INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017–3
January 17, 2017

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

INCOME TAX

Rev. Rul. 2017–01, page 377.

Section 995(f) of the Internal Revenue Code requires the IRS to annually publish a "base period T-bill rate" with which a shareholder of an interest charge domestic international sales corporation (IC-DISC) calculates the interest due on their IC-DISC-related deferred tax liability for the year. Revenue Ruling 2017–01 sets forth the base period T-bill rate as determined by the Office of Debt Management within the Treasury Department for the period ending September 30, 2016, and provides a table of factors compounded daily for taxpayers with short or alternative taxable years.

Notice 2017–06, page 422.

Notice 2017–6 waives the eligibility rule for one more year (to any taxable year beginning before January 1, 2017) for taxpayers making certain automatic changes to utilize the final tangible property regulations under §§ 162(a) and 263(a) of the Internal Revenue Code (and for making certain automatic changes to comply with the final depreciation and disposition regulations under § 168). The eligibility rule, set out in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, prohibits taxpayers from making certain automatic changes in accounting methods if they applied or made a change in accounting method for the same item during any of the five taxable years ending with the year of change. This notice provides an additional year's waiver of that requirement for making certain automatic method changes under these final regulations.

Notice 2017–07, page 423.

The notice modifies the effective dates in the § 1.987–12T deferral rule (published in December 2016 in TD 9795) to apply to deferral events or outbound loss events that occur as a result of an entity classification election made under § 301.7701–3.

Notice 2017–08, page 423.

The notice modifies Notice 2016–66, 2016–47 I.R.B. 745, to provide an extension of time for the filing of participant and material advisor disclosure statements until May 1, 2017.

Rev. Proc. 2017–12, page 424.

The revenue procedure generally provides that the Internal Revenue Service will treat certain internal total loss-absorbing capacity (TLAC) instruments as indebtedness for federal tax purposes.

Rev. Proc. 2017–15, page 437.

This revenue procedure sets forth the final qualified intermediary (QI) withholding agreement (QI agreement) that foreign persons may enter with the Internal Revenue Service (IRS) under § 1.1441–1(e)(5) to simplify their obligations as withholding agents under chapters 3 and 4 and as payors under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement also allows certain foreign persons to enter into an agreement with the IRS to act as qualified derivatives dealers (QDDs). This revenue procedure also announces that because updated withholding foreign partnership (WP) and withholding foreign trust (WT) agreements will not be published before December 31, 2016, WPs and WTs with agreements currently in effect may continue to treat those agreements as in effect until updated agreements are issued in January 2017.

(Continued on the next page)

Finding Lists begin on page ii.

Rev. Proc. 2017–16, page 501.

This revenue procedure sets forth 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). 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. The FFI agreement provided in Revenue Procedure 2014–38 (2014–29 I.R.B. 131) (2014 FFI agreement) expires on December 31, 2016. The FFI agreement in this revenue procedure will apply to FFIs with an FFI agreement effective on or after January 1, 2017.

T.D. 9796, page 380.

Final regulations treating a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Code.

T.D. 9803, page 384.

This final regulations address certain transfers of property by United States persons to foreign corporations. The final regulations affect United States persons that transfer certain property, including foreign goodwill and going concern value, to foreign corporations in nonrecognition transactions described in section 367 of the Internal Revenue Code. The regulations also combine certain sections of the existing regulations under section 367(a) into a single section. This document also withdraws certain temporary regulations.

T.D. 9804, page 406.

These final regulations address issues under section 36B of the Internal Revenue Code relating to the health insurance premium tax credit. The final regulations amend the computation of the premium tax credit for families with children who enroll in health coverage through Exchanges offering qualified health plans that do not provide pediatric dental benefits, and address information reporting by Exchanges and other issues. The final regulations are reserved on the effect of employer opt-out arrangements on the affordability of employer-provided health coverage for purposes of the premium tax credit and the section 5000A individual shared responsibility provision.

EMPLOYMENT TAX

Rev. Proc. 2017–14, page 426.

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 requires the IRS to establish a voluntary certification program for professional employer organizations. A professional employer organization, sometimes referred to as an employee leasing company, is an organization that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. Being certified by the IRS as a certified professional employer organization (CPEO) has certain federal employment tax consequences for both the CPEO and its clients. This revenue procedure describes the procedures a CPEO must follow and the requirements a CPEO must satisfy to maintain its certification.

ADMINISTRATIVE

Rev. Proc. 2017–12, page 424.

The revenue procedure generally provides that the Internal Revenue Service will treat certain internal total loss-absorbing capacity (TLAC) instruments as indebtedness for federal tax purposes.

T.D. 9796, page 380.

Final regulations treating a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Code.

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.

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

Section 995.—Taxation of DISC Income to Shareholders

2016 Base Period T-Bill Rate. The "base period T-bill rate" for the period ending September 30, 2016, is published as required by section 995(f) of the Internal Revenue Code.

Rev. Rul. 2017–01

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a domestic international sales corporation ("DISC") shall pay interest each taxable year in an amount equal to the product of the "shareholder's DISC-related deferred tax liability" for the year (as defined in section 995(f)(2)) and the "base period T-bill rate." Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or the most recent calendar year ending before) the close of the taxable year of the shareholder.

The base period T-bill rate for the period ending September 30, 2016, is 0.54 percent.

Pursuant to section 6622 of the Internal Revenue Code, interest must be compounded daily. The table below provides factors for compounding the 2016 base period T-bill rate daily for any number of days in the shareholder's taxable year (including for a 52–53 week accounting period). To compute the amount of the interest charge for the shareholder's taxable year, multiply the amount of the shareholder's DISC-related deferred tax liability for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder's taxable year for which the interest charge is being determined is a short taxable year, if the shareholder uses a 52–53 week taxable year, or if the shareholder's taxable year is a leap year.

For the base period T-bill rates for periods ending in prior years, see Rev. Rul. 2015–26, 2015–49 IRB 696; Rev. Rul. 2014–33, 2014–52 IRB 957; Rev. Rul. 2013–24, 2013–49 IRB 594; Rev. Rul. 2012–22, 2012–48 IRB 565; and Rev. Rul. 2011–30, 2011–49 IRB 826.

DRAFTING INFORMATION

The principal author of this revenue ruling is Matthew A. Nieters of the Office of Associate Chief Counsel (International). For further information regarding the revenue ruling, contact Mr. Nieters at (202) 317-6939 (not a toll-free number).

ANNUAL RATE, COMPOUNDED DAILY
0.54 PERCENT

DAYS	FACTOR
1	.000014754
2	.000029508
3	.000044263
4	.000059018
5	.000073773
6	.000088528
7	.000103283
8	.000118039
9	.000132795
10	.000147551
11	.000162307
12	.000177064
13	.000191820
14	.000206577
15	.000221334
16	.000236092
17	.000250849
18	.000265607
19	.000280365
20	.000295123
21	.000309882
22	.000324640

ANNUAL RATE, COMPOUNDED DAILY
0.54 PERCENT

DAYS	FACTOR
23	.000339399
24	.000354158
25	.000368918
26	.000383677
27	.000398437
28	.000413197
29	.000427957
30	.000442718
31	.000457478
32	.000472239
33	.000487000
34	.000501761
35	.000516523
36	.000531285
37	.000546047
38	.000560809
39	.000575571
40	.000590334
41	.000605097
42	.000619860
43	.000634623
44	.000649386
45	.000664150
46	.000678914
47	.000693678
48	.000708442
49	.000723207
50	.000737972
51	.000752737
52	.000767502
53	.000782267
54	.000797033
55	.000811799
56	.000826565
57	.000841331

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
58	.000856098
59	.000870864
60	.000885631
61	.000900398
62	.000915166
63	.000929933
64	.000944701
65	.000959469
66	.000974238
67	.000989006
68	.001003775
69	.001018544
70	.001033313
71	.001048082
72	.001062852
73	.001077621
74	.001092391
75	.001107162
76	.001121932
77	.001136703
78	.001151474
79	.001166245
80	.001181016
81	.001195788
82	.001210559
83	.001225331
84	.001240103
85	.001254876
86	.001269648
87	.001284421
88	.001299194
89	.001313968
90	.001328741
91	.001343515
92	.001358289
93	.001373063
94	.001387837
95	.001402612

