A QI that has submitted an application for QI status to the IRS before July 31, 2014 and is approved during calendar year 2014 may act as a qualified intermediary in accordance with Revenue Procedure 2000-12 (as amended) until June 30, 2014, as if the QI agreement of such QI were effective on January 1, 2014 and expires on June 30, 2014.

.04 *Effect on Other Documents.* Revenue Procedure 2000-12, 2000-1 C.B. 387, is superseded with respect to the requirements of a QI that apply on or after June 30, 2014. A QI agreement (which includes any riders to such agreement) in effect before June 30, 2014 expires on June 30, 2014. Revenue Procedure 2002-55, 2002-2 C.B. 435, is revoked.

## **SECTION 2. WITHHOLDING AND REPORTING REQUIREMENTS UNDER CHAPTERS 3, 4, AND 61 AND SECTION 3406**

### *.01 In General.*

(A) *Withholding and Reporting under Chapter 4 on Payments Made to Foreign Financial Institutions and Other Payees.* Section 1471(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an FFI, unless the FFI agrees to and complies with the terms of the FFI agreement to satisfy the obligations specified in section 1471(b) (a participating FFI), is deemed to meet these requirements under section 1471(b) (a deemed-compliant FFI), or is treated as an exempt beneficial owner under § 1.1471-6. Section 1472(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an NFFE unless such entity provides a certification that it does not have any substantial U.S. owners, provides information regarding its substantial U.S. owners, or an exception otherwise applies.

A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a nonreporting Model 2 FFI treated as registered deemed-

compliant but excluding a reporting Model 1 FFI) will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct account holders that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders under the FFI agreement, § 1.1471-5(f), or an applicable Model 2 IGA. See the FFI agreement, § 1.1471-5(f), and the applicable Model 2 IGA for the additional withholding requirements that may apply to withholdable payments made to direct account holders that are individuals and are treated as recalcitrant account holders. A reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI will satisfy its requirement to withhold under section 1471(a) with respect to direct account holders by withholding on withholdable payments made to nonparticipating FFIs to the extent required under the applicable Model 1 IGA. A withholding agent (including a participating FFI or registered deemed-compliant FFI) that is required to withhold on a withholdable payment must report the payment on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

A participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), or a registered deemed-compliant Model 1 IGA FFI must also report certain account information regarding a U.S. account (or U.S. reportable account) that it maintains to the extent required under the FFI agreement, § 1.1471-5(f), a Model 1 IGA, or a Model 2 IGA, as applicable to the FFI's chapter 4 status. A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) must report certain information about accounts that it maintains that are held by recalcitrant account holders (or non-consenting U.S. accounts). A participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), or registered deemed-compliant Model 1 IGA FFI must, for a

transitional period, report certain information about accounts it maintains that are held by nonparticipating FFIs. A withholding agent (including an FFI with respect to payments made to an NFFE that were not already reported as made to U.S. accounts (or U.S. reportable accounts)) is also required to report withholdable payments made to an NFFE (other than an excepted NFFE) with substantial U.S. owners on Form 8966, FATCA Report, even though no withholding is required. See §§ 1.1472-1(b)(iii) and 1.1474-1(d) and (i).

(B) *Withholding and Reporting under Chapter 3 on Payments to Foreign Persons.* Sections 1441 and 1442 require a withholding agent to deduct and withhold a tax equal to 30 percent on any payment of U.S. source fixed or determinable, annual or periodical (FDAP) income that is an amount subject to withholding (as defined in § 1.1441-2(a)) made to a foreign person. A lower rate of withholding may apply under the Code (e.g., section 1443), the regulations, or an income tax treaty. Generally, a withholding agent must also report the payments on Forms 1042-S regardless of whether withholding is required. See § 1.1461-1(c).

(C) *Backup Withholding under Section 3406 and Reporting on Payments to Certain U.S. Persons under Chapter 61.* Under sections 6041, 6042, 6045, 6049, and 6050N (chapter 61 or the Form 1099 reporting provisions), payors of interest, dividends, royalties, gross proceeds from the sales of securities, and other fixed or determinable income must report payments made to certain U.S. persons (i.e., U.S. non-exempt recipients or presumed U.S. non-exempt recipients) on the appropriate Form 1099 unless an exception to reporting applies. See §§ 1.6041-4(a); 1.6042-3(b)(1)(iii); 1.6045-1(g)(1)(i); 1.6049-5(b)(12); and 1.6050N-1(c)(1)(i). Under section 3406, a payor must generally obtain a Form W-9, Request for Taxpayer Identification Number and Certification, from a U.S. payee receiving a payment reportable on a Form 1099 or must otherwise backup withhold under section 3406 and report the payment on Form 1099.

(D) *Coordination of Withholding and Reporting Requirements under Chapters 3 and 4.* With respect a payment that is subject to withholding under chapter 4, a

withholding agent may credit any tax withheld under chapter 4 against its liability for any tax due with respect to the payment under chapter 3. A withholding agent may use a single Form 1042-S to report information required under both chapters 3 and 4 with respect to a withholdable payment of U.S. source FDAP income subject to withholding under chapter 4 and for which a credit against the beneficial owner's chapter 3 liability, if any, may be claimed. Thus, a withholding agent that reports on Form 1042-S a withholdable payment that has been withheld upon under chapter 4 may provide certain information on the same Form 1042-S about the beneficial owner for purposes of chapter 3. With respect to a withholdable payment of U.S. source FDAP income that is not subject to withholding under chapter 4 and that is an amount subject to withholding (or reporting) under chapter 3, a withholding agent is also required to report the applicable chapter 4 exemption code in addition to the other information required to be reported on Form 1042-S.

For additional coordination of the withholding and reporting requirements of a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI), or a registered deemed-compliant Model 1 IGA FFI under chapters 3, 4, and 61, and section 3406, see sections 3.01(B), 3.04(B) and 8.04 of the QI agreement.

*.02 Responsibilities of Intermediaries that Enter into the QI Agreement.* When the IRS enters into a QI agreement with a foreign person, that foreign person becomes a QI. A QI is a withholding agent under chapters 3 and 4, and a payor under chapter 61 and section 3406 for amounts that it pays to its account holders. The general obligations of a QI as a withholding agent and payor are described in section 1.01 of the QI agreement and are relevant to whether an event of default occurs under section 11.04 of the QI agreement.

*.03 Highlight of Changes to the QI Agreement.* A summary of the significant changes to the existing QI agreement is as follows:

(A) *Non-Financial Entities Acting as QIs.* The scope of eligible entities allowed to apply for and enter into the existing QI agreement is generally limited to FFIs, foreign clearing organizations, and foreign branches of U.S. financial institutions and U.S. clearing organizations. Non-financial foreign corporations that sought to claim treaty benefits on behalf of shareholders or that sought to act as intermediaries for account holders that are unrelated persons generally could only apply to enter into QI agreements by executing riders to the agreements because the agreements did not provide guidance on how an entity other than an entity described in the preceding sentence could operate as a QI. The revised QI agreement clarifies that a non-financial foreign corporation or intermediary is eligible to enter into the QI agreement and describes the specific requirements for such an entity to the extent they differ from the requirements applicable to a QI that is an FFI. Thus, for a non-financial foreign corporation or intermediary, the QI agreement in section 4 of this revenue procedure may be executed without the need for any rider to the agreement. Treasury and the IRS will, however, consider comments requesting further revisions to the agreement to address the requirements of QIs that are not FFIs. Notwithstanding these revisions to the agreement, a non-financial entity will require approval from the IRS to obtain QI status as described in section 3 of this revenue procedure, and the IRS expects that foreign flow-through entities entering into withholding agreements on behalf of their owners for chapters 3 and 4 purposes will generally be required to obtain status as a withholding foreign partnership or withholding foreign trust.

(B) *Coordinating Chapter 4 Requirements of QIs that are FFIs.* In the case of a QI that is an FFI, the revised QI agreement, generally reflecting the provisions under § 1.1441-1(e)(5), limits status as a QI to an FFI that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), a registered deemed-compliant Model 1 IGA FFI, a limited FFI, or under certain conditions a central bank of issue. An FFI that has entered into

a QI agreement will be subject to the FATCA requirements applicable to its chapter 4 status for all of the accounts that it maintains irrespective of whether the FFI is acting as a QI with respect to such an account (or with respect to a central bank of issue, all accounts that it maintains and that are held in connection with a commercial financial activity and for which it receives a withholdable payment). When an FFI chooses to act as a QI with respect to an account that it maintains, the FFI will continue to have the obligation to comply with its FATCA obligations applicable to its chapter 4 status, except when such FATCA obligations have been explicitly modified in the QI agreement. The agreement also references a QI's chapter 4 requirements as required to coordinate those requirements with the QI's other requirements under the QI agreement.

For example, the QI agreement specifies when a QI's FATCA requirements with respect to its account holders (including U.S. accounts) will satisfy its chapter 61 reporting obligations for payments made to its account holders, and when a QI may provide or receive a withholding statement that applies this coordination rule by permitting a QI to allocate payments (or receive payment allocations) to a chapter 4 withholding rate pool of U.S. payees. The QI agreement addresses the coordination rule for chapters 4 and 61 reporting with respect to when a QI assumes or does not assume primary reporting and backup withholding responsibilities under chapter 61 and section 3406.

(C) *QIs Acting as Qualified Securities Lenders (QSLs).* The revised QI agreement permits a QI to act as a QSL with respect to payments of U.S. source substitute dividends consistent with Notice 2010-46, 2010-24 I.R.B. 757. Pursuant to the QI agreement, a QI that acts as a QSL is required to act as a QSL with respect to all U.S. source substitute dividends that it receives as an intermediary or dealer. The QI agreement is intended to otherwise incorporate the requirements applicable to a QSL pursuant to Notice 2010-46 or any subsequent guidance prescribing the requirements of the QSL.

(D) *Reporting under Section 1472.* As described in section 2.01(A) of this revenue procedure, a QI will be required to

withhold under section 1472 to the extent required in the QI agreement. Regardless of whether a QI assumes this withholding obligation under the QI agreement and regardless of whether the QI is an FFI, a QI will be required under the agreement to assume primary reporting obligations for section 1472 purposes with respect to passive NFFE that have substantial U.S. owners (or controlling persons that are specified U.S. persons) and will not be required to provide specific payee information to other withholding agents for purposes of this reporting. A QI will also be required to act as a direct reporting NFFE for purposes of reporting its substantial U.S. owners under § 1.1472-1(c)(4) when it acts as a QI on behalf of its shareholders.

(E) *Private Arrangement Intermediaries (PAIs)*. Under the existing QI agreement, a QI may enter into an agreement with another intermediary (private arrangement intermediary or PAI) under which the PAI would generally fulfill the obligations of a QI without the need to execute a QI agreement with the IRS. To coordinate with the requirements of foreign entities under chapter 4, under the revised QI agreement, only a QI that is an FFI is allowed to enter into an agreement with a PAI. Additionally, to be eligible to be treated as a PAI, the intermediary must be a certified deemed-compliant FFI under § 1.1471-5(f)(2) (other than a registered deemed-compliant Model 1 IGA FFI). To coordinate with the withholding and reporting requirements of chapter 4, the QI agreement permits PAIs to allocate payments to a chapter 4 withholding rate pool on a withholding statement provided to a QI that treats the intermediary as a PAI, in addition to the allowance for a PAI to allocate payments received from the QI to chapter 3 withholding rate pools. The QI agreement also specifies that an intermediary cannot act as a PAI with respect to its direct account holders that are qualified intermediaries, withholding foreign trusts, withholding foreign partnerships, participating FFIs (including reporting Model 2 FFIs), registered deemed-compliant FFIs (including reporting Model 1 FFIs and nonreporting Model 2 FFIs treated as registered deemed-compliant), or registered deemed-compliant Model 1 IGA FFIs. Finally, the

compliance requirements of a PAI are coordinated with the compliance requirements applicable to a QI in section 10 of the QI agreement.

(F) *Treatment of Certain Partnerships and Trusts*. The revised QI agreement includes in sections 4.05 and 4.06 the joint account and agency options in sections 4A.01 and .02 of the existing QI agreement, which allow a QI to enter into an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust to apply simplified documentation, withholding, and reporting requirements for payments made to these entities. Similar to the modifications applicable to a QI's agreement with a PAI, the revisions to these procedures specify and limit the chapter 4 statuses required of partnerships and trusts (including their partners, owners, and beneficiaries, as applicable) to which a QI may apply the procedures of sections 4.05 and 4.06.

(G) *QI's Documentation Requirements for Chapters 3 and 4 Purposes*. The revised QI agreement updates the documentation requirements under the existing QI agreement to reference the documentation requirements applicable to a QI with respect to payees to which it makes withholdable payments and, with respect to a QI that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI or a nonreporting Model 2 FFI treated as registered deemed-compliant), or a registered deemed-compliant Model 1 IGA FFI, the due diligence requirements applicable to the FFI's chapter 4 status. For documenting its direct account holders for chapters 3 and 61 purposes, the QI agreement retains the requirement limiting a QI that is an FFI's use of documentary evidence to documentary evidence permitted under the QI's know-your-customer rules. Thus, as under the existing QI agreement, a QI may act as a QI only in a jurisdiction with know-your-customer rules approved by the IRS. The requirements relating to the use of documentary evidence do not apply to an NFFE acting as a QI, as such entity is required to obtain Forms W-8 and W-9 from its account holders. The QI agreement also incorporates changes to the documentation requirements applicable to a QI for chapter 3 purposes consistent with

the temporary regulations under section 1441 (see T.D. 9658). For example, the QI agreement modifies the documentation validity standards for QIs in section 5.10 to account for the reason to know standards applicable to a withholding agent with respect to an account holder's claim of foreign status as reflected in the revisions made by the temporary regulations to § 1.1441-7(b).

(H) *QI's Presumption Rules and Reliable Association of Payments*. Section 5.13(C) of the existing QI agreement specifies the presumption rules applicable to a QI making reportable payments for chapter 61 purposes other than amounts subject to chapter 3 withholding, and substantially incorporates the presumption rules for withholding agents and U.S. and non-U.S. payors under the chapters 3 and 61 regulations as then in effect. The revised QI agreement modifies the presumption rules of the existing QI agreement to coordinate with the presumption rules of chapter 4 with respect to a payee of a withholdable payment and with the revisions to the presumption rules made in the temporary coordination regulations applicable to payors of reportable payments. See § 1.6049-5(d)(2) and (3). The QI agreement also revises the circumstances in which a QI can avoid application of the presumption rules by modifying the rules for when the QI can reliably associate a payment with valid documentation for how intermediaries and flow-through entities may provide withholding statements to withholding agents (including QIs) for chapter 4 purposes.

(I) *QI's Reporting on Form 1042-S*. The QI agreement substantially modifies the existing QI agreement with respect to a QI's Form 1042-S reporting requirements by adding the reporting required with respect to certain intermediaries and flow-through entities that provide chapter 4 withholding rate pool information to the QI on withholding statements. The revised requirements also reference the Form 1042-S requirements of a QI with respect to its direct account holders when chapter 4 withholding applies, and allow the QI to file Forms 1042-S with respect to a chapter 4 withholding rate pool.