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
96	.001417387
97	.001432162
98	.001446937
99	.001461712
100	.001476488
101	.001491264
102	.001506040
103	.001520816
104	.001535593
105	.001550369
106	.001565146
107	.001579924
108	.001594701
109	.001609479
110	.001624257
111	.001639035
112	.001653813
113	.001668591
114	.001683370
115	.001698149
116	.001712928
117	.001727708
118	.001742487
119	.001757267
120	.001772047
121	.001786827
122	.001801608
123	.001816388
124	.001831169
125	.001845950
126	.001860732
127	.001875513
128	.001890295
129	.001905077
130	.001919859
131	.001934642

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
132	.001949424
133	.001964207
134	.001978990
135	.001993774
136	.002008557
137	.002023341
138	.002038125
139	.002052909
140	.002067693
141	.002082478
142	.002097263
143	.002112048
144	.002126833
145	.002141618
146	.002156404
147	.002171190
148	.002185976
149	.002200763
150	.002215549
151	.002230336
152	.002245123
153	.002259910
154	.002274698
155	.002289485
156	.002304273
157	.002319061
158	.002333850
159	.002348638
160	.002363427
161	.002378216
162	.002393005
163	.002407794
164	.002422584
165	.002437374
166	.002452164
167	.002466954
168	.002481745
169	.002496535

ANNUAL RATE, COMPOUNDED DAILY
0.54 PERCENT

DAYS	FACTOR
170	.002511326
171	.002526117
172	.002540909
173	.002555700
174	.002570492
175	.002585284
176	.002600077
177	.002614869
178	.002629662
179	.002644455
180	.002659248
181	.002674041
182	.002688835
183	.002703628
184	.002718422
185	.002733217
186	.002748011
187	.002762806
188	.002777600
189	.002792396
190	.002807191
191	.002821986
192	.002836782
193	.002851578
194	.002866374
195	.002881171
196	.002895967
197	.002910764
198	.002925561
199	.002940358
200	.002955156
201	.002969953
202	.002984751
203	.002999550
204	.003014348
205	.003029146
206	.003043945
207	.003058744

ANNUAL RATE, COMPOUNDED DAILY
0.54 PERCENT

DAYS	FACTOR
208	.003073543
209	.003088343
210	.003103143
211	.003117942
212	.003132743
213	.003147543
214	.003162343
215	.003177144
216	.003191945
217	.003206746
218	.003221548
219	.003236349
220	.003251151
221	.003265953
222	.003280756
223	.003295558
224	.003310361
225	.003325164
226	.003339967
227	.003354770
228	.003369574
229	.003384378
230	.003399182
231	.003413986
232	.003428790
233	.003443595
234	.003458400
235	.003473205
236	.003488011
237	.003502816
238	.003517622
239	.003532428
240	.003547234
241	.003562041
242	.003576847
243	.003591654
244	.003606461
245	.003621268

ANNUAL RATE, COMPOUNDED DAILY
0.54 PERCENT

DAYS	FACTOR
246	.003636076
247	.003650884
248	.003665692
249	.003680500
250	.003695308
251	.003710117
252	.003724926
253	.003739735
254	.003754544
255	.003769354
256	.003784163
257	.003798973
258	.003813783
259	.003828594
260	.003843404
261	.003858215
262	.003873026
263	.003887837
264	.003902649
265	.003917460
266	.003932272
267	.003947085
268	.003961897
269	.003976709
270	.003991522
271	.004006335
272	.004021148
273	.004035962
274	.004050775
275	.004065589
276	.004080403
277	.004095218
278	.004110032
279	.004124847
280	.004139662
281	.004154477
282	.004169292

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
283	.004184108
284	.004198924
285	.004213740
286	.004228556
287	.004243373
288	.004258189
289	.004273006
290	.004287823
291	.004302641
292	.004317458
293	.004332276
294	.004347094
295	.004361912
296	.004376731
297	.004391550
298	.004406368
299	.004421188
300	.004436007
301	.004450826
302	.004465646
303	.004480466
304	.004495286
305	.004510107
306	.004524927
307	.004539748
308	.004554569
309	.004569391
310	.004584212
311	.004599034
312	.004613856
313	.004628678
314	.004643500
315	.004658323
316	.004673146
317	.004687969
318	.004702792
319	.004717616
320	.004732439

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
321	.004747263
322	.004762087
323	.004776912
324	.004791736
325	.004806561
326	.004821386
327	.004836211
328	.004851037
329	.004865863
330	.004880688
331	.004895515
332	.004910341
333	.004925167
334	.004939994
335	.004954821
336	.004969648
337	.004984476
338	.004999303
339	.005014131
340	.005028959
341	.005043788
342	.005058616
343	.005073445
344	.005088274
345	.005103103
346	.005117932
347	.005132762
348	.005147592
349	.005162422
350	.005177252
351	.005192083
352	.005206913
353	.005221744
354	.005236575
355	.005251407
356	.005266238

ANNUAL RATE, COMPOUNDED DAILY 0.54 PERCENT	
DAYS	FACTOR
357	.005281070
358	.005295902
359	.005310734
360	.005325567
361	.005340400
362	.005355232
363	.005370066
364	.005384899
365	.005399732
366	.005414566
367	.005429400
368	.005444234
369	.005459069
370	.005473903
371	.005488738

26 CFR 1.6038A–1: General Requirements and Definitions; 26 CFR 1.6038A–2: Requirement of Return; 26 CFR 301.7701–2: Business entities; definitions

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

T.D. 9796

Treatment of Certain Domestic Entities Disregarded as Separate from Their Owners as Corporations for Purposes of Section 6038A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code.

DATES: *Effective date*: These regulations are effective December 13, 2016.
Applicability date: For dates of applicability, see §§ 1.6038A–1(n)(1) and (2) and 301.7701–2(e)(9).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1191. The estimated average annual recordkeeping burden per recordkeeper is 10 hours. The estimated reporting burden is being reported under Form 5472 (OMB # 1545-0123).

The collection of information in these final regulations is in §§ 1.6038A–2 and 1.6038A–3. This information will enhance the United States' compliance with international standards of transparency and exchange of information for tax purposes and will strengthen the enforcement of U.S. tax laws. The likely respondents are foreign-owned domestic entities that are disregarded as separate from their owners.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it 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 26 U.S.C. 6103.

Background and Explanation of Provisions

On May 10, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the **Federal Register** a notice of proposed rulemaking (REG–127199–15; 81 FR 28784) under sections 6038A and 7701 (the proposed regulations). The proposed regulations would treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code. The proposed regulations would have applied to taxable years of the entities described in § 301.7701–2(c)(2)(vi) ending on or after the date that is 12 months after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**.

In addition to generally soliciting comments on all aspects of the proposed rules, the preamble to the proposed regulations specifically requested comments on possible alternative methods for reporting a domestic disregarded entity's transactions in cases in which the foreign owner of the domestic disregarded entity already has an obligation to report the income resulting from those transactions—for example, transactions resulting in income effectively connected with the conduct of a U.S. trade or business.

No written comments on the proposed regulations were received, and no public hearing was requested or held. However, these final regulations reflect a limited number of changes by the Treasury Department and the IRS to the proposed regulations.

First, it was and remains the intent of the Treasury Department and the IRS that the generally applicable exceptions to the requirements of section 6038A should not apply to a domestic disregarded entity that is wholly owned by a foreign person. Accordingly, the proposed regulations provided that the exceptions to the record maintenance requirements in § 1.6038A–1(h) and (i) for small corporations and *de minimis* transactions would not apply to these entities. The proposed regulations did not address the additional exception provided in § 1.6038A–2(e)(3), under which a reporting corporation is not required to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code), with respect to a related foreign corporation when a U.S. person that controls the related foreign corporation files a Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, containing required information with respect to reportable transactions between the reporting corporation and the related foreign corporation for the taxable year. Similarly, the proposed regulations did not address the additional exception provided in § 1.6038A–2(e)(4), under which a reporting corporation is not required to file Form 5472 with respect to a related foreign corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation. Upon final consideration of the proposed regulations, the Treasury Department and the IRS have concluded that, consistent with the scope and intent of the proposed regulations, the reporting requirements of the proposed regulations should apply without regard to the exceptions generally applicable under § 1.6038A–2(e)(3) and (4). The exceptions in § 1.6038A–2(e)(3) and (4) are revised accordingly in the final regulations.

Second, to facilitate entities' compliance with the requirements of section 6038A, including the obligation of reporting corporations to file Form 5472, the final regulations provide that these entities have the same taxable year as their foreign owner if the foreign owner has a U.S. return filing obligation. If the foreign owner has no U.S. return filing obligation, then for ease of tax administration, the final regulations provide that the taxable year of these entities is the calendar year unless otherwise provided in forms, instructions, or published guidance.

Third, the Treasury Department and the IRS have concluded that for ease of administration, these regulations should apply to taxable years of entities beginning on or after January 1, 2017, and ending on or after December 13, 2017. The proposed regulations would have applied to taxable years ending on or after the date that is 12 months after the date of publication of the final regulations in the **Federal Register**, without regard to the date on which the taxable year began. This Treasury decision adopts the proposed regulations as so amended and with other minor clarifications for readability.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect a small number of foreign-owned domestic entities that do not themselves otherwise have a U.S. return filing requirement, and that the requirement to file a return for these entities will not impose a significant burden on them. Pursuant to section 7805(f), the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for §§ 1.6038A–1 and 1.6038A–2 to read in part as follows:

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

Section 1.6038A–1 also issued under 26 U.S.C. 6001.

Section 1.6038A–2 also issued under 26 U.S.C. 6001.

* * * * *

Par. 2. Section 1.6038A–0 is amended by adding an entry for § 1.6038A–2(b)(9) to read as follows:

§ 1.6038A–0 Table of contents.

* * * * *

§ 1.6038A–2 Requirement of return.

* * * * *

(b) * * *

(9) Examples.

* * * * *

Par. 3. Section 1.6038A–1 is amended as follows:

1. Add a sentence at the end of paragraph (c)(1).

2. Revise the first sentence of paragraph (h).

3. Revsie the first sentence of paragraph (i)(1).

4. Add a sentence at the end of paragraph (n)(1).

5. Add a sentence at the end of paragraph (n)(2).

The additions and revisions read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(c) * * *

(1) * * * A domestic business entity that is wholly owned by one foreign person and that is otherwise classified under § 301.7701–3(b)(1)(ii) of this chapter as disregarded as an entity separate from its owner is treated as an entity separate from its owner and classified as a domestic corporation for purposes of section 6038A. *See* § 301.7701–2(c)(2)(vi) of this chapter.

* * * * *

(h) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year.* * *

(i) * * *

(1) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary consideration, nonmonetary consideration, and the value of transactions involving less than full consideration) is not more than $5,000,000 and is less than 10 percent of its U.S. gross income. * * *

* * * * *

(n) * * *

(1) * * * However, § 1.6038A–1 as it applies to entities that are reporting corporations as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter applies to taxable years of such reporting corporations beginning after December 31, 2016, and ending on or after December 13, 2017.

(2) * * * Section 1.6038A–2 as it applies to entities that are reporting corporations as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter applies to taxable years of such reporting corporations beginning after December 31, 2016, and ending on or after December 13, 2017.

* * * * *

Par. 4. Section 1.6038A–2 is amended as follows:

1. Revise the second sentence of paragraph (a)(2).

2. Revise paragraph (b)(3)(vii).

3. Remove the word "and" at the end of paragraph (b)(3)(ix).

4. Remove the undesignated paragraph following paragraph (b)(3)(x).

5. Remove the period at the end of paragraph (b)(3)(x) and add "; and" in its place.

6. Add paragraphs (b)(3)(xi) and (b)(9).

7. Add a sentence at the end of paragraph (d).

8. Revise the first sentence of paragraph (e)(3).

9. Revise paragraph (e)(4).

The additions and revisions read as follows:

§ 1.6038A–2 Requirements of return.

(a) * * *

(2) * * * However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) (which, for purposes of section 6038A, includes an

entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) and the transaction—

* * * * *

(b) * * *

(3) * * *

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business), to be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe;

* * * * *

(xi) With respect to an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter, any other transaction as defined by § 1.482–1(i)(7), such as amounts paid or received in connection with the formation, dissolution, acquisition and disposition of the entity, including contributions to and distributions from the entity.

* * * * *

(9) *Examples*. The following examples illustrate the application of paragraph (b)(3) of this section:

Example 1. (i) In year 1, W, a foreign corporation, forms and contributes assets to X, a domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, W contributes funds to X. In year 3, X makes a payment to W. In year 4, X, in liquidation, distributes its assets to W.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, X is disregarded as an entity separate from W. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, X is treated as an entity separate from W and classified as a domestic corporation for purposes of section 6038A. In accordance with paragraphs (a)(2) and (b)(3) of this section, each of the transactions in years 1 through 4 is a reportable transaction with respect to X. Therefore, X has a section 6038A reporting and record maintenance requirement for each of those years.

Example 2. (i) The facts are the same as in *Example 1* of this paragraph (b)(9) except that, in year 1, W also forms and contributes assets to Y, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 1, X and Y form and contribute assets to Z, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, X transfers funds to Z. In year 3, Z makes a payment to Y. In year 4, Z distributes its assets to X and Y in liquidation.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, Y and Z are disregarded as entities separate from each other, W, and X. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, Y, Z and X are treated as entities separate from each other and W, and are classified as domestic corporations for purposes of section 6038A. In accordance with paragraph (b)(3) of this section, each of the transactions in years 1 through 4 involving Z is a reportable transaction with respect to Z. Similarly, W's contribution to Y and Y's contribution to Z in year 1, the payment to Y in year 3, and the distribution to Y in year 4 are reportable transactions with respect to Y. Moreover, X's contribution to Z in Year 1, X's funds transfer to Z in year 2, and the distribution to X in year 4 are reportable transactions with respect to X. Therefore, Z has a section 6038A reporting and record maintenance requirement for years 1 through 4; Y has a section 6038A reporting and record maintenance requirement for years 1, 3, and 4; and X has a section 6038A reporting and record maintenance requirement in years 1, 2, and 4 in addition to its section 6038A reporting and record maintenance described in *Example 1* of this paragraph (b)(9).

* * * * *

(d) * * * In the case of an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter, Form 5472 must be filed at such time and in such manner as the Commissioner may prescribe in forms or instructions.

(e) * * *

(3) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not required to make a return of information on Form 5472 with respect to a related foreign corporation for a taxable year for which a U.S. person that controls the foreign related corporation makes a return of information on Form 5471 that is required under section 6038 and this section, if that return contains information required under § 1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year.* * *

(4) *Transactions with a foreign sales corporation*. A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not required to make a return of information on Form 5472 with respect to a related corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 301.7701–2 is amended by revising the last sentence of paragraph (a) and adding paragraphs (c)(2)(vi) and (e)(9) to read as follows:

§ 301.7701–2 Business entities; definitions.

(a) * * * But see paragraphs (c)(2)(iii) through (vi) of this section for special rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner.

* * * * *

(c) * * *

(2) * * *

(vi) *Special rule for reporting under section 6038A*—(A) *In general*. An entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as an entity separate from its owner and classified as a corporation for purposes of section 6038A if—

(*1*) The entity is a domestic entity; and

(*2*) One foreign person has direct or indirect sole ownership of the entity.