(J) *QI's Compliance Procedures*. Under the existing QI agreement, unless a QI

requested an IRS audit instead of an internal audit or qualified for a waiver, the QI was required to engage an external auditor to complete an audit of the second and fifth full calendar years that the QI agreement was in effect, and the external auditor was required to provide its findings directly to the IRS. The revised QI agreement replaces the external audit requirement with an internal compliance program. As part of the internal compliance program, a QI is required to designate a responsible officer who will oversee the QI's compliance with the QI agreement, make the periodic certifications to the IRS described in section 10.03 of the QI agreement, and provide certain factual information regarding the QI which will vary depending on the amount of reportable amounts received by the QI. The periodic certification will be required every three calendar years (including extensions to the agreement). Although the QI will be required to arrange for the performance of a periodic review of its compliance with the QI agreement, the revised agreement provides more flexibility than the existing agreement with respect to the auditors that will be eligible to perform the review as well as the content of the auditor's report, which will no longer be required to be filed with the IRS absent a specific request. Additionally, the auditor's procedures will be required to conform to the review procedures outlined in section 10 of the QI agreement rather than the more prescriptive audit steps set forth in Revenue Procedure 2002-55, thereby permitting the auditor to exercise more judgment regarding the specific steps required to conduct the review.

(K) *Events of Default.* The revised QI agreement specifies that when the QI is acting as a nonqualified intermediary with respect to a non-QI designated account (as defined in section 2.66 of the QI agreement), the QI's compliance with its obligations under chapters 3 and 61 and section 3406 are factors in determining whether an event of default has occurred under section 11.04 of the QI agreement.

(L) *Term of the Revised QI Agreement.* For all QIs that enter into the revised QI agreement, the agreement will expire, unless otherwise previously terminated, on December 31, 2016. The term of the revised QI agreement is consistent with the

term of the FFI agreement. See Revenue Procedure 2014-13, as revised by Revenue Procedure 2014-38, for more information about the FFI agreement.

### SECTION 3. APPLICATION FOR QI STATUS

*.01 Prospective QI.* A prospective QI must submit Form 14345, Qualified Intermediary Application, to become a QI. An application must include the information required by Form 14345 and any additional information and documentation requested by the IRS. The Form 14345 must establish, to the satisfaction of the IRS, that the applicant has adequate resources and procedures to comply with the terms of the QI agreement. A prospective QI must apply for QI status by submitting Form 14345 to:

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

Attention: QI Applications

Once the QI application is approved, the IRS will send an approval notice to the address of the QI provided on Form 14345. The approval notice will include a QI-EIN for fulfilling the requirements of a QI under chapters 3, 4, and 61, and section 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966, and will also instruct a QI (other than an NFFE that is not acting on behalf of its shareholders) to submit the information specified in Form 8957, Foreign Act Tax Compliance Act (FATCA) Registration, ("registration form") through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA), to obtain its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or direct reporting NFFE, and must register as a QI by providing the information specified for renewal of QI status. An NFFE that is acting as a sponsoring entity (as defined in § 1.1471-1(b)(124)) of a direct reporting NFFE and that obtains QI status must also register as a QI on the FATCA registration website by providing the information specified for renewal of QI status. Upon completion of the registration process, an FFI (other than a limited FFI or limited branch of an FFI) will be issued

a GIIN to be used to identify itself to withholding agents and to tax administrators for FATCA reporting. In the case of an NFFE that is not acting on behalf of its shareholders, the approval notice will provide the date on which the QI-EIN is issued (which will serve as the effective date of the QI agreement).

For future years, the IRS intends to update the online FATCA registration website to allow prospective QIs to submit a QI application electronically and in such manner as the IRS may prescribe in future guidance or other instructions. Until this update to the FATCA registration website occurs, a prospective QI must submit to the IRS address identified above a paper Form 14345.

Except as otherwise provided in future published guidance, the IRS will not enter into a QI agreement with an FFI that provides for the use of documentary evidence obtained under a jurisdiction's know-your-customer rules if it has not approved the "know-your-customer" practices and procedures for opening accounts. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules are acceptable is available at: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. To request approval of a jurisdiction's know-your-customer rules, contact the KYC coordinator in the Foreign Intermediaries Program at the address provided above.

*.02 Existing QI.* An FFI that seeks to renew its QI agreement as well as register as a participating FFI, registered deemed-compliant FFI, or limited FFI must do so by submitting a registration form through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA). An NFFE that is a direct reporting NFFE or a sponsoring entity of a direct reporting NFFE must also renew its QI agreement through the FATCA registration website. As part of the FATCA registration process, the QI must include the information specified in the registration form and its accompanying instructions. The FFI or NFFE should ensure that it has provided to the IRS all of the information that is required to complete its FATCA registration and renew its QI agreement. Upon completion of the registration process and approval by the

IRS, an FFI (other than a limited FFI) or NFFE will be issued a GIIN to be used to identify itself to a withholding agent and to a tax administration for FATCA reporting. A QI will also retain its QI-EIN to be used when it is fulfilling the requirements of a QI under chapters 3, 4, and 61 and section 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

A QI that is an NFFE and that is not acting as a QI on behalf of its shareholders and is not a sponsoring entity must renew its QI agreement by submitting a request for renewal to the Foreign Intermediaries Program at the address provided in section 3.01 of this revenue procedure.

#### **SECTION 4. QUALIFIED INTERMEDIARY AGREEMENT**

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

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

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

**WHEREAS**, QI and the IRS desire to enter into an agreement to establish QI’s rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposits, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474, 3406, 6041, 6042, 6045, 6049, 6050N, 6302,

6402, and 6414 with respect to certain types of payments;

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

**WHEREAS**, if QI is a foreign financial institution (FFI), QI represents that, as of the effective date of this Agreement, it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI; § 1.1471-4(e)(4), in the case of a limited FFI; § 1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or the applicable IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI; and

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

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

#### **SECTION 1. PURPOSE AND SCOPE**

**Sec. 1.01. General Obligations.** When the IRS enters into a QI agreement with a foreign person, that foreign person becomes a QI. QI is a withholding agent under chapters 3 and 4, and a payor under chapter 61 and section 3406, for amounts that it pays to its account holders.

If QI is an FFI, the requirements QI has agreed to as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI continue to apply in addition to the requirements under this Agreement. If QI acts as a QI with respect to an account, this Agreement will reference QI’s chapter 4 obligations when necessary to facilitate coordination with a QI’s obligations under chapters 3, 4, and 61, and section 3406, with respect to such account holders. A participating FFI’s obligations are provided in the FFI agreement, a limited FFI’s obligations are provided in § 1.1471-4(e)(4), a registered deemed-compliant FFI’s (other than a reporting Model 1 FFI) obligations are provided in

§ 1.1471-5(f)(1), and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA. For purposes of chapter 4, QI must comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI (as applicable) with respect to all financial accounts that it maintains, irrespective of whether QI acts as a QI with respect to an account holder, as well as the requirements of a withholding agent for any payee that is a nonparticipating FFI or NFFE that is not an account holder. If QI is an FFI, QI must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472, for certain indirect account holders for which it acts as a QI.

If QI is an NFFE acting as a QI on behalf of its shareholders, the requirements QI has agreed to as a direct reporting NFFE apply in addition to the requirements under this Agreement, and, to the extent necessary to facilitate coordination of its direct reporting NFFE obligations with its obligations as a QI, the direct reporting NFFE obligations are incorporated into this Agreement. A direct reporting NFFE’s obligations are provided in § 1.1472-1(c)(3). For purposes of chapter 4, if QI is an NFFE acting as a QI on behalf of its shareholders, QI must comply with the requirements of a direct reporting NFFE with respect to any shareholder that is a substantial U.S. owner as defined in § 1.1473-1(b). If QI is an NFFE acting on behalf of persons other than its shareholders, QI must assume primary reporting responsibility for purposes of section 1472 for any person for which it acts as a QI.

For purposes of chapters 3 and 61 and section 3406, QI must act in its capacity as QI pursuant to this Agreement for those accounts that QI holds with a withholding agent and that QI has designated as accounts for which it acts as a QI. QI is not required to act as a QI for all accounts that it holds with a withholding agent. However, QI must, as part of its QI agreement, materially comply with the requirements of a withholding agent or payor, as applicable to a nonqualified (foreign) intermediary under chapters 3 and 61 and section

3406, for any account for which it does not (or cannot) act as a QI and for any payee that is not an account holder. If QI designates an account as one for which it will act as a QI, it must act as a QI for all payments made to that account and obtain the documentation required under section 5 of this Agreement for such account.

When QI acts as a QI for an account and assumes primary chapter 3 withholding responsibility for payments to the account, QI must also assume primary withholding responsibility for withholdable payments made to such account for chapter 4 purposes. If QI acts as a qualified securities lender (QSL) with respect to payments of substitute dividends (as defined in section 871(m) and the regulations under that section), QI is required to act as a QSL and assume primary withholding responsibility for all substitute dividends received and paid by QI when acting as an intermediary or dealer with respect to securities lending and similar transactions.

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

**Sec. 1.02. Parties to the Agreement.** This Agreement applies to:

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

If QI is an FFI, QI can only designate an account that it holds as a QI designated account if the branch of QI that holds the account operates in a KYC jurisdiction identified under the QI agreement. QI may add any jurisdiction in which it operates a branch that is not initially included in its QI application without prior IRS approval if the jurisdiction is one for which the IRS will enter a qualified intermediary agreement (i.e., the jurisdiction is identified on the IRS's Approved KYC List) and QI updates its information on the FATCA registration website with respect to such branch. A branch of a QI that is not subject to the provisions of this Agreement remains subject to the rules of chapters 3, 4, and 61, and section 3406, as provided in section 1.01 of this Agreement.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, the terms listed below are defined as follows:

**Sec. 2.01. Account.** "Account" or "Financial Account" has the meaning given to that term in § 1.1471-1(b) with respect to QI's obligations for chapter 4 purposes and otherwise means any account for which QI acts as a qualified intermediary.

**Sec. 2.02. Account Holder.** If QI is an FFI, an "account holder" means any person that is a direct account holder or an indirect account holder of an account that QI has designated to its withholding agent as an account for which it is acting as a qualified intermediary and also includes any person that receives a payment of a U.S. source substitute dividend from QI that is a qualified securities lender acting as a dealer or intermediary for the payment. If QI is an NFFE acting on behalf of its shareholders, an "account holder" means each owner for whom QI is acting with respect to an amount subject to chapter 3 withholding and, with respect to a withholdable payment, any direct or indirect owner of QI that is a substantial U.S. owner. If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, an "account holder" means any person for whom QI is acting with respect to a reportable payment.

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

**(B) Indirect Account Holder.** An indirect account holder is any person who receives amounts from QI but who does not have a direct relationship with QI. For example, a person that holds an account with a foreign intermediary or an interest in a flow-through entity which, in turn, has a direct relationship with QI is an indirect account holder. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and QI. For chapter 4 purposes, if QI is an

NFFE, an indirect account holder includes any person treated as a substantial U.S. owner under § 1.1473-1(b).

**Sec. 2.03. Agreement.** "Agreement" means this Agreement, all appendices and attachments to this Agreement, and QI's application to become a qualified intermediary. All such appendices, attachments, and QI's application are incorporated into this Agreement by reference.

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

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An "amount subject to chapter 4 withholding" is an amount that is a withholdable payment (as defined in section 2.91 of this Agreement) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4.

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

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

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

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

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

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

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

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

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

**Sec. 2.15. Chapter 4 Withholding Statement.** A “chapter 4 withholding statement” is a withholding statement that contains the name, address, foreign TIN or U.S. 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; and any other information the withholding agent reasonably requests to fulfill its obligations under chapter 4. A chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs.

**Sec. 2.16. Chapter 61.** Any reference to “chapter 61” means sections 6041, 6042, 6045, 6049, and 6050N.

**Sec. 2.17. Deemed-Compliant FFI.** “Deemed-compliant FFI” means an FFI

that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b).

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

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

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

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

**Sec. 2.19. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules (as described in the Attachments to this Agreement), any documentary evidence described in § 1.1441–6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty, or any documentary evidence described in § 1.6049–5(c) sufficient to establish an account holder’s status as a foreign person for purposes of chapter 61. Documentary evidence does not include a Form W–8 or Form W–9 (or an acceptable substitute Form W–8 or Form W–9).

**Sec. 2.20. Documentation.** “Documentation” means any valid Form W–8, Form W–9 (or an acceptable substitute Form W–8 or Form W–9), or documentary evidence as defined in section 2.19 of this Agreement, including all statements

or other information required to be associated with the form or documentary evidence.

**Sec. 2.21. Documented Account Holder.** A “documented account holder” is an account holder for whom QI holds valid documentation.

**Sec. 2.22. Effective Date of the QI Agreement.** For an FFI (other than a limited FFI) or an NFFE that is a direct reporting NFFE or a sponsoring entity, the effective date of the QI agreement is the later of the date on which the IRS issues a QI-EIN to the QI or the date on which the IRS issues a GIIN to the QI. For NFFEs not described in the previous sentence, the effective date of the QI agreement is the date provided in the approval notice from the IRS. For QIs that receive a GIIN prior to June 30, 2014, the effective date of the QI agreement is June 30, 2014. For limited FFIs, the effective date of the QI agreement is the date the FFI completes its registration on the FATCA registration website.

**Sec. 2.23. Excepted NFFE.** “Excepted NFFE” means a person described in § 1.1471–1(b)(41).

**Sec. 2.24. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in § 1.1471–1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

**Sec. 2.25. Exempt Recipient.** For purposes of Form 1099 reporting and backup withholding, an “exempt recipient” means a person described in § 1.6049–4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045–2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041–3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income). Exempt recipients are not exempt from chapter 3 or 4 withholding.

**Sec. 2.26. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, Registered Deemed-Compliant Model 1 IGA FFI, or Limited FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI” means—

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



FFI, the requirements set forth in the FFI agreement;

(B) For a limited FFI, the requirements under § 1.1471-4(e)(4);

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

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

**Sec. 2.27. Financial Institution (FI).** “Financial institution” or “FI” means an entity described in § 1.1471-5(d) and includes a financial institution as defined under an applicable Model 1 or Model 2 IGA.

**Sec. 2.28. FFI Agreement.** “FFI Agreement” means an agreement described in § 1.1471-4(a) and provided in Revenue Procedure 2014-3, 2014-3 I.R.B. 419, as revised by Revenue Procedure 2014-38 (and any superseding revenue procedure).

**Sec. 2.29. Foreign Financial Institution (FFI).** “Foreign Financial Institution” or “FFI” means a foreign entity (as defined in § 1.1473-1(e)) that is a financial institution.

**Sec. 2.30. FFI Withholding Statement.** An “FFI withholding statement” means a withholding statement provided by an FFI that meets the requirements of § 1.1471-3(c)(3)(iii)(B)(I) and (2).