(B) *Definitions*—(*1*) *Indirect sole ownership*. For purposes of paragraph (c)(2)(vi)(A)(*2*) of this section, indirect sole ownership means ownership by one person entirely through one or more other entities disregarded as entities separate from their owners or through one or more grantor trusts, regardless of whether any such disregarded entity or grantor trust is domestic or foreign.

(*2*) *Entity disregarded as separate from its owner*. For purposes of paragraph (c)(2)(vi)(B)(*1*) of this section, an entity disregarded as an entity separate from its owner is an entity described in paragraph (c)(2)(i) of this section.

(*3*) *Grantor trust*. For purposes of paragraph (c)(2)(vi)(B)(*1*) of this section, a grantor trust is any portion of a trust that is treated as owned by the grantor or another person under subpart E of subchapter J of chapter 1 of the Code.

(C) *Taxable year*. The taxable year of an entity classified as a corporation for section 6038A purposes pursuant to paragraph (c)(2)(vi)(A) of this section is—

(*1*) The same as the taxable year of the foreign person described in paragraph (c)(2)(vi)(A)(*2*) of this section, if that foreign person has a U.S. income tax or information return filing obligation for its taxable year; or

(*2*) The calendar year, if paragraph (c)(2)(vi)(C)(*1*) of this section does not apply, unless otherwise provided in forms, instructions, or published guidance.

* * * * *

(e) * * *

(9) *Reporting required under section 6038A*. Paragraph (c)(2)(vi) of this section applies to taxable years of entities beginning after December 31, 2016, and ending on or after December 13, 2017.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: November 15, 2016.

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

(Filed by the Office of the Federal Register on December 12, 2016, at 8:45 a.m.., and published in the issue of the Federal Register for December 13, 2016, 81 F.R. 89849)

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26 CFR 1.367(a)–1, –2; 26 CFR 1.367(d)–1

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

T.D. 9803

Treatment of Certain Transfers of Property to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain transfers of property by United States persons to foreign corporations. The final regulations affect United States persons that transfer certain property, including foreign goodwill and going concern value, to foreign corporations in nonrecognition transactions described in section 367 of the Internal Revenue Code (Code). The regulations also combine certain sections of the existing regulations under section 367(a) into a single section. This document also withdraws certain temporary regulations.

DATES: *Effective date*: These regulations are effective on December 16, 2016.

Applicability date: For dates of applicability, see §§ 1.367(a)–1(g)(5), 1.367(a)–2(k), 1.367(a)–4(b), and 1.367(a)–6(j); 1.367(d)–1(j); and 1.6038B–1(g)(7).

FOR FURTHER INFORMATION CONTACT: Ryan A. Bowen, (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been submitted for review and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-0026.

The collections of information are in § 1.6038B–1(c)(4) and (d)(1). The collections of information are mandatory. The likely respondents are domestic corporations. Burdens associated with these requirements will be reflected in the burden for Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Estimates for completing the Form 926 can be located in the form instructions.

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

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

Background

This document contains final regulations issued under sections 367 and 6038B of the Code. Temporary regulations were published on May 16, 1986 (TD 8087, 51 FR 17936) (the 1986 temporary regulations). Proposed regulations under these sections were published on September 16, 2015 (80 FR 55568) (the proposed regulations). Written comments to the proposed regulations were received, and a public hearing was held on February 8, 2016. All comments are available at www.regulations.gov or upon request.

The proposed regulations generally provided five substantive changes from the 1986 temporary regulations: (1) eliminating the favorable treatment for foreign goodwill and going concern value by narrowing the scope of the active trade or business exception under section 367(a)(3) (ATB exception) and eliminating the exception under § 1.367(d)–1T(b) that provides that foreign goodwill and going concern value is not subject to section 367(d); (2) allowing taxpayers to apply section 367(d) to certain property that otherwise would be subject to section 367(a); (3) removing the twenty-year limitation on useful life for purposes of section 367(d) under § 1.367(d)–1T(c)(3); (4) removing the exception under § 1.367(a)–5T(d)(2) that permits certain property denominated in foreign currency to qualify for the ATB exception; and (5) changing the valuation rules under § 1.367(a)–1T to better coordinate the regulations under sections 367 and 482 (including temporary regulations under section 482 issued with the proposed regulations (see § 1.482–1T(f)(2)(i), TD 9738, 80 FR 55538).

Specifically with regard to the ATB exception, the proposed regulations revised the categories of property that are eligible for the ATB exception so that foreign goodwill and going concern value cannot qualify for the exception. Under the 1986 temporary regulations, all property was eligible for the ATB exception, subject only to five narrowly tailored exceptions. In addition to limiting the scope of the ATB exception, the proposed regulations also implemented changes to the ATB exception that were intended to consolidate various provisions and update the 1986 temporary regulations in response to subsequent changes to the Code.

The proposed regulations did not resolve the extent to which property, including foreign goodwill and going concern value, that is not explicitly enumerated in section 936(h)(3)(B)(i) through (v) (enumerated section 936 intangibles) is described in section 936(h)(3)(B) and therefore subject to section 367(d) or instead is subject to section 367(a) and not eligible for the ATB exception. All property that is described in section 936(h)(3)(B) is referred to at times in this preamble as "section 936 intangibles." Nonetheless, the proposed regulations permitted taxpayers to apply section 367(d) to such property. Under this rule, a taxpayer that has historically taken the position that goodwill and going concern value is not described in section 936(h)(3)(B) could apply section 367(d) to such property.

These regulations generally finalize the proposed regulations, as well as portions of the 1986 temporary regulations, as amended by this Treasury decision. Although minor wording changes have been made to certain aspects of those portions of the 1986 temporary regulations, the final regulations are not intended to be interpreted as making substantive changes to those regulations. Further explanation of the proposed regulations can be found in the Explanation of Provisions section of the preamble to the proposed regulations. That Explanation of Provisions section is hereby incorporated as appropriate into this preamble.

Summary of Comments and Explanation of Revisions

Nineteen sets of comments were received in response to the proposed regulations, and three speakers presented at the public hearing. In drafting the final regulations, the Treasury Department and the IRS carefully considered all of the comments received.

This section of the preamble is comprised of five parts that discuss, in turn, the comments received with respect to (i) the elimination of the favorable treatment of transfers of foreign goodwill and going concern value, (ii) the useful life of property for purposes of applying section 367(d), (iii) the applicability date of the final regulations, (iv) the qualification of property denominated in foreign currency for the ATB exception, and (v) other issues.

I. *Foreign Goodwill and Going Concern Value*

A. *Overview*

The Treasury Department and the IRS received a variety of comments in response to the proposed elimination of the favorable treatment of transfers of foreign goodwill and going concern value provided by the 1986 temporary regulations. Two comments supported the treatment of foreign goodwill and going concern value under the proposed regulations. One comment asserted that allowing intangible property to be transferred outbound in a tax-free manner is inconsistent with the policies of section 367. Other comments acknowledged the concerns about tax avoidance described in the preamble to the proposed regulations, but requested specific exceptions for transfers of foreign goodwill and going concern value in situations that the comments asserted were not abusive. Other comments disagreed more fundamentally with the approach taken and stated that the Treasury Department and the IRS should withdraw the proposed regulations entirely. Many of these comments asserted that eliminating the favorable treatment of transfers of foreign goodwill and going concern value would be an invalid exercise of regulatory authority under section 367.

Overall, the comments indicated widely divergent understandings of the nature of foreign goodwill and going concern value. Accordingly, the comments also widely differed in their proffered justifications for an exception for foreign goodwill and going concern value and in the recommended contours of an appropriate exception. The variance in the comments regarding these fundamental issues highlights the difficulty of permitting some form of favorable treatment for foreign goodwill and going concern value while preventing tax avoidance.