**Sec. 2.31. Flow-Through Entity.** A flow-through entity is a foreign partnership described in § 301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust (other than a withholding foreign trust) that is described in section 651(a), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

**Sec. 2.32. Foreign Person.** A “foreign person” is any person that is not a “United

States person” and includes a “nonresident alien individual,” a “foreign corporation,” a “foreign partnership,” a “foreign trust,” and a “foreign estate,” as those terms are defined in section 7701. For purposes of chapters 3 and 4, the term foreign person also means, with respect to a payment by a withholding agent (including a qualified intermediary), a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a qualified intermediary or does not agree to be treated as a U.S. person. A foreign branch of a U.S. person that is a qualified intermediary is, however, a U.S. payor for purposes of chapter 61 and section 3406.

**Sec. 2.33. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.34. Form W-8.** “Form W-8” means IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals); IRS Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities); IRS Form W-8ECI, Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting, as appropriate. It also includes any acceptable substitute form.

**Sec. 2.35. Form W-9.** “Form W-9” means IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute.

**Sec. 2.36. Form 945.** “Form 945” means IRS Form 945, Annual Return of Withheld Federal Income Tax.

**Sec. 2.37. Form 1042.** “Form 1042” means IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

**Sec. 2.38. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, For-

Foreign Person’s U.S. Source Income Subject to Withholding.

**Sec. 2.39. Form 1096.** “Form 1096” means IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

**Sec. 2.40. Form 1099.** “Form 1099” means IRS Form 1099-B, Proceeds From Broker and Barter Exchange Transactions; IRS Form 1099-DIV, Dividends and Distributions; IRS Form 1099-INT, Interest Income; IRS Form 1099-MISC, Miscellaneous Income; IRS Form 1099-OID, Original Issue Discount; and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**Sec. 2.41. Form 8966.** “Form 8966” means IRS Form 8966, FATCA Report.

**Sec. 2.42. Form 1099 Reporting.** “Form 1099 reporting” means the reporting required on Form 1099.

**Sec. 2.43. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN” means the identification number that is assigned to a participating FFI, registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity of a direct reporting NFFE. The term also includes the identification number assigned to a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that is a QI for the purpose of identifying itself to withholding agents.

**Sec. 2.44. Intermediary.** An “intermediary” means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent or a person that acts as a qualified securities lender with respect to a payment of a substitute dividend.

**Sec. 2.45. Know-Your-Customer Rules.** The phrase “know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures, identified in the Attachments to this Agreement, governing the requirements of QI to obtain documentation confirming the identity of QI’s account holders for QI designated accounts.

**Sec. 2.46. Limited Branch.** A “limited branch” means a branch of a participating FFI or reporting Model 2 FFI described in § 1.1471-1(b)(76). A “limited branch” also means, with respect to a reporting Model 1 FFI, a branch of the reporting

Model 1 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471, or a branch that is treated as a nonparticipating FFI solely due to the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), and which branch (and reporting Model 1 FFI) meets any additional requirements for such branch as provided in the applicable Model 1 IGA.

**Sec. 2.47. Limited FFI.** A “limited FFI” means an FFI described in § 1.1471-1(b)(77). A “limited FFI” also means, with respect to a reporting Model 1 FFI, a related entity (as defined in the applicable Model 1 IGA) of the reporting Model 1 FFI that operates in a jurisdiction that prevents such related entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471, or a related entity that is treated as a nonparticipating FFI solely due to the expiration of the transitional rule for limited FFIs under § 1.1471-4(e)(3)(iv), and which related entity (and reporting Model 1 FFI) meets any additional requirements for such related entities as provided in the applicable Model 1 IGA.

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

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

**Sec. 2.50. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the definition in section 2.25 of this Agreement.

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

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

**Sec. 2.53. Nonqualified Intermediary.** A “nonqualified intermediary” is any intermediary that is not a qualified intermediary. A nonqualified intermediary includes any intermediary that is a foreign person unless such person enters an agreement to be a qualified intermediary and acts in such capacity. A nonqualified intermediary also includes an intermediary that is a territory FI (as defined section 2.78 of this Agreement) unless such institution agrees to be treated as a U.S. person.

**Sec. 2.54. Non-U.S. Payor.** A “non-U.S. payor” means a payor other than a U.S. payor as defined in this section 2.83 of this Agreement.

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

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

**Sec. 2.57. Overwithholding.** The term “overwithholding” means any amount actually withheld (determined before application of the adjustment procedures described in section 9 of this Agreement) from an item of income or other payment that is in excess of the amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and, in the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred. For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.58. Participating FFI.** A “participating FFI” means an FFI that has agreed to comply with the requirements of

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

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

**Sec. 2.60. Payment.** A “payment” is considered made to a person if that person realizes income, whether or not such income results from an actual transfer of cash or other property. See § 1.1441-2(e). For example, a payment includes crediting an amount to an account.

**Sec. 2.61. Payor.** A “payor” is defined in § 31.3406(a)-2 and § 1.6049-4(a)(2) and generally means any person required to make an information return under chapter 61. The term includes any person that makes a payment, directly or indirectly, to QI and to whom QI provides information, pursuant to this Agreement, so that such person can report a payment on Form 1099 and, if appropriate, backup withhold. See sections 3.05 and 3.06 of this Agreement. Also see sections 2.83 and 2.54 of this Agreement for the definition of U.S. payor and non-U.S. payor.

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

**Sec. 2.63. Presume/Presumption.** The terms “presume” and “presumption” refer to the presumption rules set forth in section 5.13(C) of this Agreement.

**Sec. 2.64. Private Arrangement Intermediary (PAI).** A “private arrangement intermediary” or “PAI” is an intermediary described in section 4 of this Agreement.

**Sec. 2.65. Qualified Intermediary.** A “qualified intermediary” is a person, described in § 1.1441-1(e)(5)(ii), that enters into an agreement with the IRS to be treated as a qualified intermediary and acts in its capacity as a qualified intermediary.

**Sec. 2.66. QI Designated Account.** A “QI designated account” means an account that QI has designated as an account for which it is acting as a qualified intermediary.

**Sec. 2.67. Qualified Intermediary (QI) EIN.** A “qualified intermediary EIN” or “QI-EIN” means the employer identification number assigned by the IRS to a qualified intermediary. QI’s QI-EIN is only to be used when QI is acting in its capacity as a qualified intermediary. For example, QI must give a withholding agent its non-QI EIN, if any, rather than its QI-EIN, if it is receiving income as a beneficial owner and a taxpayer identification number is required. QI must also use its non-QI EIN, if any, when acting as a nonqualified intermediary. Each signatory to this Agreement must have its own QI-EIN (to the extent referenced in this section 2.67).

**Sec. 2.68. Qualified Securities Lender (QSL).** A “qualified securities lender” or “QSL” is a person described in Notice 2010–46, 2010–1 C.B. 757, or subsequent published guidance defining this term. In the case of a QI that acts as a qualified securities lender with respect to a payment of substitute dividends (as defined in section 871(m) and the regulations thereunder), such QI is required to act as a QSL for all U.S. source substitute dividends received by the QI when acting as an intermediary or dealer with respect to securities lending and similar transactions.

**Sec. 2.69. Recalcitrant Account Holder.** A “recalcitrant account holder” means an account holder described in § 1.1471–5(g).

**Sec. 2.70. Reduced Rate of Withholding.** A “reduced rate of withholding” means a rate of withholding under chapter 3 that is less than 30 percent, including an exemption from withholding.

**Sec. 2.71. Reliably Associating a Payment With Documentation.** See section 5.13(B) of this Agreement to determine whether QI can reliably associate a payment with documentation.

**Sec. 2.72. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding (as defined in section 2.04 of this Agreement), U.S. source deposit interest (as defined in section 2.18

of this Agreement), and U.S. source interest or original issue discount paid on the redemption of short-term obligations (as defined in section 2.77 of this Agreement). The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in § 1.6049–5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.73. Reportable Payment.** For purposes of this Agreement, a “reportable payment” means an amount described in section 2.73(A) of this Agreement, in the case of a U.S. payor, and an amount described in section 2.73(B) of this Agreement, in the case of a non-U.S. payor.

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

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

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

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

**Sec. 2.74. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting FFI under the Model 1 IGA.

**Sec. 2.75. Reporting Pool.** A “reporting pool” is defined in section 8 of this Agreement.

**Sec. 2.76. Responsible Officer.** A “responsible officer” of a QI means an officer of the QI with sufficient authority to fulfill the duties of a responsible officer as described in section 10 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review the QI’s compliance (or that of a PAI).

**Sec. 2.77. Short-Term Obligation.** A “short-term obligation” is any obligation described in section 871(g)(1)(B)(i).

**Sec. 2.78. Territory FI.** A “territory FI” means a financial institution that is incorporated or organized under the laws of any U.S. territory, excluding a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company (as defined in § 1.1471–5(e)(1)(i), (ii), and (iv), respectively).

**Sec. 2.79. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 or section 3406 over the amount actually withheld.

**Sec. 2.80. Undocumented Account Holder.** An “undocumented account holder” is an account holder for whom QI does not hold valid documentation.

**Sec. 2.81. U.S. Account.** A “U.S. account” is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S.-owned foreign entities that such FFI reports or elects to report under the FFI Agreement or § 1.1471–5(f), as applicable.

**Sec. 2.82. U.S. Branch Treated as a U.S. Person.** A “U.S. branch treated as a U.S. person” means a U.S. branch of a participating FFI, registered deemed-compliant FFI, or NFFE that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

**Sec. 2.83. U.S. Payor.** The term “U.S. payor” has the same meaning as in § 1.6049–5(c)(5).

**Sec. 2.84. U.S. Person.** A “U.S. person” (or “United States person”) is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of

Columbia (including an agency or instrumentality thereof). 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.

**Sec. 2.85. U.S. Reportable Account.** A “U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.86. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in § 1.1441–2(b)(1).

**Sec. 2.87. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.88. Withholding Agent.** A “withholding agent” has the same meaning as set forth in § 1.1441–7(a) for purposes of chapter 3 and as set forth in § 1.1473–1(d) for purposes of chapter 4, and includes a payor (as defined in section 2.61 of this Agreement). As used in this Agreement, the term generally refers to the person making a payment to a qualified intermediary.

**Sec. 2.89. Withholding Foreign Partnership.** A “withholding foreign partnership” or “WP” means a partnership, described in § 1.1441–5(c)(2), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.90. Withholding Foreign Trust.** A “withholding foreign trust” or “WT” means a trust, described in § 1.1441–5(e)(5)(v), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign trust.

**Sec. 2.91. Withholdable Payment.** A “withholdable payment” means an amount described in § 1.1473–1(a).

**Sec. 2.92. Withholding Rate Pool.** A “withholding rate pool” is defined in section 6.03 of this Agreement and includes a chapter 3 withholding rate pool and a chapter 4 withholding rate pool.

**Sec. 2.93. Withholding Statement.** The term “withholding statement” is defined in section 6.02 of this Agreement.

**Sec. 2.94. Other Terms.** Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 or Model 2 IGA with respect to a QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI.

### SECTION 3. WITHHOLDING RESPONSIBILITY

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

**(A) Chapter 4 Withholding.** QI is a withholding agent for purposes of chapter 4 and subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its accounts. QI is required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an FFI unless either QI can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under § 1.1471–2(a)(4) or the payment is made under a grandfathered obligation described in § 1.1471–2(b). See § 1.1473–1(a) for the definition of a withholdable payment and the applicable exceptions to this definition. QI is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an NFFE unless either QI can reliably associate the payment (or portion of the payment) with a certification described in § 1.1472–1(b)(1)(ii) or an exception to withholding under § 1.1472–1 otherwise applies.

If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), QI will satisfy its requirement to withhold under sections

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

If QI is a limited FFI, it is treated as a nonparticipating FFI for chapter 4 purposes, and QI cannot assume primary chapters 3 and 4 withholding responsibility. QI is not required to withhold to the extent that its withholding agent has withheld 30 percent of any withholdable payment made to QI after June 30, 2014 or an exception described above applies.

**(B) Chapter 3 Withholding.** To the extent that QI makes a payment of an amount subject to chapter 3 withholding, QI is required to withhold 30 percent of any such payment made to an account holder that is (or is presumed) a foreign person unless QI can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documentation requirements. With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, QI may credit any tax withheld under chapter 4 against its

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

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

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

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

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

**Sec. 3.03. Assumption of Primary Chapters 3 and 4 Withholding Responsibility.** QI (other than a limited FFI), upon notification to a withholding agent, may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to the QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility. QI may assume primary withholding responsibility without informing the IRS. QI is not required to assume primary withholding responsibility for all accounts it holds with the withholding agent. However, if QI is acting as a QSL for a substitute dividend payment, QI must assume primary withholding responsibility for any such payment made to any account holder receiving a substitute dividend payment. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under both chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. To the extent that QI assumes primary withholding responsibility, QI shall withhold as described in section 3.01 of this Agreement. QI is not required to withhold on amounts it pays to another qualified intermediary that has assumed

primary withholding responsibility with respect to the payment or to withholding foreign partnership or withholding foreign trust. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding on Form 1042-S.

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

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

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

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

**(C) Form 1099 Reporting.** QI is a payor under chapter 61 and, unless an exception to reporting applies, it is generally required to report reportable payments made to an account holder that is (or is presumed to be) a U.S. non-exempt recipient on the appropriate Form 1099 (Form 1099 reporting). See, however, section 8 of this Agreement for QI's Form 1099 reporting responsibilities and when QI is treated as satisfying its Form 1099 reporting responsibilities. If QI reports an amount subject to withholding under chapter 4 on Form 1042-S and the payment is also a reportable payment to which backup withholding otherwise applies, QI is not required to report the payment on a Form 1099. If QI instead elects to backup withhold (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099, and it should not also report the payment on Form 1042-S.

**Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts.** QI is primarily responsible for reporting on Form 1099 and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.04 and section 8.06 of this Agreement, whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. Further, no provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts.

**(A) U.S. Payor.** Except as provided in section 3.05(C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients. See, however, § 31.3406(g)-1(e) provid-

ing that a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States, unless the payor has actual knowledge that the payee is a U.S. person.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.73(B)(2) of this Agreement and foreign source fixed and determinable income other than income paid and received outside United States as described in section 2.73(B)(3) of this Agreement, if such payments are made (or presumed made) to U.S. non-exempt recipients.

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

**Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Amounts Not Assumed.** Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to report on Form 1099 and, if required, backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient fails to provide a Form W-9, information regarding the account holder's name, address, and U.S. TIN, if a U.S. TIN is available) together with the withholding rate pools (as defined in section 6.03(D) of this Agreement) attributable to U.S. non-exempt recipient account holders so that such payor may report on Form 1099 and, if required, backup withhold. If QI elects to backup withhold on withholdable payments that are also reportable amounts made to recalcitrant account holders that are also U.S. non-exempt recipients, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if it provides a payor from which it receives a reportable amount information regarding such recalcitrant account holders. See section 6.03 of this Agreement and section 4 of the FFI Agreement. If QI reports its U.S. accounts on Forms 1099 under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, see section 8.04(A) of this Agreement providing that QI cannot delegate to a withholding agent its requirement to report its U.S. accounts. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts and see also section 6.03 of this Agreement for when QI may provide a chapter 4 withholding rate pool of U.S. payees. If QI elects not to assume primary Form 1099 reporting and backup withholding responsibility, QI must provide the withholding agent with such information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding

responsibility, QI shall backup withhold and report a reportable amount to the extent required under sections 3.04 and 8.06 of this Agreement if—

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

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

QI is not required to backup withhold, however, on a reportable amount that QI makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the payment. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 3.05 of this Agreement for backup withholding responsibility for reportable payments other than reportable amounts. See section 8.06 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

**Sec. 3.07. Assumption of Primary Form 1099 Reporting and Backup Withholding Responsibility.** QI may assume primary Form 1099 reporting responsibility and primary backup withholding responsibility with respect to reportable amounts without approval from the IRS. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts. A QI that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406, as modified by this Agreement, and QI shall be subject to any applicable penalties for failure to meet those obligations. QI shall inform a payor from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the payor with a valid withholding certificate described in section 6 of this Agreement and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility. QI may assume primary Form 1099 reporting and backup withholding responsibility without informing the IRS.

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it has with a payor. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account. QI shall not be required to backup withhold on a reportable amount it makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the

payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 8 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

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

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

**Sec. 4.01. In General.** If QI is an FFI (other than a limited FFI), QI may enter into a private arrangement with another intermediary under which the other intermediary agrees to perform all of the obligations of QI under this Agreement, except as modified in section 4.03 of this Agreement. The agreement between QI and the other intermediary shall be between the QI and all the offices of the other intermediary located in a specified jurisdiction. The specified jurisdiction must be one for which this Agreement is available (i.e., IRS has approved the "know-your-customer" practices). Such an intermediary is referred to in this Agreement as a private arrangement intermediary (PAI). By entering into a PAI agreement, QI is not assigning its liability for the performance of any of its obligations under this Agreement. Therefore, QI shall remain liable for any tax, penalties, interest, and any other sanctions that may result from the failure of the PAI to meet

any of the obligations imposed by its agreement with QI. QI agrees not to assert any defenses against the IRS for the failures of the PAI or any defenses that the PAI may assert against QI. For purposes of this Agreement, the PAI's actual knowledge or reason to know of facts relevant to withholding or reporting shall be imputed to QI. QI's liability for the failures of the PAI shall apply even though the PAI is itself a withholding agent under chapters 3 and 4 and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Code. Notwithstanding the foregoing, QI shall not be liable for tax, interest, or penalties for failure to withhold and report under chapters 3, 4, and 61, and section 3406 unless the underwithholding or the failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to QI's or its PAI's failure to properly perform its obligations under this Agreement. The PAI is not required to enter into an agreement with the IRS but must respond (either directly or through QI) to IRS inquiries related to its compliance review described in section 10.07 of this Agreement. The IRS may, however, in its sole discretion, refuse to permit an intermediary to operate as a PAI by providing notice to QI at the address provided in section 12.06 of this Agreement. QI may, however, appeal the IRS's determination by following the notice and cure provisions in section 11.05 of this Agreement. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

(A) The PAI is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) that acts as an intermediary with respect to reportable amounts;

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

(C) The PAI is, pursuant to a written agreement between QI and the PAI (PAI agreement), subject to all the obligations of QI under this Agreement, except to the

extent modified by sections 4.02 and 4.03 of this Agreement;

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

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

(F) The PAI agrees to comply with the compliance procedures described in section 10.05 of this Agreement, provide QI with the certification required under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding PAI's compliance, and respond (either directly or through QI) to IRS inquiries regarding its compliance review described in section 10.07 of this Agreement, including providing the QI and the IRS with the periodic review report described in section 10.06 of this Agreement;

(G) The PAI furnishes QI with a Form W-8IMY and withholding statement described in section 6 of this Agreement as modified by this section 4.01(G). The PAI is required to provide QI with Forms W-9 (or, in absence of the form, the name, address, and U.S. TIN (if available)) of the PAI's U.S. non-exempt recipient account holders and the withholding rate pool information for those account holders as required by section 6.03 of this Agreement so that the QI (or the payor) may report on Form 1099 and, if required, backup withhold. In addition, the PAI is required to disclose to QI any account holder of PAI that is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) as defined in §§ 1.1471-1(b)(74) and 1.1473-1(b), respectively (or the applicable IGA), and the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an account with the PAI, and provide all of the documentation and other information relating

to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement. The PAI is not required to disclose to QI, or another withholding agent, its direct account holders that are foreign persons other than a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person); and

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

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

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

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

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

(3) A direct foreign account holder of the PAI that is a nonqualified intermediary or flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding with respect to any indirect account holders of the PAI that the nonqualified intermediary or flow-through entity includes in a chapter 4 withholding rate pool of nonparticipating FFIs using



the chapter 4 reporting pool for such account holders described in section 8.03 of this Agreement with the nonqualified intermediary or flow-through entity reported as the recipient and shall report payments of amounts subject to chapter 3 withholding made with respect to indirect foreign account holders of the PAI that are not subject to chapter 4 withholding by reporting the payments as made to specific recipients under the rules of section 8.02 of this Agreement.

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

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

**Sec. 4.03. Other Requirements of PAI Agreement.** QI shall require a PAI to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and a PAI that preclude, and no provisions of this Agreement shall be construed to preclude, the PAI's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61, and section 3406 to the extent that underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or Form 8966 are due to a PAI's failure to properly perform its obligations under its agree-

ment with QI. Nothing in the agreement between QI and a PAI shall be construed to limit the PAI's requirements under chapter 4 or an applicable IGA. Further, nothing in the agreement between QI and a PAI shall permit the PAI to assume primary chapters 3 and 4 withholding responsibility or assume primary Form 1099 reporting and backup withholding responsibility.

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

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

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

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

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

**(1)** The partnership or trust is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an exempt beneficial owner, or an excepted NFFE (other than a WP or WT);

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

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

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

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

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

**(1)** QI may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of § 1.1441-5(c)(3)(iv) or (e)(5)(iv), and § 1.1471-3(c)(3)(iii)(B), if the payment is a withholdable payment, and that provides information for all partners, beneficiaries, or owners together with valid Forms W-8 or, in the case of a partnership or trust that is a certified deemed-compliant FFI, documentary evidence listed in the know-your-customer (KYC) attachment to this Agreement from each partner, beneficiary,

or owner, and, for a withholdable payment, documentation that meets the requirements of § 1.1471-3(d) to establish the partner's, beneficiary's, or owner's chapter 4 status. The withholding statement need not provide any allocation information.

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

(3) QI may include payments made to the partnership or trust in its chapter 3 reporting pools for direct account holders of QI for Form 1042-S purposes under section 8.03(B) of this Agreement.

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

(5) QI may not include any payments made to a partnership or trust to which QI is applying the rules of this section 4.05 in any collective refund claim made under section 9.04 of this Agreement.

**Sec. 4.06. Agency Option for Certain Partnerships and Trusts.** QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 4.06(A) of this Agreement under which the partnership or

trust agrees to act as an agent of QI with respect to its partners, beneficiaries, or owners, and, as QI's agent, to apply the provisions of the QI Agreement to the partners, beneficiaries, or owners. By entering into an agreement with a partnership or trust as described in this section 4.06, QI is not assigning its liability for the performance of any of its obligations under the QI Agreement. QI and the partnership or trust to which QI applies the rules of this section 4.06 (agency option) are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with QI. QI and a partnership or trust that apply the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, QI and a partnership or trust that apply the agency option to any calendar year are not required to apply the agency option to subsequent calendar years. If, however, QI withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 4.06(B)(2) of this Agreement, QI must apply the agency option to that calendar year in its entirety. QI and a partnership or trust may not apply the agency option to any calendar year when the partnership or trust has failed to make available to QI or QI's auditor the records described in section 4.06 of this Agreement within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to the IRS. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirement of this section 4.06, QI must apply §§ 1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period in which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply the agency option to subsequent calendar years.

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

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

(2) The partnership or trust is an FFI that is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an NFFE, or an exempt beneficial owner.

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

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

(5) The partnership or trust agrees to comply with the compliance procedures described in section 10.05 of this Agreement, provide QI with the certification required under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding the partnership's or trust's compliance with this section 4.06, and respond (either directly or through QI) to IRS inquiries regarding its compliance review described in section 10.07 of this Agreement, including providing the QI and the IRS with the auditor's report described in section 10.06 of this Agreement.

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

(1) QI may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in § 1.1441-5(c)(3)(iv) or (e)(5)(iv) and § 1.1471-3(c)(3)(iii)(B), if the payment is a withholdable payment, that includes all information necessary for QI to fulfill its withholding, reporting, and filing obligations under this Agreement. The withholding statement may include chapter 3 withholding rate pools described in section 6.03 of this Agreement for part-

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

**(2) Timing of Withholding.** QI must withhold on the date it makes a payment to the partnership or trust based on a withholding statement provided by the partnership or trust on which QI is permitted to rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner, beneficiary, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner, beneficiary, or owner's actual distributive share, and must provide this corrected information to QI by the due date for QI's Forms 1042 and 1042-S (without regard to extensions) for the calendar year.

**(3) Payments Reportable Under Chapters 3 and 4.** The agreement between QI and the partnership or trust must also provide that QI shall include all amounts subject to chapters 3 and 4 withholding made by the partnership or trust in

QI's Forms 1042 and 1042-S as if QI had made the payments directly to the partnership or trust's partners, beneficiaries, or owners. QI shall apply the reporting requirements specified in section 4.03(A) of this Agreement by substituting the term "partnership or trust" for "PAI."

**(4) Form 1099 Reporting and Backup Withholding.** The agreement between QI and the partnership or trust must also provide that QI shall include all reportable payments made by the partnership or trust in QI's Forms 945 and 1099 to the extent required under this section 4.06(B)(4). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI to U.S. non-exempt recipient that are direct or indirect partners, beneficiaries, owners of the partnership or trust in accordance with the terms of this Agreement.

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

**(C) Other Requirements of Agency Agreement.** QI shall require the partnership or trust to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and the partnership or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership or trust's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61, and section 3406, to the extent that the underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S,

1099, or 8966 is due to the partnership or trust's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and the partnership or trust shall be construed to limit the partnership or trust's requirements under chapter 4 as a certified deemed-compliant FFI, NFFE, or exempt beneficial owner. Further, nothing in the agreement between QI and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility.

## SECTION 5. DOCUMENTATION REQUIREMENTS

### Sec. 5.01. Documentation Requirements.

#### (A) Coordination of Documentation Requirements with Chapter 4.

**(1) QI that is an FFI.** If QI is an FFI, QI is required to perform the due diligence procedures for each account holder for whom QI is acting under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI to determine if the account is a U.S. account (or U.S. reportable account) and each account holder that is a nonparticipating FFI and, if applicable, recalcitrant account holder (or non-consenting U.S. account). See QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI to perform due diligence with respect to each account that it maintains. To the extent an account holder receives a payment with respect to which QI has determined that withholding is not required under chapter 4, QI shall obtain, unless already collected, documentation that meets the requirements of this section 5 to determine whether the account holder is a foreign person for which QI is required to withhold under chapter 3 or a U.S. payee for which QI is required to backup withhold under section 3406 or report on Form 1099 under chapter 61. See, however, section 8.06 providing the circumstances in which reporting of U.S. accounts (or U.S. reportable accounts) under its FATCA requirements as a participating FFI, registered deemed-

compliant FFI, or registered deemed-compliant Model 1 IGA FFI satisfies QI's Form 1099 reporting responsibilities.

**(2) QI that is an NFFE.** If QI is an NFFE, QI is required to determine the chapter 4 status of each account holder for whom QI is acting to determine if withholding and reporting apply under section 1471 or 1472 on withholdable payments made to the account holder. QI is required to obtain, unless already collected, a valid Form W-8 or Form W-9 from each account holder to determine whether QI is required to withhold under chapter 3 or 4 or report on Form 1099 under chapter 61. Thus, the allowance in this section 5 for QI to obtain documentary evidence does not apply if QI is an NFFE. QI may, however, obtain appropriate documentary evidence as additional documentation to establish the foreign status of an account holder.

**(B) General Documentation Requirements.** QI agrees to use its best efforts to obtain documentation from account holders that receive a reportable payment to determine whether withholding applies or whether a payment is reportable under this Agreement. If QI is an FFI obtaining documentary evidence, QI also agrees to adhere to the know-your-customer rules that apply to QI with respect to the account holder from whom the documentary evidence is obtained. Unless QI can reliably associate a reportable payment with valid documentation from the account holder under section 5.13(B) of this Agreement, QI shall apply the presumption rules described in section 5.13(C) of this Agreement to any account holder that receives a reportable payment to determine if withholding is required under chapter 3 or 4 or if backup withholding is required under section 3406. As set forth in section 11.04 of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of default. QI agrees to review and maintain documentation in accordance with this section 5 and, in the case of documentary evidence obtained from direct account holders, in accordance with the know-your-customer rules set forth in the Attachments to this Agreement. QI also agrees, if the performance of external audit procedures is requested by IRS as de-

scribed in section 10.07(D) of this Agreement, to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by QI's external auditor. QI represents that none of the laws to which it is subject prohibits disclosure of the identity of any account holder or account information to QI's external auditor. QI may rely on the documentation it obtains under this section 5 as the basis for the information it provides to another withholding agent under section 6 of this Agreement, as well as to determine its own withholding and reporting obligations.

**Sec. 5.02. Documentation for Foreign Account Holders.** QI may treat an account holder as a foreign beneficial owner of an amount if the account holder provides a valid Form W-8 (other than Form W-8IMY) or valid documentary evidence, as described in section 2.19 of this Agreement, that supports the account holder's status as a foreign person. QI may not treat an account holder that provides documentation indicating that it is a bank, broker, intermediary, or agent (such as an attorney) as a beneficial owner unless QI receives a statement, in writing and signed by a person with authority to sign such a statement, stating that such account holder is the beneficial owner of the income. Further, QI may not reduce the rate of withholding with respect to an indirect account holder unless the certification is a valid Form W-8IMY, and then only to the extent that QI can reliably associate the payment with valid documentation that establishes the indirect account holder's entitlement to a reduced rate of withholding under chapter 3 and establishes that withholding does not apply under chapter 4 in the case of a withholdable payment made to the account holder. See section 5.13(B) of this Agreement for rules regarding reliable association with documentation

**Sec. 5.03. Beneficial Owner's Claim of Treaty Benefits.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not reduce the rate of withholding under chapter 3 based on a beneficial owner's claim of treaty benefits unless QI obtains the documentation required by section 5.03(A) of this Agreement. In ad-

dition, QI agrees to establish procedures to inform account holders of the terms of limitation on benefits provisions of a treaty (whether or not those provisions are contained in a separate article entitled Limitation on Benefits) under which the account holder is claiming benefits.

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

**(1)** The account holder has provided a properly completed Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including the appropriate limitation on benefits and section 894 certifications. A U.S. TIN or foreign TIN shall not be required, however, if the beneficial owner is a direct account holder. An indirect account holder is required to have either a U.S. TIN or foreign TIN to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities;

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

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

**(B) Treaty Statement.** The treaty statement required by this section 5.03(B) is as follows:

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

QI is required to obtain the treaty statement required by this section 5.03(B) from an account holder that is an entity. QI shall not be required to obtain a treaty statement required by this section 5.03(B) from an individual who is a resident of an applicable treaty country or from the gov-

ernment, or its political subdivisions, of a treaty country.