As described in greater detail in Part I.B of this Summary of Comments and Explanation of Revisions, and consistent with the proposed regulations, the final regulations eliminate the favorable treatment of foreign goodwill and going concern value contained in the 1986 temporary regulations. The Treasury Department and the IRS have determined that this change is necessary to carry out the tax policy embodied in section 367 in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the IRS to administer the rules and monitor compliance, and the overall integrity of the federal tax system. In particular, the final regulations are consistent with the policy and intent of the statute, which does not reference foreign goodwill or going concern value, and with Congress' expectation that the Secretary would exercise the regulatory authority under section 367 to require gain recognition when property is transferred offshore under circumstances that present a potential for tax avoidance.

B. *Interpretation of section 367*

1. Summary of Comments Challenging Authority

The Treasury Department and the IRS received numerous comments addressing the proposed regulations' treatment of foreign goodwill and going concern value. One comment asserted that the ATB exception must apply to transfers of foreign goodwill and going concern value, because (i) foreign goodwill and going concern value is not a section 936(h)(3)(B) intangible, and so is subject to section 367(a) rather than section 367(d), and (ii) the legislative history indicates that Congress expected that the transfer of such value should be tax-free. The comment further asserted that, because goodwill and going concern value is inextricably linked to the conduct of an active trade or business, the ATB exception necessarily encompasses such transfers. Other comments asserted that finalizing the proposed regulations would represent an unreasonable exercise of regulatory authority because the proposed regulations eliminated the favorable treatment of all transfers of purported foreign goodwill and going concern value, rather than just those transfers that the Treasury Department and the IRS determine are abusive.

Several comments asserted that the proposed regulations are inconsistent with Congressional intent and cited statements from the legislative history to section 367, such as the following:

> The committee does not anticipate that the transfer of goodwill or going concern value developed by a foreign branch to a newly organized foreign corporation will result in abuse of the U.S. tax system. . . . The committee contemplates that the transfer of goodwill or going concern value developed by a foreign branch will be treated under [the exception for transfers of property for use in the active conduct of a foreign trade or business] rather than a separate rule applicable to intangibles.

H.R. Rep. No. 98–432, pt. 2, at 1317–19 (1984).

Comments also asserted that it is inappropriate to use regulatory authority under section 367 to address transfer pricing concerns under section 482.

2. Response

The Treasury Department and the IRS do not agree with the foregoing comments. Section 367 generally provides for income recognition on transfers of property to a foreign corporation in certain transactions that otherwise would qualify for nonrecognition. While section 367(a)(3)(A) includes a broad exception to this general rule for property used in the active conduct of a trade or business outside of the United States, grants of rulemaking authority in section 367(a)(3)(A) and (B) authorize the Secretary to exercise administrative discretion in determining the property to which nonrecognition treatment applies under the ATB exception. Moreover, section 367(d) reflects a clear policy that income generally should be recognized with respect to transfers of section 936 intangibles. The 1984 legislative history to section 367 explains that Congress intended for the Secretary to use his "regulatory authority to provide for recognition in cases of transfers involving the *potential* of tax avoidance." S. Rep. No. 98–169, at 364 (1984) (emphasis added). The Treasury Department and the IRS have determined that the proposed regulations and these final regulations are consistent with that intention and the authority granted to the Secretary under section 367, based on the fact that the statute does not refer to foreign goodwill and going concern value and the determination that, as described in the preamble to the proposed regulations, the favorable treatment of foreign goodwill and going concern value contravenes the policy that income generally should be recognized with respect to transfers of section 936 intangibles. The remainder of this section discusses subsequent changes to the regulatory, statutory, and market context in which the 1984 legislative history was drafted, in order to reconcile the statements in the 1984 legislative history expressing the expectation that an exception for foreign goodwill and going concern value would not result in abuse with the IRS's contrary experience administering the statute during the intervening years.

a. The 1980s and early 1990s

The Treasury Department and the IRS considered the 1984 legislative history to section 367 in issuing the 1986 temporary regulations. The 1986 temporary regulations gave effect to the statements in the legislative history indicating that Congress anticipated that the transfer of goodwill and going concern value developed by a foreign branch to a newly organized foreign corporation generally would not result in abuse of the U.S. tax system, and, on that basis, that such transfers would benefit from nonrecognition treatment. As a result, the 1986 temporary regulations provide nonrecognition treatment for foreign goodwill and concern value. The 1986 temporary regulations did not provide a conceptual definition of foreign goodwill and going concern value but, in effect, provided a rule for valuing it by describing foreign goodwill and going concern value as the residual value of a business operation conducted outside of the United States after all other tangible and intangible assets have been identified and valued. § 1.367(a)–1T(d)(5)(iii).

The Treasury Department and the IRS also took into account the 1984 legislative history in issuing the proposed regulations and these final regulations. In doing so, the Treasury Department and the IRS also considered that, in amending section 367 in 1984, Congress did not choose to statutorily mandate any particular treatment of foreign goodwill and going concern value and instead delegated broad authority to the Secretary to promulgate regulations under section 367 to carry out its purposes in this complex area. The Treasury Department and the IRS further considered that the legal and factual context in which the 1984 legislative history was drafted has changed significantly over the last 32 years.

Before 1993, goodwill and going concern value was not amortizable. As a result, in 1984, much of the case law and policy debate regarding goodwill and going concern value involved sales of business operations at arm's length between unrelated parties, where the taxpayer attempted to minimize the value of goodwill in order to maximize the value of amortizable intangibles. See, for example, *Newark Morning Ledger Co. v. United States*, 507 U.S. 546 (1993). In 1989, the General Accounting Office analyzed data with respect to unresolved tax cases involving purchased intangibles and found that, presumably in order to minimize the amount of unamortizable goodwill, taxpayers had identified 175 different types of customer-based intangibles that were distinct from goodwill. See General Accounting Office, Report to the Joint Committee on Taxation: Issues and Policy Proposals Regarding Tax Treatment of Intangible Assets, at 3 (Aug. 1991).

b. Statutory and regulatory changes

In 1993, Congress addressed these valuation disputes between taxpayers and the IRS by enacting section 197, which, similar to the approach taken by the proposed regulations, did not directly address the underlying disagreement about the relative size of goodwill but substantially reduced the stakes of the disagreement. That is, by generally providing for the amortization of goodwill over 15 years, the enactment of section 197 generally eliminated the incentive that existed in 1984, when Congress enacted section 367(d) in its present form, for taxpayers to argue that goodwill has relatively minor value.

Other law changes since 1984 have increased the relevance of section 367(d) and the incentive for taxpayers to overstate the value attributable to goodwill and going concern value. Before 1997, amounts received under section 367(d) were treated as ordinary income from U.S. sources. In 1997, Congress amended section 367(d)(2)(C) to provide that amounts received under section 367(d) are treated as ordinary income that is sourced in the same manner as a royalty, and thus potentially as from sources outside the United States. Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788. The 1997 amendments increased the relevance of section 367(d) and the exception for foreign goodwill and going concern value because, before 1997, the consequences under the foreign tax credit limitation of the treatment of section 367(d) deemed royalties as U.S. source income represented a substantial disincentive for taxpayers to structure transactions in a way that would be subject to section 367(d).

Additionally, the so-called "check-the-box" regulations of § 301.7701–3, published December 18, 1996 (TD 8697, 61 FR 66584), and Congress's enactment in 2006 of the subpart F "look-thru" rule in section 954(c)(6) (Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222, 120 Stat. 345), increased the potential benefit to taxpayers from transferring high-value intangibles offshore by reducing obstacles to redeploying cash earned in overseas operations among foreign affiliates without incurring U.S. tax. Both of these changes also facilitate, in certain circumstances, the ability of foreign subsidiaries to license transferred intangibles to affiliates without incurring subpart F income.