**Sec. 5.04. Documentation for International Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat the account holder as an international organization entitled to an exemption from withholding under section 892 unless the name provided on the documentation (including a Form W-8EXP) is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f) and the documentation is valid under section 5.10 of this Agreement. If an international organization is not claiming benefits under section 892 but under another Code exception, the provisions of section 5.02 of this Agreement shall apply rather than the provisions of this section 5.04.

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

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

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

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

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

**(B) Treaty Exemption.** To the extent an account holder receives a payment that is not subject to withholding under chap-

ter 4, QI may treat an account holder as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 if it has valid documentation that is sufficient to obtain a reduced rate of withholding under a treaty as described in section 5.03 of this Agreement.

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

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

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

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

**(C) Other Exceptions.** If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or

under a treaty article that applies to exempt certain foreign organizations from tax, but is claiming a reduced rate of withholding under another Code or treaty exception, the provisions of section 5.02 or 5.03 (as applicable) of this Agreement shall apply rather than the provisions of this section 5.06.

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

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

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

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

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

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

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

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

**(D) Private Arrangement Intermediaries.** If QI has an agreement with a PAI (see section 4.01 of this Agreement), QI obtains from the PAI a Form W-8IMY completed as if the PAI were a QI that is an FFI (with the exception that the PAI must not provide a QI-EIN on the Form

W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.01(G) of this Agreement and the information described in this section 5.07 for any account holders of the PAI that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person).

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

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

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

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

(C) Documentary evidence that is sufficient to establish the account holder's status as a U.S. person and QI can treat the person as an exempt recipient under the rules of §§ 1.6045-2(b)(2)(i) or 1.6049-4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 5.09. Documentation for U.S. Non-Exempt Recipients.** QI shall not treat an account holder as a U.S. non-exempt recipient unless QI obtains a valid Form W-9 from the account holder, QI

knows an account holder is a U.S. non-exempt recipient, or QI must presume a person is a U.S. non-exempt recipient to the extent required under sections 5.13(C)(3) or (4) of this Agreement.

**Sec. 5.10. Documentation Validity.**

**(A) In General.** QI may not rely on documentation if QI has actual knowledge, or reason to know as described in section 5.10(B) or 5.10(C) of this Agreement, that there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See § 1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances. A change in circumstances affecting withholding information, including allocation information or withholding rate pools contained in a withholding statement, will also cause the documentation provided with respect to that information to no longer be reliable. Once QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect, it can no longer reliably associate a payment with valid documentation unless QI obtains the additional documentation described in this section 5.10 to establish the account holder's foreign status.

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

sections 1471 and 1472 following a change in circumstances.

**(B) Reason to Know-Direct Account Holders.** If QI is a financial institution as defined in § 1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities, QI shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect only if one or more of the circumstances described in this section 5.10(B) apply. If an account holder has provided documentation that is unreliable or incorrect under the rules of this section 5.10(B), QI must request new documentation. Alternatively, QI may rely on the documentation originally provided if the rules of this section 5.10(B) permit such reliance based on the additional statements and documentation described in this section 5.10(B).

**(1) General Rules.**

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

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

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

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

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

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

For example, if an account holder is an entity and provides documentary evidence

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

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

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

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

If QI has classified the account holder as a U.S. person or has an address or sole telephone number for the account holder in the United States, QI may nevertheless treat an account holder that is an individual as a foreign person if QI—

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

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

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

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

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

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

(f) Has classified the entity as a resident of the country where the account is

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

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

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

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

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

(iv) QI shall not treat documentation as valid for purposes of establishing an account holder's status as a foreign person if the account holder has standing instructions directing QI to pay amounts from its

account to an address or an account maintained in the United States. QI may treat documentation as valid for establishing foreign status even though the account holder has such standing instructions if the account holder provides a reasonable explanation in writing supporting the account holder's foreign status (as defined in § 1.1441-7(b)(12)) or has both a valid Form W-8 establishing foreign status and documentary evidence establishing foreign status.

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

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

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

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

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

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

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

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

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

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

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

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



the direct account holder's residence in the applicable treaty country or a valid Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country, or, if the account holder initially provided a Form W-8, documentary evidence establishing the account holder's residence in the applicable treaty country.

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

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

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

of time as the documentation. For establishing an account holder's chapter 3 status (as defined in § 1.1441-1(c)(45)) or foreign status for chapter 61 purposes, QI may rely on a Form W-8 until its validity expires under § 1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under § 1.6049-5(c).

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

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

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

**(B) Retention Period.** QI shall retain a record of the account holder's documentation obtained under this section 5 for as long as the documentation is relevant to the determination of QI's tax liability or reporting responsibilities under sections 1461, 1474(a), and 3406.

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

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

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

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

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

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

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

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

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

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

missible under § 1.1471-3(c)(3)(iii)(B)), and with respect to a payment of an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, that allocates such payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement.

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

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

1099 reporting and backup withholding responsibility, if it can associate the payment with a valid Form W-8IMY from the qualified intermediary and, if the form is associated with a withholdable payment, it includes the qualified intermediary's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment or an amount subject to chapter 3 withholding that is not a withholdable payment among a single withholding rate pool for all account holders with respect to which the qualified intermediary assumes primary chapters 3 and 4 withholding responsibility.

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

**(4) Reliably Associating a Payment With Documentation Provided by a**

**Qualified Intermediary that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility.**

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

**(5) Reliably Associating a Payment with Documentation Provided by a Qualified Intermediary that Assumes Both Primary Chapters 3 and 4 Withholding Responsibility and Primary Form 1099 Reporting and Backup Withholding Responsibility.**

Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility if QI can associate the payment with a valid Form W-8IMY from the qualified intermediary that, if the payment is a withholdable payment, includes the qualified intermediary's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must also designate the accounts for which the other qualified intermediary is acting as a qualified intermediary and is assuming pri-

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

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

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

**(1) Certain Withholdable Payments Made with Respect to an Offshore Obligation.**

A withholdable payment paid outside of the United States as defined under § 1.6049-5(e) with respect to an offshore obligation (as defined in § 1.1471-1(b)(88)) that is made to an entity is presumed made to a nonparticipating FFI for purposes of chapter 4. A withholdable payment that is not an amount subject to chapter 3 withholding, that is paid outside the U.S. with respect to an offshore obligation, and that is treated as made to a payee that is an individual is presumed made to a U.S. person when the payee has any of the indicia of U.S. status that are described in section 5.10(B)(2) of

this Agreement. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), see the rules under its FATCA requirements as a participating FFI or registered deemed-compliant FFI for classifying account holders as recalcitrant account holders. If QI is an FFI, see also section 8.06 of this Agreement for whether QI is required to report such payments on Form 1099.

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

**(3) Payments on Certain Short-Term Obligations.** An amount of U.S. source original issue discount on the redemption of a short-term obligation is presumed made to an undocumented U.S. non-exempt recipient account holder regardless of whether paid to an individual or entity. QI must report an amount described in this section 5.13(C)(3) on Form 1099. QI must backup withhold at 28 percent<sup>3</sup> and report such amounts on Form 1099 unless it provides sufficient information to another payor from which it receives such amounts to backup withhold and report the payments and QI does not know that the other payor has failed to backup withhold or report.

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

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

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

**Sec. 6.01. Qualified Intermediary Withholding Certificate.** QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a qualified intermediary. The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is

acting as a qualified intermediary, contains QI's QI-EIN, and provides all other information required by the form. If QI is acting as a QSL for a substitute dividend payment, QI must also certify that it is acting as a qualified securities lender and provide all other information required by the form including its QI-EIN. If QI receives a withholdable payment, QI must certify to its chapter 4 status to the extent required for chapter 4 purposes, provide its GIIN (if applicable), and provide the other information and certifications required on the form. QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI to the extent QI provides a Form W-8IMY that certifies that it meets the requirements of § 1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement.

Except as otherwise provided in section 6.02 of this Agreement, QI also agrees to furnish each withholding agent to whom it provides a Form W-8IMY with the withholding statement described in section 6.02 of this Agreement. QI is not required to disclose, as part of its Form W-8IMY or its withholding statement, any information regarding the identity of a direct or indirect account holder that is a foreign person or a U.S. exempt recipient. To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility under section 3.04 or is not excepted from reporting under section 8.04 of this Agreement, QI must provide to a withholding agent the Forms W-9, or if any such account holder has not provided a Form W-9, the name, address, and U.S. TIN (if available), of each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount.

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

**(A) In General.** QI agrees to provide to each withholding agent from which QI receives reportable amounts as a qualified intermediary a written statement (the "withholding statement") described in this section 6.02. A withholding statement shall not be provided to a withholding agent if QI is a limited FFI receiving a

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

withholdable payment on behalf of persons other than exempt beneficial owners or if QI assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility. The withholding statement forms an integral part of the Form W-8IMY. The withholding statement may be provided in any manner, and in any form, to which QI and the withholding agent mutually agree. For example, QI and the withholding agent may agree to establish a procedure to furnish withholding statement information electronically provided that the procedure meets the requirements of § 1.1441-1(e)(3)(iv). In addition, QI and the withholding agent must be capable of providing upon request a hard copy of all withholding statements provided by QI. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406.

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

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

(2) Designate those accounts for which QI assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

(3) If applicable, designate the accounts for which QI is acting as a QSL with respect to any U.S. source substitute dividend payments received from the withholding agent; and

(4) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement.

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

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

1042-S and Form 1099 reporting responsibilities.

**(B) Chapter 4 Withholding Rate Pools.** If QI receives a withholdable payment on behalf of its account holders, QI may allocate the payment to a chapter 4 withholding rate pool. A chapter 4 withholding rate pool is a payment of a single type of income (e.g., interest or dividends) that is allocated to payees that are nonparticipating FFIs. If QI is a participating FFI or registered deemed-compliant FFI (other than reporting Model 1 FFI), it may also allocate a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders (if applicable). If QI is a participating FFI or registered deemed-compliant FFI receiving a reportable amount that is excepted from reporting under section 8.06(A) of this Agreement (excluding sections 8.06(A)(2) and (A)(3) of this Agreement when the payment is subject to chapter 4 withholding and section 8.06(A)(4) of this Agreement), QI may allocate the payment to a chapter 4 withholding rate pool of U.S. payees. See section 6.03(D) of this Agreement for the alternative procedures that may be used in this case.

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

If QI has an account holder that is another intermediary (whether a qualified intermediary, a nonqualified intermediary, or a private arrangement intermediary) or a flow-through entity, QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 4 withholding rate pools described in this section 6.03(B).

**(C) Chapter 3 Withholding Rate Pools.** With respect to any portion of the payment that is attributable to payees for

which no chapter 4 withholding is required but is an amount subject to chapter 3 withholding, a chapter 3 withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding (e.g., 0%, 10%, 15%, or 30%) and that is reported under a single chapter 4 exemption code on Form 1042-S. QI shall determine chapter 3 withholding rate pools based on valid documentation obtained under section 5 of this Agreement or, if a payment cannot be reliably associated with valid documentation, on the presumption rules of section 5.13(C) of this Agreement. If QI has an account holder that is another intermediary (whether a qualified intermediary, a nonqualified intermediary, or a private arrangement intermediary) or a flow-through entity (other than a nonparticipating FFI that is not acting on behalf of any exempt beneficial owners), QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 3 withholding rate pools with respect to the portion of the payment allocable to an account holder to which chapter 4 withholding does not apply.

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

for all U.S. non-exempt recipient account holders subject to backup withholding prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds.

Alternatively, QI may include U.S. non-exempt recipients in a zero rate withholding pool that includes U.S. exempt recipients and foreign persons for which no withholding is required under chapters 3 and 4 and section 3406 and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees in this pool to the extent permitted to be provided by QI under section 6.03(B) of this Agreement. If QI chooses the alternative procedure of this paragraph, QI must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable amounts and designated broker proceeds, if applicable, are paid in order to allocate to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees (when applicable). Failure to provide such information will result in the application of penalties to QI under sections 6721 and 6722 and shall constitute an event of default under section 11.04 of this Agreement.

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

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

(A) **In general.** QI (other than a QI that is a limited FFI) shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 or 4, on or before March 15 of the year following any calendar year in which QI acts as a qualified intermediary and makes a payment of an amount subject to chapter 3 or 4 withholding when acting as a qualified intermediary (including as a QSL) under this Agreement. If QI is a limited FFI, QI shall file Form 1042 only if it is required to file Form 1042-S as described in section 8.01 of this Agreement. A separate Form 1042 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Form 1042 shall be filed at the address indicated on the form or at the address at which the IRS notifies QI under the provisions of section 12.06 of this Agreement. In addition to the information specifically requested on Form 1042 and

the accompanying instructions, if QI made any overwithholding or underwithholding adjustments under §§ 1.1461-2 and 1.1474-2 and sections 9.02 and 9.05 of this Agreement, QI must attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments and an explanation of the circumstances that resulted in the over- or under- withholding.

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

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

**Sec. 7.03. Retention of Returns.** QI shall retain Forms 945 and 1042 for the applicable statute of limitations on assessment under section 6501.

## **SECTION 8. INFORMATION REPORTING OBLIGATIONS**

**Sec. 8.01. Form 1042-S Reporting.** Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form 1042-S reporting the pools of income (“reporting pools”) as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapters 3 and 4 (or in the case of a participating FFI, in the manner required under the FFI Agreement) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Sep-

arate Forms 1042-S must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Each QI covered by this Agreement may, however, allow its individual branches to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of which the branch forms a part and (to the extent required for chapter 4 purposes) the GIIN of the branch. Any Form 1042-S required by this section 8 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, Application for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by Form 8809.

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

(A) QI must file a separate Form 1042-S for each account holder that is a qualified intermediary, withholding foreign partnership, withholding foreign trust, or qualified securities lender that receives from QI an amount subject to withholding under chapter 3 or 4 (or, in the case of a qualified securities lender, that receives a U.S. source substitute dividend payment), regardless of whether such account holder is a direct or indirect account holder of QI.

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

(C) QI must file a separate Form 1042-S for each account holder that is a

nonqualified intermediary or flow-through entity that is not described in section 8.02(B) of this Agreement (other than a nonparticipating FFI) that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of whether such intermediary or flow-through entity is a direct or indirect account holder of QI.

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

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

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

preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

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

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

(A) **Chapter 4 Reporting Pools.** Except for amounts required to be reported under section 8.02 of this Agreement, if QI is an FFI (other than a limited FFI), QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI or to direct account holders of a PAI of QI or a partnership or trust to which QI applies the agency option. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 4 reporting pool is a payment of a single type of income (e.g., interest, dividends), determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of either recalcitrant account holders, payees that are nonparticipating FFIs, or U.S. payees. QI must report recalcitrant account holders in pools based upon a recalcitrant account holder's particular status described in § 1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool.

If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is

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

If QI is an NFFE, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs. If QI is a limited FFI that is required to file Form 1042-S because its withholding agent failed to withhold and report a withholdable payment made to QI, QI must report all withholdable payments made to QI on a Form 1042-S in a chapter 4 reporting pool of nonparticipating FFIs.

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

and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government.

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

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

**(B) QI that is an NFFE.** If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, QI shall file Forms 8966 to report information about

any direct or indirect substantial U.S. owners of QI. QI must report on Form 8966 to the extent required of a direct reporting NFFE in the time and manner provided in the instructions to the form. Such report must include the name, address, and U.S. TIN of each substantial U.S. owner of QI; the total of all payments made to each substantial U.S. owner (including gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the QI during the calendar year, which includes payments in redemption or liquidation (in whole or in part) of the substantial U.S. owner's equity interest in QI); and any other information as required by the form and its accompanying instructions.

If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, QI shall file Form 8966 to report information about each substantial U.S. owner of a direct account holder that is an NFFE that is not an excepted NFFE. QI must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions.

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

companying instructions. QI is not required to report, however, if the intermediary or flow-through entity certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

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

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

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

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting account



under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of § 1.6049-4(c)(4)(ii) are satisfied;

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

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

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

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

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

presumed) a U.S. non-exempt recipient if—

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

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

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

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

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

**Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does not Assume Primary Withholding Responsibility.** QI, other than a QI that is a limited FFI, may request that a withholding agent make an adjustment for amounts paid to QI when the withholding agent has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 9.01(A) of this Agreement or the set-off procedure described in section 9.01(B) of this Agreement within the time period prescribed for those procedures. Nothing in this section shall be interpreted to require a withholding agent to apply the

reimbursement or set off procedures under sections 9.01(A) or (B) of this Agreement. See § 1.1474-2(a)(2) for the definition of overwithholding that applies for purposes of this section 9 with respect to an amount withheld under chapter 4.

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

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

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

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

taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if:

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

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

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

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

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

**Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.** If there has been overwithholding on amounts subject to chapter 3 or 4 withholding paid to QI's account holders during a calendar year and the amount has not

been recovered under the reimbursement or set-off procedures as described in sections 9.01 or 9.02 of this Agreement, QI, other than a QI that is a limited FFI, may request a credit or refund of the total amount overwithheld by following the procedures of this section 9.04. QI shall follow the procedures set forth under sections 6402 and 6414, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511.

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

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

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

(2) If QI is a participating FFI or registered deemed-compliant FFI, no refund is sought on behalf of an account holder that holds an account with QI that is a U.S. account or U.S. reportable account;

(3) If a refund is sought on the grounds that the account holder of an amount subject to chapter 3 withholding is entitled to a reduced rate of tax by reason of any income tax treaty obligation of the United States, QI has obtained valid documentation that meets the requirements of section 5 of this Agreement for a reduced rate of withholding.

(4) QI must submit together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and claims a credit or refund, a copy of the Form 1042-S furnished to QI by its with-

holding agent reporting the taxes withheld to which the claim relates (if applicable) and a statement that includes the following information and representations—

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

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

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

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

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

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

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

it informs a withholding agent from which it received the payment of the underwithholding and the withholding agent satisfies the underwithholding.

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

## SECTION 10. COMPLIANCE PROCEDURES

### Sec. 10.01.

**(A) In General.** QI is required to adopt a compliance program under the authority of a responsible officer or, if QI adopts a consolidated compliance program, under the authority of a responsible officer of a Compliance QI (as described in section 10.02(B) of this Agreement). QI's compliance program must include policies, procedures, and processes sufficient for QI to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for a responsible officer of QI (or Compliance QI) to make the certifications required under section 10.03 of this Agreement. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement. As part of the responsible officer's certification, QI must provide to the IRS the factual information referenced in section 10.03(C) of this Agreement. QI must also satisfy the requirements of section 10.06 of this Agreement with respect to the report covering the periodic review, and must comply with the IRS review described in section 10.07 of this Agreement.

**(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, Registered Deemed-Compliant Model 1 IGA FFI, or Limited FFI and, for a Direct Reporting NFFE, the Requirements of § 1.1472-1(c)(3).** As a condition for maintaining QI status, QI must comply

with its FATCA requirements as applicable to its chapter 4 status (including any applicable compliance procedure) with respect to each branch operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 (including the periodic review described in section 10.04 of this Agreement and in making the periodic certification described in section 10.03 of this Agreement) determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3), with respect to its QI designated accounts. See the compliance procedure, if any, required under QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE with respect to all accounts that it maintains or all of its shareholders. If QI is a participating FFI or direct reporting NFFE, QI will be able to make the certification described in section 10.03 of this Agreement, and the FFI Agreement, to the extent provided in future published guidance or other instructions.

**10.02. Responsible Officer.** QI must appoint an individual as a responsible officer as defined in section 2.76 of this Agreement. The responsible officer must be identified on the FATCA registration website as QI's responsible party and, as the responsible officer for purposes of compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). The responsible officer (or the responsible officer's designee) must establish a compliance program that meets the requirements of this section 10.02 and must make the periodic certifications to the IRS described in section 10.03 of this Agreement. The responsible officer of QI must be an officer of QI with sufficient authority to fulfill the duties of a responsible officer described in this section 10. The responsible officer (or a delegate ap-

pointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional audit procedures under section 10.07 of this Agreement.

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

**(1) Written Policies and Procedures.** The responsible officer (or designee) must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for QI to satisfy the documentation, withholding, reporting, and other obligations of this Agreement with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). Such written policies and procedures must include a process for employees of QI to raise issues to the responsible officer (or the responsible officer's designee) that concern QI's compliance with this Agreement.

**(2) Training.** The responsible officer (or designee) must communicate such policies and procedures to any line of business of QI that is responsible for obtaining, reviewing, and retaining a record of documentation under requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; or reporting payments and accounts as required under sections 7 and 8 of this Agreement. This includes any line of business that is responsible for the performance of the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3).

**(3) Systems.** The responsible officer (or designee) must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement and its FATCA requirements as a participating FFI, registered deemed-

compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3). For example, in order fulfill QI's obligations to report on Forms 1042-S, 1099, and 8966 under section 8 of this Agreement, QI must establish systems for documenting account holders and for recording the information with respect to each such account that QI is required to report under that section.

**(4) Monitoring of Business Changes.** The responsible officer (or designee) must monitor business practices and arrangements that affect QI's compliance with this Agreement, including, for example, QI's acquisition of lines of businesses or accounts that give rise to documentation, withholding, or reporting obligations under this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3).

**(5) Periodic Review.** The responsible officer (or designee) must designate an auditor that meets the qualifications described in section 10.04(A) of this Agreement to perform the periodic review as described in section 10.05 of this Agreement.

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

**(B) Election for a Consolidated Compliance Program.** The IRS, in its discretion, may permit a consolidated compliance program that includes two or more QIs that are members of a group of entities under common ownership when the QIs: (i) operate under a uniform compliance program for purposes of this

Agreement; (ii) share practices, procedures, and systems subject to uniform monitoring and control; and (iii) are subject to a consolidated periodic review that includes a review of internal controls and testing of transactions relevant to this Agreement with respect to each QI in the consolidated compliance program. Each QI that is a member of a consolidated compliance program must designate a Compliance QI to act on its behalf, and the responsible officer of the Compliance QI must comply with the identification and periodic certification requirements for the QI consolidated compliance program as the IRS may prescribe in future guidance or other instructions.

**10.03. Periodic Certification by Responsible Officer.** On or before July 1 of the calendar year following the certification period, QI must make either the certification described in section 10.03(A) or (B) of this Agreement. The initial certification period is the period ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods will be every three calendar years following the initial certification period (including renewals of this Agreement). QI (or its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe in future guidance or other instructions. The responsible officer must consider the results of QI's periodic review described in section 10.05 of this Agreement in making the periodic certification.

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

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

(2) A periodic review was conducted for the certification period in accordance with sections 10.04 through 10.06 of the QI Agreement, and based on the review

and other steps taken by QI, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3);

(3) Based on the periodic review and other information known to the responsible officer, there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are any material failures, such failures are identified as part of this certification as well as the actions taken to remediate such failures and to prevent their reoccurrence by the date of this certification;

(4) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(5) All PAIs of QI and partnerships and trusts to which QI applies the agency option have provided the responsible officer of the QI with a certification of effective controls meeting the requirements of this section 10.03(A) of the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(D) of the QI Agreement, or have disclosed any such failures to QI and the actions taken by the PAI, partnership, or trust to remediate such failures.

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

(1) The responsible officer (or designee) has identified an event of default as defined in section 11.04 of the QI Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 10.03(D) of the QI Agreement with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option and that appropriate actions will be

taken to prevent such failures from reoccurring;

(2) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

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

**(C) Factual Information.** At the same time QI provides the periodic certification, QI must also provide certain factual information regarding its accounts, withholdable payments, and amounts subject to chapter 3 withholding and must certify as to the accuracy of the information. The information requested will be limited to certain account information and payments of reportable amounts reviewed as part of QI's periodic review procedure described in section 10.05 of this Agreement. The IRS will consider the reportable amounts received by QI during the certification period to determine the extent of the factual information to request. The IRS will prescribe in future published guidance or other instructions the factual information that the QI is required to report with the periodic certification and the manner such information must be reported.

**(D) Material Failures.**

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

(i) QI's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with this Agreement or its FATCA requirements as

a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3).

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

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

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

(a) Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of this Agreement;

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

(c) Provide allocation information as described in section 6.03(D) of this Agreement (regarding U.S. non-exempt recipient account holders) by January 15 required by that section when QI applies the alternative withholding rate pool procedures;

(d) Make deposits in the time and manner required by section 3.08 of this Agreement or fail to make adequate deposits to satisfy its withholding obligations, taking into account the procedures under section 9 of this Agreement;

(e) Report or report accurately on Forms 1099 as required under section 8.06 of this Agreement or provide information to the extent QI assumes primary Form 1099 reporting and backup withholding responsibilities;

(f) Report or report accurately on Forms 1042 and 1042-S under sections 8.02 and 8.03 of this Agreement;

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

(h) Report or report accurately its U.S. accounts (or U.S. reportable accounts) or, in the case of a direct reporting NFFE, its substantial U.S. owners as required under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3).

(i) Withhold an amount required to be withheld or report accurately with respect to U.S. source substitute dividend payments or make timely and adequate deposits of tax due with respect to such payments for which QI is a QSL and acts as a dealer or intermediary.

**(2) Limitations on Material Failures.**

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

**Sec. 10.04. Requirements for Periodic Review.**

**(A) Independent Auditor.** The periodic review may be performed by an internal auditor that is an employee of QI (internal auditor), an internal auditor that is an employee of a Compliance QI in the case of a consolidated compliance program, or a certified public accountant, at-

torney, or third-party consultant (“external auditor”), or any combination thereof.

**(1) Internal Auditor.** QI may designate an internal auditor to perform the periodic review (or a portion of the periodic review) only when the internal auditor is competent with respect to the requirements of this Agreement and QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472–1(c)(3). The internal auditor must also be able to report findings that reflect the independent judgment of the auditor. The internal auditor must not report directly to the responsible officer or any other officer or employee of QI with direct authority over employees performing functions in connection with QI’s obligations under this Agreement and QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472–1(c)(3). The IRS has the right to request the performance of the periodic review by an external auditor if the IRS, in its sole discretion, reasonably believes that the auditor selected by QI was not independent or did not perform an effective periodic review under this Agreement.

**(2) Internal Auditor of the Compliance QI.** The Compliance QI may designate an internal auditor to perform the consolidated periodic review (or a portion of the consolidated periodic review). See section 10.02(B) of this Agreement. The internal auditor of the Compliance QI must meet the requirements of section 10.04(A)(1) of this Agreement with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

**(3) External Auditor.** QI may engage an external auditor that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of client’s policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including for assisting clients in determining such compliance). The external auditor must be

independent of QI under the standards applicable to a certified public accountant with respect to the engagement or, in the case of an auditor other than a certified public accountant, any standard of independence otherwise applicable to the auditor for such an engagement. The external auditor is not required to make an attestation or render an opinion regarding QI’s compliance with this Agreement or QI’s compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472–1(c)(3), but the auditor must be able to perform the periodic review as specified in section 10.05 of this Agreement and provide the report described in section 10.06 of this Agreement. QI must permit the external auditor to have access to all relevant records of QI for purposes of performing the audit, including information regarding specific account holders. Additionally, the engagement between the external auditor and QI must impose no restrictions on QI’s ability to provide the report described in section 10.06 of this Agreement to the IRS. However, the external auditor is not required to divulge the identity of QI’s account holders to the IRS. QI must permit the IRS to communicate directly with the external auditor, and any legal prohibitions that prevent the IRS from communicating directly with the auditor must be waived.

**Sec. 10.05. Scope and Timing of Review.** The responsible officer of QI (or of the Compliance QI) must require the auditor to perform a review of the QI’s internal controls, test a sample of transactions and accounts related to QI’s documentation, withholding, reporting, and other obligations under this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472–1(c)(3), and identify deficiencies in meeting these obligations. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) of this Agreement. The review may include recommendations for either

corrective actions or enhancements to QI’s compliance program. QI is required to arrange for the performance of one review for the certification period to evaluate QI’s documentation, withholding, and reporting practices for the most recent calendar year. The review is not required to include statistical sampling procedures for testing transactions, but must require that the auditor document its methodology for sampling determinations.

**(A) Documentation.** The auditor must—

**(1)** Verify that QI has training materials, manuals, and directives that instruct the appropriate QI employees how to request, collect, review, and maintain documentation in accordance with this Agreement, including procedures for identifying and communicating changes in circumstances;

**(2)** Review QI’s account opening procedures and interview QI’s employees, to determine if appropriate documentation is requested from account holders and, if obtained, that it is reviewed and maintained in accordance with this Agreement;

**(3)** Verify that QI follows procedures designed to inform account holders that claim a reduced rate of withholding under an income tax treaty about any applicable limitation on benefits provision;

**(4)** Review QI’s accounts, using a sample of QI designated accounts, to ensure that QI obtained documentation that meets the general requirements described in sections 5.01 through 5.09 of this Agreement;

**(5)** Review QI’s accounts, using a sample of QI designated accounts for which treaty benefits are claimed, to ensure that QI obtained the treaty statements required by section 5.03(B) of this Agreement;

**(6)** Review information, using a sample of QI designated accounts, contained in account holder files to determine if the documentation validity standards of section 5.10 of this Agreement have been met. For example, the auditor must verify that changes in account holder information (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S.) are being conveyed to QI’s withholding agent;

**(7)** Review QI’s accounts, using a sample of QI designated accounts, to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with

its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI and, in the case of a direct reporting NFFE, its requirements under § 1.1472-1(c)(3);

(8) Review accounts, using a valid sample of U.S. non-exempt recipient account holders, to determine if QI obtained Forms W-9, and, if QI does not assume primary Form 1099 reporting and backup withholding responsibility, that QI transmitted those forms to a withholding agent consistent with this Agreement;

(9) Review QI's agreements with its PAIs and the partnerships or trusts described in section 4 of this Agreement to ensure that the obligations imposed meet the requirements provided in section 4 of this Agreement; and

(10) For a QI that is a QSL, review a sample of transactions for which QI acts as a QSL to determine whether QI has documented the status of persons to which QI pays U.S. source substitute dividends under the general requirements described in sections 5.01 through 5.09 of this Agreement.