Finally, on January 5, 2009, the Treasury Department and the IRS issued temporary regulations under section 482 (TD 9441, 74 FR 340) related to cost sharing arrangements (subsequently finalized at TD 9568, 76 FR 80082 (Dec. 22, 2011)). The 2009 cost sharing regulations, in particular the supplemental guidance in § 1.482–7T(g) on transfer pricing methods applicable in determining the arm's length price for a platform contribution transaction or PCT (so-called "buy-in payments"), were intended, in part, to address inappropriate income shifting from intangible transfers under the prior cost sharing regulations. Although the prior cost sharing regulations did not provide any favorable treatment for foreign goodwill and going concern value, in the experience of the IRS, taxpayers took positions under those regulations that allowed a domestic cost sharing participant to transfer intangibles to a foreign cost sharing participant for development under a cost sharing arrangement without fully compensating the domestic cost sharing participant for the value of the transferred intangibles. It is also the experience of the IRS that the 2009 cost sharing regulations limited taxpayers' ability to use PCTs in cost sharing arrangements to shift high value intangibles offshore without appropriate compensation, thereby increasing the relative appeal of transferring intangibles in a transaction subject to section 367. Thus, taxpayers began using transactions subject to section 367 to transfer intangibles intended for development under a cost sharing arrangement rather than as part of a PCT.

c. Changing markets for intangibles

Moreover, since Congress enacted section 367(d) in its current form in 1984, the relative importance of intangibles in the economy and in the profitability of business has increased greatly. According to a joint report issued by the Economic and Statistics Administration and the U.S. Patent and Trademark Office, "IP use permeates all aspects of the economy with increasing intensity and extends to all parts of the U.S." Justin Antonipillai, Economics and Statistics Administration, & Michelle K. Lee, U.S. Patent and Trademark Office, Intellectual Property and the U.S. Economy, at p.30 (2016). This growing importance is reflected in the significant increase in the portion of business values attributable to intangible assets in the years since 1984, with one study indicating that intangibles accounted for only 32 percent of the market value of the S&P 500 in 1985, but accounted for 84 percent by 2015. Annual Study of Intangible Asset Market Value from Ocean Tomo, LLC (Mar. 4, 2015, 12:00AM), http://www.oceantomo.com/2015/03/04/2015-intangible-asset-market-value-study/. Growth in the share of business values attributable to section 936 intangibles during this period, together with the statutory and regulatory changes discussed in the preceding paragraphs, have increased the incentives for taxpayers to transfer such valuable intangibles to related offshore affiliates in transactions subject to section 367(d) and to misattribute intangible value from enumerated section 936 intangibles to foreign goodwill and going concern value in the context of such transactions.

d. The potential for abuse

Since 1984, taxpayers have reversed their positions regarding the significance of goodwill and going concern value in response to the enactment of sections 197 and 367(d), and now commonly assert that such value constitutes a large percentage – even the vast majority – of an enterprise's value. The IRS's experience administering section 367(d) has, once again, highlighted the abuse potential that arises from the need to distinguish value attributable to nominally distinct intangibles that are used together in a single trade or business. Specifically, the uncertainty inherent in distinguishing between value attributable to goodwill and going concern value and value attributable to other intangible property makes any exception to income recognition for the outbound transfer of goodwill and going concern value unduly difficult to administer and prone to tax avoidance. Of course, any rule that provides for the tax-free transfer of one type of property, while the transfer of other types of property remains taxable, provides an incentive to improperly allocate value away from the taxable property and onto the tax-free property. This problem is acute, however, in cases involving the offshore reorganization of entire business divisions that include high-value, interrelated intangibles, because goodwill and going concern value are particularly difficult to distinguish (perhaps are even indistinguishable) from the enumerated section 936 intangibles. See, for example, *International Multifoods Corp. v. Commissioner*, 108 T.C. 25, 42 (1997) (noting that it "is well established that trademarks embody goodwill"). See also Joint Committee on Taxation, Present Law and Background Related to Possible Income Shifting and Transfer Pricing, (JCX-37-10) July 20, 2010, at 110 (noting that unique intangible property is difficult to value because it is rarely, if ever, transferred to third parties).

e. Legislative intent and the broad grant of authority to limit potential abuses

These statutory, regulatory, and market developments since Congress amended section 367(d) in 1984, as well as the experience of the IRS in administering section 367 over that period, inform the manner in which the Treasury Department and the IRS seek to give effect to the intent of Congress in this complex area of law. As a starting point, the Treasury Department and the IRS observe that the statutory grants of authority in section 367(a) and (d), coupled with the absence of any specific statutory protection for transfers of goodwill and going concern value, form the basis for the broad authority of the Treasury Department and the IRS to design the appropriate parameters for the taxation of outbound transfers. The 1984 legislative history expressed an expectation that outbound transfers of foreign goodwill and going concern value would not lead to abuse of the U.S. tax system and, on the basis of that expectation, anticipated that the Secretary would exercise the regulatory authority under section 367 in a manner that would allow taxpayers to transfer foreign goodwill and going concern value outbound without current U.S. tax. The legislative history also explains that Congress expected the Secretary to use the "regulatory authority to provide for recognition in cases of transfers involving the potential of tax avoidance." Accordingly, the administrative discretion to determine the contours of nonrecognition treatment must be exercised in light of the income recognition objectives of the statute and informed by the IRS's experience in administering the exception.

The Treasury Department and the IRS have determined that the premise of the expectation noted in the legislative history that an exception to recognition treatment would apply to foreign goodwill and going concern value—namely, that outbound transfers of foreign goodwill and going concern value would not lead to abuse—is inconsistent with the experience of the IRS in administering section 367(d), and consequently no longer supports such an exception. Rather, based on the IRS's experience over the past three decades, the Treasury Department and the IRS have determined that the favorable treatment of foreign goodwill and going concern value has interfered with the application of the general rule in section 367(d) that requires income recognition upon the outbound transfer of section 936 intangibles due to the inherent difficulty of distinguishing value attributable to goodwill and going concern value from value attributable to enumerated section 936 intangibles, coupled with taxpayer efforts to maximize the value allocated to goodwill and going concern value.

The Treasury Department and the IRS also observe that the 1984 legislative history explains that the 1984 amendments to section 367(d) were made in response to challenges the IRS faced in administering the prior regime. That regime required a taxpayer to clear its purpose for transferring property offshore with the IRS. See H.R. Rep. 98-432, pt. 2, at 1315. The 1984 reworking of section 367 was intended to promote administrability by making the analysis of outbound transfers more objective. Other passages from the legislative history show that the general purpose of the amendments to section 367 was to close "serious loopholes," and that the 1984 revisions were intended to strengthen the application of that section. *Id.*

Accordingly, the Treasury Department and the IRS do not view the legislative history as mandating an exception for transfers of goodwill and going concern value developed by a foreign branch, or as indicating that Congress anticipated, or would have condoned, the extent of the claims regarding foreign goodwill and going concern value that the IRS has in fact encountered. To the contrary, the Treasury Department and the IRS have concluded that the statutory purpose of the income recognition provisions in section 367(d) is incompatible with the favorable treatment of foreign goodwill and going concern value reflected in the 1986 temporary regulations. In particular, taking into account the statutory, regulatory, and market developments since 1984 and the experience of the IRS in administering section 367(d) under the 1986 temporary regulations, the Treasury Department and the IRS have determined that, at this juncture, the approach most consistent with the intent of Congress in 1984, including the directive to use regulatory authority "to provide for recognition in cases of transfers involving the potential of tax avoidance," is to remove the favorable treatment for foreign goodwill and going concern value in the 1986 temporary regulations.

The Treasury Department and the IRS also disagree with the notion expressed in comments that the proposed regulations inappropriately attempt to solve section 482 transfer pricing problems under the authority of section 367. Congress made clear in adding the commensurate with income language to both sections 367(d) and 482 in 1986 that the provisions are closely related, and it is within the authority of the Treasury Department and the IRS to consider valuation concerns in administering section 367. Section 1231 (e)(1) and (2) of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2562–3.

For these reasons, the Treasury Department and the IRS disagree with comments asserting that the Treasury Department and the IRS lack the authority to eliminate the favorable treatment that applied to foreign goodwill and going concern value under the 1986 temporary regulations.