**(B) Withholding Rate Pools.** The external auditor must—

(1) Verify that QI has training materials, manuals, and directives that instruct the appropriate QI employees how to determine chapters 3 and 4 withholding rate pools based on documentation and the presumption rules;

(2) Interview employees responsible for determining chapters 3 and 4 withholding rate pools to ascertain if they are adequately trained to determine those pools and that they follow adequate procedures for determining those pools;

(3) Review QI's procedures for preparing the withholding statements associated with QI's Forms W-8IMY and verify that the withholding statements provided to withholding agents convey complete and correct information on a timely basis;

(4) Perform test checks, using a valid sample of account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by, or the presumption rules applied to the account holder, the type of income earned, and the withholding rate applied;

(5) Verify, if QI is using the alternative procedure for U.S. non-exempt recipients described in section 6.03(D) of this Agreement, that QI is providing sufficient and timely information to withholding agents that allocates reportable payments to U.S. non-exempt recipients; and

(6) With respect to a partnership or trust described in section 4.05 of this Agreement, if applicable, perform test checks, using a valid sample of account holder documentation for the selected partners, owners, or beneficiaries and records of each type of reportable amount paid by QI to the entity, to determine whether the highest rate of withholding applicable to each type of reportable amount was applied.

**(C) Withholding Responsibilities.** The auditor must—

(1) To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using a valid sample of recalcitrant account holders and nonparticipating FFIs, to verify that QI withheld the proper amounts under chapter 4;

(2) To the extent QI has assumed primary chapters 3 and 4 withholding responsibility, perform test checks, using a valid sample of foreign account holders for which no withholding is required under chapter 4 based on the payees chapter 4 status, to verify that QI withheld the proper amounts under chapter 3 (including properly applying the exemptions from chapter 4 withholding);

(3) To the extent QI has not assumed primary chapters 3 and 4 withholding responsibility, verify that QI has fulfilled its responsibilities under section 3.02 of this Agreement when failing to provide the required information to a withholding agent to withhold on payments;

(4) To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using a valid sample of U.S. non-exempt recipient account holders to verify that QI backup withheld when required;

(5) To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using a valid sample of U.S. non-exempt account holders to verify that QI fulfilled its backup withholding responsi-

bilities under sections 3.04 through 3.06 of this Agreement;

(6) Verify that amounts withheld by QI were timely deposited in accordance with section 3.08 of this Agreement; and

(7) To the extent that QI acts as a QSL, determine that QI withheld when required on U.S. source payments of substitute dividends.

**(D) Return Filing and Information Reporting.** The auditor must—

(1) Obtain copies of original and amended Forms 1042 and 945, and any schedules, statements, or attachments required to be filed with those forms, verify that the forms have been filed, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing work papers used to prepare these forms;

(ii) Interviewing personnel responsible for preparing these forms;

(iii) Reviewing copies of Forms 1042-S that withholding agents have provided QI to determine whether QI properly reported the amount of taxes withheld by other withholding agents on Form 1042;

(iv) Reviewing account statements and correspondence from withholding agents;

(v) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by QI for refund or credit) properly reflect the adjustments to withholding made by QI using the reimbursement or set off procedures under section 9.02 of this Agreement and are supported by sufficient documentation;

(vi) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

(vii) In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, ascertain their accuracy, and—

(a) Determine the causes of any over-withholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund;

(b) Determine that QI repaid the appropriate account holders and that the amount of the claim is accurate and supported by adequate documentation; and

(c) Determine that QI did not include payments made to a partnership or trust described in section 4.05 of this Agreement.

(2) Obtain copies of original and corrected Forms 1042-S and Forms 1099 filed by QI together with the work papers used to prepare those forms, and determine whether the amounts reported on those forms are accurate by—

(i) Reconciling payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by QI as withheld on Forms 1042-S and determining the reason(s) for any variance;

(ii) Reviewing the Forms W-8IMY, and the associated withholding statements, that QI has provided withholding agents;

(iii) Reviewing a valid sample of account statements issued by QI to account holders;

(iv) Interviewing QI's personnel responsible for preparing the Forms 1042-S and, if applicable, Forms 1099, and the work papers used to prepare those forms; and

(v) Determining, in the case in which QI utilized the reimbursement or set-off procedure, that QI satisfied the requirements of section 9.02 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Forms 8966, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing a sample of U.S. accounts (or U.S. reportable accounts) to determine that such accounts were reported in accordance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI;

(ii) If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, confirming that any direct or indirect shareholders that are substantial U.S. owners were reported in accordance with § 1.1472-1(c)(3);

(iii) If QI is an NFFE acting as a qualified intermediary on behalf of persons

other than its shareholders, confirming that if QI is acting on behalf of a passive NFFE with substantial U.S. owners, withholdable payments made to the passive NFFE and the information regarding its owners were reported;

(iv) Confirming with respect to any nonqualified intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or controlling persons) that such substantial U.S. owners (or controlling persons) were reported to the extent required under section 8.04(B) of this Agreement;

(v) Reviewing a sample of the documentation provided by a PAI or a partnership or trust to which QI applied the agency option to determine that QI reported on Form 8966 to the extent required under section 4 of this Agreement;

(vi) Reviewing work papers used to prepare these forms; and

(vii) Interviewing personnel responsible for preparing these forms.

**(E) Significant Change in Circumstances.** The auditor must verify that in the course of the audit it has not discovered any significant change in circumstances, as described in section 11.03(A), (D), or (E) of this Agreement.

#### **Sec. 10.06 Periodic Review Report.**

**(A) In General.** The performance of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the steps performed to evaluate internal controls and test transactions, including the methodology for sampling determinations. The report must identify any deficiencies noted by the auditor, including those deficiencies that the auditor concludes are material failures, and may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report.

**(B) PAI Certification.** Any PAI with which QI has an agreement must provide a written certification to QI as described in section 10.03 of this Agreement regarding

its compliance with the requirements of the PAI agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.07 of this Agreement (with a certified translation into English if the certification is not in English).

**(C) Partnership or Trust to which QI Applies the Agency Option.** Any partnership or trust to which QI applies the agency option must provide a written certification to QI as described in section 10.03 of this Agreement regarding its compliance with the requirements of its agreement with QI. Such certification must be available to the IRS upon a request made as part of the review described in section 10.07 of this Agreement (with a certified translation into English if the certification is not in English).

**(D) Retention of Report.** The report and certifications described in this section 10.06 must be retained by QI (or the Compliance QI) for as long as this Agreement is in effect.

#### **Sec. 10.07. Compliance Review.**

**(A) In General.** Based upon the certifications made by the responsible officer and the disclosure of material failures, the information reported on Forms 945, 1042, 1042-S, 1099, and 8966 filed with the IRS during the certification period, or otherwise at IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.07.

**(B) Periodic Review Report.** The IRS may request through written correspondence to the responsible officer of QI (or the Compliance QI) a copy of QI's periodic review report that was issued for any prior certification period or the periodic review report of any PAI or partnership or trust to which QI applied the agency option that QI has an agreement during the current certification period (with a certified translation into English if the report is not in English). QI is required to provide the report within 30 calendar days of such request.

**(C) Correspondence Review.** The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of QI (or the Compliance QI) in writing and request information about QI's compliance with this Agreement or the compliance of a



PAI or a partnership or trust to which QI applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with employees of QI (and the Compliance QI), PAI, or a partnership or trust to which QI applied the agency option as part of the IRS's correspondence review. QI is required to respond in a reasonable time to any such requests.

**(D) Additional Review Procedures.** In limited circumstances, the IRS may direct QI (or the Compliance FFI) or any PAI, partnership, or trust described in section 4 of this Agreement with which QI has an agreement to perform additional, specified review procedures. The IRS reserves the right to require QI (or the Compliance QI) or a PAI, or a partnership or trust to which QI applied the agency option to engage an external auditor to perform the additional review procedures regardless of whether such auditor performed the periodic review. The IRS will provide the responsible officer of the QI with a written plan describing the additional review procedures and will provide a due date of not more than 120 days for the QI to provide to the IRS a report covering the auditor's findings.

## **SECTION 11. EXPIRATION, TERMINATION AND DEFAULT**

**Sec. 11.01. Term of Agreement.** This Agreement begins on the effective date of the QI Agreement and expires on December 31, 2016 unless terminated under section 11.02 of this Agreement. This Agreement may be renewed as provided in section 11.06 of this Agreement.

**Sec. 11.02. Termination of Agreement.** This Agreement may be terminated by either the IRS or QI prior to the end of its term by delivery of a notice, in accordance with section 12.06 of this Agreement, of termination to the other party. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 11.03 of this Agreement, or an event of default has occurred, as defined in section 11.04 of this Agreement, and the IRS determines, in its sole discretion,

that the significant change in circumstances or the event of default warrants termination of this Agreement. The IRS shall not terminate this Agreement if QI can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify QI, in accordance with section 11.05 of this Agreement, that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures the default or establishes that no event of default occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated.

If QI is a limited FFI, this Agreement will terminate upon the termination of QI's limited FFI status on December 31, 2015, unless QI enters into an FFI agreement or obtains status as a registered deemed-compliant FFI or a registered deemed-compliant Model 1 IGA FFI.

**Sec. 11.03. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

(A) An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity;

(B) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects QI's ability to perform its obligations under this Agreement;

(C) A ruling of any court that affects the validity of any material provision of this Agreement;

(D) A material change in the know-your-customer rules and procedures set forth in any Attachment to this Agreement;

(E) A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement;

(G) If QI is a limited FFI, termination of status as a limited FFI after December 31, 2015 and failure of QI to enter into an FFI Agreement or obtain status as a registered deemed-compliant FFI or regis-

tered deemed-compliant Model 1 IGA FFI;

(H) If QI is an FFI, termination of its status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(I) If QI is an NFFE acting as a QI on behalf of its shareholders, if it fails to meet its requirements as a direct reporting NFFE under § 1.1472-1(c)(3); or

(J) If QI is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, if it fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity.

**Sec. 11.04. Event of Default.** For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement and the responsible officer had actual knowledge or should have known the facts relevant to the failure to perform any material duty. An event of default includes, but is not limited to, the occurrence of any of the following:

(A) QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

(B) QI underwithholds a material amount of tax that QI is required to withhold under chapter 3 or 4 or backup withhold under section 3406 and fails to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

(C) QI makes excessive refund claims;

(D) Documentation described in section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of direct account holders;

(E) QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;

(F) If QI is an FFI, QI fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI;

(G) If QI is an NFFE acting as a QI on behalf of its shareholders, QI fails to materially comply with its requirements as a direct reporting NFFE under § 1.1472-1(c)(3); or if QI is a sponsoring entity, QI fails to materially comply with the due

diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

(H) QI fails to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any non-QI designated account.

(I) QI fails to perform a periodic review when required or document the findings of such review in a written report;

(J) QI fails to cooperate with the IRS on its compliance review described in section 10.07 of this Agreement;

(K) QI fails to inform the IRS of any change in the know-your-customer rules described in any Attachment to this Agreement within 90 days of the change becoming effective;

(L) QI fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under this Agreement;

(M) QI fails to inform the IRS of any PAI of QI, as described in section 4 of this Agreement;

(N) QI fails to cure a material failure identified in the qualified certification described in section 10.04 of this Agreement or identified by the IRS;

(O) QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or QI's auditor;

(P) The IRS determines that QI's auditor is not sufficiently independent to adequately perform its audit function and QI fails to arrange for a periodic review conducted by an auditor approved by the IRS;

(Q) An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.04 of this Agreement; or

(R) A partnership or trust to which QI applies the agency option is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.06 of this Agreement

**Sec. 11.05. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to QI a notice of default specifying each event of default. QI must respond to the notice of default within 60 days (60-day response) from the date of

the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which to cure or shall state why QI believes that no event of default occurred. If QI does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 11.02 of this Agreement. If QI provides a 60-day response, the IRS shall either accept or reject QI's statement that no default has occurred or QI's proposal to cure the event of default. If the IRS rejects QI's contention that no default has occurred or rejects QI's proposal to cure the event of default, the IRS may offer a counter-proposal to cure the event of default with which QI will be required to comply within 30 days. If QI fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 11.02 of this Agreement to QI, which QI may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 12.06 of this Agreement. If QI appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of an audit, the QI may cure the default, without following the procedures of this section 11.05, if the external auditor's report describes the default and the actions that QI took to cure the default and the IRS determines that the cure procedures followed by QI were sufficient. If the IRS determines that QI's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 11.05 shall be followed.

**Sec. 11.06. Renewal.** If QI is an FFI, an NFFE acting on behalf of its shareholders, or an NFFE that is a sponsoring entity and intends to renew this Agreement, it must submit a registration for renewal to the IRS on the FATCA registration website in accordance with the instructions to Form 8957 or as otherwise provided in published guidance. This Agreement will be renewed only upon the agreement of both QI and the IRS.

A QI not described in the preceding paragraph must renew its QI agreement by submitting a request for renewal to the Foreign Intermediaries Program at the address provided in section 12.06 of this Agreement.

## SECTION 12. MISCELLANEOUS PROVISIONS

**Sec. 12.01.** QI's application to become a qualified intermediary, all Appendices and Attachments to this Agreement, and the following are hereby incorporated into and made an integral part of this Agreement:

(a) If QI is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or limited FFI; or

(b) If QI is an NFFE acting as a QI on behalf of its shareholders, its requirements as a direct reporting NFFE under § 1.1472-1(c)(3).

This Agreement, QI's application, and the Appendices and Attachments to this Agreement constitute the complete agreement between the parties.

**Sec. 12.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 12.03.** Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

**Sec. 12.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, QI agrees to submit to the jurisdiction of such United States court.

**Sec. 12.05.** QI's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 12.06.** Except as otherwise provided in the instructions to Form 8957,

notices provided under this Agreement shall be mailed registered, first class airmail. All notices sent to the IRS must include the QI's name, QI-EIN, GIIN (if applicable), and the name of its responsible officer. Such notices shall be directed as follows:

To the IRS:  
Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Team  
290 Broadway, 12 Floor NW  
New York, New York 10007-1867

To the QI:

The QI's responsible officer. Such notices shall be sent to the address indicated in the QI's registration or application (as may be amended).

**Sec. 12.07.** QI, acting in its capacity as a qualified intermediary or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

### **SECTION 13. EFFECTIVE DATE**

The effective date of this revenue procedure is June 27, 2014.

### **SECTION 14. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1597.

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 assigned by the Office of Management and Budget.