C. *Other comments suggesting that some favorable treatment for transfers of foreign goodwill and going concern value be maintained*

Several comments generally favored retaining both the nonrecognition treatment for foreign goodwill and going concern value and its current measurement as the residual value of a foreign business operation. Other comments, however, acknowledged the problems associated with the residual valuation approach but supported an exception determined on some other basis. Some of these comments included suggestions for other ways to define goodwill and going concern value and for determining the amount that should qualify for nonrecognition. The Treasury Department and the IRS have determined that none of the comments provided a sufficiently administrable approach that would reliably ensure that section 367 applies with respect to the full value of all section 936 intangibles.

1. Local Pressure to Incorporate; Industry-Based Exception

The proposed regulations specifically requested comments on a potential exception that would apply to situations where there is limited potential for abuse. As an example, the comment solicitation posited the incorporation, in response to regulatory pressure or compulsion, of a financial services business that previously had operated as a branch in another country. The Treasury Department and the IRS received several comments in response to this solicitation.

Several comments suggested that the final regulations provide an exception that would continue to permit favorable treatment of transfers of foreign goodwill and going concern value that occur as a result of the incorporation of a branch in a country that exerts regulatory pressure (either implicit or explicit) upon the U.S. transferor to conduct its operations in that country in corporate form. According to these comments, the incorporation of a branch in these circumstances is not motivated by tax considerations but rather occurs in order to comply with local law or regulations.

The regulations under section 367 provide that certain property is deemed to be transferred for use in the active conduct of a trade or business outside of the United States when the transfer is either legally required by the local foreign government as a necessary condition of doing business or is compelled by a genuine threat of immediate expropriation by the local foreign government. Section 367 and the regulations thereunder do not, however, provide exceptions to the requirement to recognize income or gain when assets that are not eligible for the ATB exception, such as section 936 intangibles and assets described in section 367(a)(3)(B), are transferred in this circumstance. Accordingly, the policy of section 367 and the regulations thereunder is not to expand on the types of assets that are eligible for the ATB exception in this circumstance. Moreover, the mere fact that a taxpayer is compelled or pressured to incorporate its branch does not mean that the taxpayer has any less incentive to reduce the tax consequences of such incorporation by adopting the aggressive valuation positions that the proposed regulations were intended to prevent. Therefore, the final regulations do not provide a special exception to continue the favorable treatment of foreign goodwill and going concern value in this circumstance. Notably, some taxpayers that are pressured to incorporate branch operations in these circumstances can avoid being subject to section 367 by incorporating the branch using an eligible entity described in § 301.7701–2 that could elect to be treated as a disregarded entity for U.S. federal income tax purposes.

Several comments recommended an exception for transfers of foreign goodwill and going concern value by taxpayers in certain industries, such as banking and finance, life insurance, and industries that primarily provide services to third parties, asserting that such businesses do not possess the types of highly valuable intangibles about which they believe the Treasury Department and the IRS are concerned. The comments did not provide any basis, however, for the Treasury Department and the IRS to conclude that taxpayers in particular industries consistently lack valuable intangibles of the kind listed in section 936(h)(3)(B), even though the prevalence of specific types of intangibles may differ across industries. Additionally, the ability and incentive to allocate value away from other intangibles, such as trademarks, and toward goodwill or going concern value is not limited to particular industries. As a general matter, the Treasury Department and the IRS attempt, to the extent possible, to avoid issuing guidance based on industry classifications that are not clearly and closely tied to specific tax policy concerns. Accordingly, the final regulations do not provide any industry-specific exceptions.

Based on these comments, the Treasury Department and the IRS considered whether it would be possible to provide an exception for tax-free transfers of foreign goodwill and going concern value developed by a foreign branch that did not possess or otherwise benefit from the use of any highly valuable enumerated section 936 intangibles. If the absence of such highly valuable intangibles could be reliably determined, the concerns regarding the potential to attribute value away from such intangibles and toward goodwill and going concern value would be mitigated. However, such an exception would require the development and administration of standards to determine whether any enumerated section 936 intangible was highly valuable, an exercise that would be as difficult (and in many circumstance would be no different) than the exercise of distinguishing value attributable to foreign goodwill and going concern value from value attributable to other intangibles transferred together with it. Such an exception also would require a careful examination of the particular facts of a transferor's assets and business as a threshold matter to confirm that valuable enumerated section 936 intangibles are not made available for the benefit of the transferee foreign corporation, either through a separate but related transfer to the foreign corporation or through a service provided to the foreign corporation using such intangibles. Accordingly, the Treasury Department and the IRS did not adopt this potential exception in these final regulations.

2. Foreign Branch Exception

Several comments suggested maintaining the favorable treatment of foreign goodwill and going concern value in situations in which section 367 applies to the incorporation of a long-standing foreign branch or a branch that conducts an active foreign business operation. The Treasury Department and the IRS acknowledge that conditioning favorable treatment for foreign goodwill and going concern value on the presence of a robust foreign branch would increase the likelihood that the business at issue has substantive foreign operations. However, in situations where the exception would continue to apply, the requirement of a robust foreign branch would not address the potential for tax avoidance that motivated the proposed regulations when value must be allocated between foreign goodwill and going concern value, on the one hand, and enumerated section 936 intangibles, on the other hand. Thus, the final regulations do not adopt the comments suggesting an exception for goodwill and going concern value developed by a foreign branch that is subsequently incorporated because, when applicable, such an exception would not address the administrative difficulties in identifying and separately valuing the property that is and is not eligible for the exception, and therefore would be insufficient to prevent the potential for tax avoidance.

3. New Rules for Valuing Foreign Goodwill and Going Concern Value

Other comments suggested that the regulations provide new rules for determining foreign goodwill and going concern value, such that an exception for such transfers could be provided that would be less susceptible to the abuses described in the preamble to the proposed regulations. That is, the comments suggested determining goodwill and going concern value using an approach that differs from that in existing § 1.367(a)–1T(d)(5)(iii), which treats it as the residual after other intangibles are valued.

Several of these comments suggested determining foreign goodwill and going concern value by classifying intangibles as routine and non-routine and permitting value attributable to routine intangibles to be transferred tax-free under an exception. One comment asserted that goodwill is relatively easy to value as compared to certain enumerated section 936 intangibles but did not explain why or how goodwill is more easily valued or how to reliably allocate value between goodwill and enumerated section 936 intangibles. Another comment asserted that goodwill can be valued based on the premise that it is the kind of asset that enables an existing business to produce "routine" or "normal" operating profits or cash flow during the period that a new business would be assembling its assets and workforce and attracting a customer base, but the comment did not explain how to determine "routine" or "normal" operating profits.

Another comment recommended determining foreign goodwill and going concern value using a formulaic approach based on sales and general and administrative expenses, asserting that routine expenses for operational costs and compensation are closely associated with the business activities that give rise to goodwill and going concern value. The comment did not provide any support for this premise. As a general matter, cost-based methods (in comparison with market-based and income-based methods) are not a reliable means of valuing intangible property because the value of intangible property does not necessarily bear any predictable relationship to the costs of developing the property. The comment suggesting a cost-based approach did not demonstrate that determining goodwill and going concern value in the section 367(d) context is a situation where costs are a reliable measure of value (regardless of whether goodwill and going concern value are section 936(h)(3)(B) intangibles). Accordingly, the Treasury Department and the IRS have determined that a rule that determined foreign goodwill and going concern value based on certain expenses would be inappropriate.

Another comment proposed, for branches incorporated in a jurisdiction with which the United States has an income tax treaty in effect, using the earnings before interest, taxes, depreciation, and amortization of the branch as reported to foreign tax authorities as reliable data on which to base a valuation. An exception based on information reported to a foreign country's tax authority, which may be based on that jurisdiction's generally accepted accounting standards, does not address the concerns expressed by the Treasury Department and the IRS in the preamble to the proposed regulations. Most significantly, the comment does not explain how this information would be useful in determining the value of foreign goodwill and going concern value or distinguishing value attributable to enumerated section 936 intangibles from that of other property, nor have the Treasury Department and the IRS been able to identify how it would be useful. Accordingly, this recommendation has not been adopted.