The collections of information are contained in sections 3 and 4 of this revenue procedure regarding (1) the application procedures for QI status and withholding agreements, and (2) the provisions of the QI withholding agreement requiring record retention or maintenance, and any communication or contact with the IRS or the account holders. This information will be used to enable the IRS to determine whether to enter into a withholding agree-

ment with the QI applicant and, if accepted, to verify the QI's compliance with the agreement. The collection of information is required to obtain a QI withholding agreement. The likely respondents are business or other for-profit institutions.

The estimated total reporting and/or recordkeeping burden is 301,018 hours.

The estimated average annual burden is 30 minutes for a QI account holder, and 2.093 hours for a QI, depending on the individual circumstances. The estimated number of recordkeepers is 88,504.

The estimated frequency of responses is on occasion. Books or 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 15. DRAFTING INFORMATION**

The principal author of this revenue procedure is Tara N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Ferris at (202) 317-6942 (not a toll free number).

## **Rev. Proc. 2014-42**

### **SECTION 1. PURPOSE**

This revenue procedure provides guidance regarding a new, voluntary Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, certified public accountants (CPAs), or enrolled agents (EAs) to complete continuing education courses for the purpose of increasing their knowledge of the law relevant to federal tax returns. In addition, this revenue procedure modifies and supersedes Revenue Procedure 81-38, 1981-2 C.B. 592, regarding limited practice before the IRS by individuals who are not attorneys, CPAs, or EAs.

### **SECTION 2. BACKGROUND**

The accuracy of tax return preparation is essential to effective tax administration. More than half of the United States' taxpayers rely on paid tax return preparers to assist them in preparing their federal tax

returns annually. While 40% of paid tax return preparers are credentialed as attorneys, CPAs, or EAs, most of the other 60% of paid tax return preparers lack any kind of professional credential or license. Basic competency for paid tax return preparers is essential to accurate return preparation, improved tax compliance, effective tax administration, and protecting taxpayers from preparer errors.

To further these goals, in 2011 the Treasury Department and the IRS published regulations under 31 U.S.C. § 330 (which are reprinted in Treasury Department Circular No. 230 (Circular 230)) that established registered tax return preparers (RTRPs) as a new category of practitioner and prohibited an individual who was not an attorney, CPA, EA, or RTRP from preparing tax returns for compensation. Circular 230 also set forth the requirements for RTRPs, which included passing a minimum competency examination and completing continuing education annually. Under these regulations, RTRPs were permitted to engage in limited practice by representing taxpayers before the IRS during an examination with respect to tax returns and claims for refund that the RTRP prepared and signed. At the same time, provisions in Circular 230 allowing any unenrolled or unlicensed tax return preparer to engage in limited practice by representing taxpayers during an examination of a return prepared and signed by the tax return preparer were removed.

In February 2014, the D.C. Circuit Court of Appeals in *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), held invalid the portion of Circular 230 regulating RTRPs as practitioners practicing before the IRS. Accordingly, the RTRP program is no longer in effect. In the Fiscal Year 2015 Budget, the Administration proposed that Congress provide the Treasury Department and the IRS with legislative authority to regulate tax return preparers. See General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals. Until legislation is enacted, the Treasury Department and the IRS have established an Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, CPAs, or EAs to improve their knowledge of federal tax law. An unenrolled tax return preparer who successfully completes

continuing education courses related to federal tax law will generally have a better understanding of the tax law necessary to represent a taxpayer before the IRS during an examination than an unenrolled individual who has not taken any continuing education courses related to federal tax law. Accordingly, this revenue procedure also modifies and supersedes Revenue Procedure 81-38, and in its place provides rules permitting unenrolled tax return preparers who have an Annual Filing Season Program Record of Completion to represent taxpayers during examination in certain limited circumstances.

### SECTION 3. SCOPE.

The Annual Filing Season Program described in this revenue procedure is voluntary and no tax return preparer is required to participate. Further, any individual may apply for and receive an Annual Filing Season Program Record of Completion if he or she meets the requirements of this revenue procedure.

This revenue procedure does not restrict any individual from preparing and signing tax returns and claims for refund nor does it change the requirement that paid tax return preparers must obtain a Preparer Tax Identification Number (PTIN). See Treas. Reg. § 1.6109-2.

An Annual Filing Season Program Record of Completion is not required for an attorney, CPA, EA, enrolled actuary, or enrolled retirement plan agent to represent taxpayers before the IRS as described in section 10.3 of Circular 230. This revenue procedure does not in any way affect or limit the ability of attorneys, CPAs, or EAs to represent taxpayers before the IRS. The rules governing the practice of such persons before the IRS are set forth in Circular 230.

### SECTION 4. ANNUAL FILING SEASON PROGRAM

.01 *In general.* An application for the Annual Filing Season Program must be made in accordance with this revenue procedure and the requirements set forth by the IRS in forms, instructions, or other appropriate guidance. An application for the Annual Filing Season Program will not be considered if the applicant does not

comply with the requirements of this section.

.02 *Record of Completion.* Upon verification that the requirements in section 4 of this revenue procedure have been met, the IRS will issue a Record of Completion to the applicant. The Record of Completion is valid only with respect to tax returns or claims for refund prepared and signed during the calendar year for which the Record of Completion is issued.

.03 *Form of application.* Applicants must apply for the Annual Filing Season Program by using the online PTIN application system or on paper, using the IRS Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal* (or successor form), as prescribed by the form's instructions. The applicant must sign the application under penalties of perjury and include any required supporting information and documentation required by forms, instructions, or other appropriate guidance. Applications must be received by April 15 of the year for which the Record of Completion is sought, and no applications received after that date will be considered.

.04 *Period of applicability.* The Record of Completion is effective for one calendar year. Once issued, the Record of Completion is effective for tax returns and claims for refund prepared and signed from the later of January 1 of the year covered by the Record of Completion or the date the Record of Completion is issued until December 31 of that year. For example, if an application is submitted on February 15, 2015, and a Record of Completion is issued on February 25, 2015, the tax return preparer's 2015 Record of Completion will be effective for tax returns and claims for refund prepared and signed from February 25, 2015 through December 31, 2015.

#### .05 *Application requirements.*

(1) *PTIN.* Applicants must be eligible for and obtain a PTIN, or timely renew their existing PTIN, in accordance with the requirements of Treas. Reg. § 1.6109-2. The PTIN must be valid for the year for which the Record of Completion is sought.

(2) *Federal tax filing season refresher course.*

(a) *Requirement.* Only applicants who successfully complete an annual federal

tax filing season refresher course (refresher course) that is administered by an IRS-approved continuing education provider (described in section 5 of this revenue procedure) are eligible to participate in the Annual Filing Season Program. The refresher course must generally cover tax law and filing requirements relevant to Form 1040 series returns and schedules. The refresher course must be 6 hours and must include a test of the material presented during the course that is given at the end of the course. The test must be a minimum of 100 questions. To successfully complete the refresher course, the applicant must pass the related test by answering 70% of the questions correctly (or a higher percentage if set forth in forms, instructions, or other appropriate guidance).

(b) *Exceptions.* The following applicants are not required to take the refresher course as a condition of eligibility to apply for a Record of Completion:

(i) Attorneys, CPAs, and EAs described in section 10.3 of Circular 230;

(ii) Individuals who passed the RTRP examination; and

(iii) Tax return preparers who are licensed or registered by any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia after passing an examination covering federal tax matters, and tax return preparers who have passed an examination covering federal tax matters administered by an entity recognized by the IRS as an eligible entity for purposes of this section. A list of states and other entities recognized by the IRS as offering an examination that qualifies for purposes of this exception will be posted on IRS.gov. Applicants who qualify for this exception must, upon request, present proof of their license, registration, or passage of an approved examination as required by the IRS in forms, instructions, or other appropriate guidance.

#### (3) *Continuing education.*

(a) *Applicants required to complete the refresher course.* Applicants required to complete the refresher course must successfully complete 18 hours of continuing education from an IRS-approved continuing education provider (described in section 5 of this revenue procedure) during the calendar year prior to the year for

which the Record of Completion is sought. The total hours completed must consist of 2 hours of ethics or professional responsibility, 10 hours of federal tax law topics, and 6 hours of federal tax law updates. For example, to receive a Record of Completion that will be effective for tax returns and claims for refund prepared and signed during the 2016 calendar year, an applicant must have completed 18 hours of continuing education meeting the requirements of this section 4.05(3) during the 2015 calendar year. Applicants who successfully complete the refresher course described in section 4.05(2) will have satisfied the requirement to take 6 hours of federal tax law updates.

(b) *Applicants exempt from the refresher course.* Applicants exempt from the refresher course must successfully complete 15 hours of continuing education from an IRS-approved continuing education provider during the calendar year prior to the year for which the Record of Completion is sought. The total hours completed must consist of 2 hours of ethics or professional responsibility, 10 hours of federal tax law topics, and 3 hours of federal tax law updates.

(c) *Transition rule.* Applicants for the Annual Filing Season Program for the 2015 calendar year are required to complete 11 hours of continuing education during 2014. For applicants who must complete the refresher course, the refresher course will satisfy 6 hours of the 11-hour requirement; the other 5 hours must consist of 3 hours of federal tax law topics and 2 hours of ethics or professional responsibility. Applicants not required to take the refresher course must complete 8 hours of continuing education consisting of 3 hours of federal tax law updates, 3 hours of federal tax law topics, and 2 hours of ethics or professional responsibility.

(4) *Consent to be subject to duties and restrictions of Circular 230.* As a prerequisite to participation in the Annual Filing Season Program and receiving a Record of Completion, an applicant must consent to be subject to the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 for the entire period covered by the Record of Completion.

.06 *Restrictions on eligibility.*

(1) *Ineligible individuals.* The following individuals are ineligible to participate in the Annual Filing Season Program:

(a) An individual who is disbarred, suspended, or disqualified from practice before the IRS under Circular 230, during the period for which the individual is disbarred, suspended, or disqualified.

(b) An individual who has been convicted of a felony involving a financial matter, tax matter, or other violation of the public trust within the 5-year period preceding the date of the application to participate in the Annual Filing Season Program.

(c) An individual who is enjoined from representing persons before the IRS, preparing tax returns, or engaging in other conduct subject to injunction under section 7407, for the time period during which the injunction is in effect.

(d) An individual who engaged in misconduct that would have violated Circular 230 if the individual were subject to Circular 230, including knowingly providing false or misleading information, or participating in providing false or misleading information, to the IRS.

(e) An individual who is not in compliance with his or her personal federal tax obligations (including employment taxes for which the applicant is personally liable), for the period of such non-compliance. The fact that the applicant is in a dispute with the IRS regarding a federal tax liability or has entered into an installment agreement (which is not in default), an offer-in-compromise, or both to satisfy a federal tax liability will not be treated as non-compliant with a personal federal tax obligation for purposes of this section.

(f) An individual who has his or her Annual Filing Season Program Record of Completion revoked under section 7 of this revenue procedure, for the period that the IRS determines, based on the facts and circumstances, that such individual is ineligible.

(g) An individual who does not comply with the requirements of this revenue procedure.

.07 *Solicitation restrictions.* A tax return preparer who receives a Record of Completion may not use the term “certified,” “enrolled,” or “licensed” to describe this designation or in any way imply an

employer/employee relationship with the IRS or make representations that the IRS has endorsed the tax return preparer. A tax return preparer who receives a Record of Completion for a calendar year may represent that the tax return preparer holds a valid Annual Filing Season Program Record of Completion for that calendar year and that he or she has complied with the IRS requirements for receiving the Record of Completion.

## **SECTION 5. APPROVED CONTINUING EDUCATION PROVIDERS**

The refresher course and other continuing education requirements described in section 4 must be administered by continuing education providers defined in section 10.9 of Circular 230 and approved by the IRS in accordance with the requirements of Revenue Procedure 2012–12, 2012–2 I.R.B. 275, and as prescribed in forms, instructions, or other appropriate guidance.

## **SECTION 6. REPRESENTATION BEFORE THE IRS BASED ON PREPARING AND SIGNING A RETURN**

.01 *Representation of taxpayers before the IRS.* This section permits unenrolled tax return preparers who obtain a Record of Completion to represent taxpayers before the IRS during an examination of a tax return or claim for refund that they prepared and signed (or prepared if there is no signature space on the form), provided the individual (1) had a valid Annual Filing Season Program Record of Completion for the calendar year in which the tax return or claim for refund was prepared and signed; and (2) has a valid Annual Filing Season Program Record of Completion for the year or years in which the representation occurs. The representation permitted under this section does not permit an individual who has a Record of Completion to represent the taxpayer before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS.

.02 *Modification and Superseding of Revenue Procedure 81–38.* Revenue Procedure 81–38 allows an unenrolled tax return preparer to represent a taxpayer

during an examination if the tax return preparer prepared and signed the taxpayer's return that is under examination (or prepared the taxpayer's return that is under examination if there is no signature space on the form).

Revenue Procedure 81-38 is modified and superseded for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015. Unenrolled tax return preparers may not rely on Revenue Procedure 81-38 to represent taxpayers during an examination of a tax return or claim for refund prepared or signed after December 31, 2015. However, unenrolled tax return preparers may rely on Revenue Procedure 81-38 to represent taxpayers during an examination of a tax return or claim for refund prepared and signed (or prepared if there is no signature space on the form) on or before December 31, 2015.

*.03 Compliance with Circular 230.* Representation of a taxpayer before the IRS under the authority of this section is governed by Circular 230.

## **SECTION 7. REVOCATION AND PROTEST**

### *.01 Revocation.*

(1) Individuals who fail to comply with the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 or with any of

the requirements described in this revenue procedure will have their Record of Completion revoked and may be prohibited from participating in the Annual Filing Season Program in the future based on the facts and circumstances, including the act that resulted in the noncompliance.

(2) Individuals who represent a taxpayer under the authority of section 6.01 of this revenue procedure who violate Circular 230 during the course of that representation will have their Record of Completion and ability to represent a taxpayer before the IRS under this revenue procedure revoked and other sanctions may be imposed.

### *.02 Protest.*

(1) Prior to any revocation of a Record of Completion pursuant to section 7.01, an individual will be informed in writing of the reason(s) for revocation. The individual may, within 30 days after the date of the IRS notice of revocation, file a written protest, as prescribed by the IRS in forms, instructions, or other appropriate guidance, to demonstrate why the Record of Completion should not be revoked. If an individual's Record of Completion is revoked, the revocation is effective for the entire calendar year for which the Record of Completion would have been valid had the revocation not occurred.

(2) An individual who has been determined to be ineligible to participate in the Annual Filing Season Program under sec-

tion 4.06 of this revenue procedure may, within 30 days after the date of the IRS notice of ineligibility, file a written protest, as prescribed by the IRS in forms, instructions, or other appropriate guidance, to demonstrate why the individual is not ineligible to participate in the Annual Filing Season Program.

## **SECTION 8. EFFECT ON OTHER DOCUMENTS**

Revenue Procedure 81-38 is modified and superseded for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

## **SECTION 9. EFFECTIVE DATE**

Except for section 6, this revenue procedure is effective as of June 30, 2014. Section 6 is effective for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

## **SECTION 10. DRAFTING INFORMATION**

The principal author of this revenue procedure is Hollie M. Marx of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure contact Hollie M. Marx on (202) 317-6844 (not a toll free number).

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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## CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008–2 edition.

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