In summary, none of the proposed approaches for more directly valuing foreign goodwill and going concern value offer a principled and administrable basis for allocating value between foreign goodwill and going concern value that would be subject to an exception and other intangibles that would not. The Treasury Department and the IRS therefore concluded that the proposed approaches would not provide a meaningful improvement over the residual value approach in the 1986 temporary regulations as a conceptual or administrative matter.

4. Formulaic Caps on Foreign Goodwill and Going Concern Value

Several comments suggested that the favorable treatment for transfers of foreign goodwill and going concern value could be maintained while addressing the concerns that prompted the issuance of the proposed regulations by capping the amount that can qualify for the exception, either on a non-rebuttable basis or in the absence of a ruling. For example, one comment suggested that the excepted amount should not exceed 25 percent of the branch's net enterprise value, unless a ruling is obtained from the IRS. The comment asserted that 25 percent represents a modest portion of a branch's value that is likely to be attributable to branch goodwill and going concern value. Another comment suggested that the excepted amount should not exceed 50 percent of the total value of the assets transferred to the foreign corporation. Although such formulaic caps would limit the potential tax avoidance from improperly attributing value from enumerated section 936 intangibles to foreign goodwill and going concern value that is eligible for an exception, the amount excepted under such an approach would still potentially reflect value properly attributable to enumerated section 936 intangibles. That is, with respect to amounts claimed below the cap, a formulaic cap would not relieve the IRS of the need to distinguish foreign goodwill and going concern value from enumerated section 936 intangibles, a key challenge that motivated the approach of the proposed regulations. Moreover, the Treasury Department and the IRS have determined that the discretionary ruling practice proposed by one comment would require an onerous commitment of IRS resources (which the comment acknowledged are constrained), and, without detailed procedures for both identifying and valuing foreign goodwill and going concern value, would simply accelerate the disputes that occur under the 1986 temporary regulations. As a result, the final regulations do not adopt the recommendations to use a formulaic cap to limit the amount of foreign goodwill and going concern value.

5. Professional Services Exception

One comment stated that U.S. citizens may conduct professional services outside the United States as sole practitioners, or in partnership with other practitioners, and observed that the incorporation of such a business would entail a section 351 contribution subject to section 367 (assuming the transferee entity was classified as a corporation for U.S. federal income tax purposes). According to the comment, because any goodwill in such a scenario would relate to foreign customers and a foreign business or professional license, there could be no abuse warranting taxation under section 367.

The Treasury Department and the IRS do not agree that the outbound transfer of value developed in such cases will necessarily not result in abuse of the U.S. tax system. The potential for abuse in a transfer subject to section 367 arises not just from the possibility that value associated with U.S. customers would be denominated as foreign goodwill, but also from the fundamental difficulty in reliably distinguishing value attributable to enumerated section 936 intangibles from value attributable to other intangibles, an issue that is no different in the professional services context. Therefore, the final regulations do not adopt this comment.

6. Joint Venture Exception

One comment proposed maintaining the favorable treatment of foreign goodwill and going concern value for transfers to joint venture companies, particularly cases in which the U.S. transferor is going into business with one or more unrelated foreign parties (third parties) and in which the U.S. transferor's interest in the joint venture is equal to or less than 50 percent. According to the comment, the U.S. transferor in this situation has a financial incentive to segregate its intangibles contributed to the joint venture from its other property. The presence of a third party, however, would not necessarily reduce the U.S. transferor's incentive to attribute value to foreign goodwill and going concern value, rather than to enumerated section 936 intangibles, in order to minimize the tax consequences of the transfer, since such a distinction may be irrelevant to the third party. Accordingly, the final regulations do not adopt this proposal.

D. *Classifying foreign goodwill and going concern value as subject to section 367(a) or (d)*

Several comments requested that the Treasury Department and the IRS address whether goodwill and going concern value should be characterized as a section 936(h)(3)(B) intangible, and thus subject to section 367(d), or instead as property subject to section 367(a). Comments also requested that the regulations provide certainty to taxpayers that have taken the position that goodwill and going concern value is not described in section 936(h)(3)(B) by providing that such taxpayers will be permitted to treat goodwill and going concern value as property subject to section 367(a) rather than section 367(d).

As discussed in the preamble to the proposed regulations, the Treasury Department and the IRS acknowledge that taxpayers have taken different positions regarding the scope of section 936(h)(3)(B) and that the issue is more significant following the elimination of the favorable treatment for foreign goodwill and going concern value. Any enumerated section 936 intangible, and any item similar to such specifically enumerated intangibles, is subject to the regime provided by section 367(d). The Treasury Department and the IRS have determined that it would be inconsistent with the policy underlying section 367(d) to permit intangible property that is described in section 936(h)(3)(B) to be subject to section 367(a). Accordingly, the Treasury Department and the IRS have determined that it is appropriate to retain the approach provided in the proposed regulations, which allows taxpayers to apply section 367(d) to certain property that otherwise would be taxed under section 367(a) but which continues to require taxpayers to apply section 367(d) to all property described in section 936(h)(3)(B). Because the identification of items that are neither explicitly listed in section 936(h)(3)(B)(i) through (v) nor explicitly listed as potentially qualifying for the ATB exception generally will require a case-by-case functional and factual analysis, the final regulations do not address the characterization of such items as similar items (within the meaning of section 936(h)(3)(B)(vi)) or as something else. In general, potential rules under section 367 for identifying and valuing transferred property are beyond the scope of these final regulations.

II. *Useful Life*

The proposed regulations eliminated the 20-year limitation on useful life for intangible property subject to section 367(d) that was included in § 1.367(d)–1T(c)(3), because of concerns that the limitation results in less than all of the income attributable to transferred intangible property being taken into account by the U.S. transferor. In the preamble to the proposed regulations, the Treasury Department and the IRS solicited comments on how to simplify the administration of section 367(d) inclusions for property with a very long useful life in the absence of the 20-year limitation. In response to this comment solicitation, several comments requested that the final regulations restore the 20-year limitation on useful life because it promotes administrability for both taxpayers and the IRS.

After considering the comments received, the Treasury Department and the IRS agree that a 20-year limitation on inclusions may promote administrability for both taxpayers and the IRS in cases where the useful life of the transferred property is indefinite or is reasonably anticipated to exceed twenty years. Accordingly, in such cases, the final regulations provide that taxpayers may, in the year of transfer, choose to take into account section 367(d) inclusions only during the 20-year period beginning with the first year in which the U.S transferor takes into account income pursuant to section 367(d). However, the Treasury Department and the IRS have determined that this optional limitation should not affect the present value of all amounts included by the taxpayer under section 367(d). Accordingly, the final regulations specifically require a taxpayer that chooses to limit section 367(d) inclusions to a 20-year period to include, during that period, amounts that reasonably reflect amounts that, in the absence of the limitation, would be required to be included over the useful life of the transferred property following the end of the 20-year period. This requirement is consistent with the requirement in section 367(d) to include amounts that are commensurate with the income attributable to the transferred intangible during its full useful life, without limitation. The requirement of the final regulations that inclusions during the limited 20-year period begin in the first year in which in which the U.S transferor takes into account income pursuant to section 367(d) reflects the possibility of delays between the year the intangible property is transferred and the first year in which exploitation of the transferred property results in taxable income being earned by the transferee and included under section 367(d) by the transferor.

One comment also suggested that the IRS be precluded from making commensurate-with-income adjustments for taxable years beginning more than 20 years after the outbound transfer. In response to this comment, the final regulations provide that, if a taxpayer chooses to limit inclusions under section 367(d) to a 20-year period, no adjustments will be made for taxable years beginning after the conclusion of the 20-year period. Thus, after the statute of limitations expires for taxable years during the 20-year period, a taxpayer will have no further section 367(d) inclusions as a result of the Commissioner's examination of taxable years that begin after the end of the 20-year period. However, consistent with the commensurate-with-income principle, for purposes of determining whether income inclusions during the 20-year period are commensurate with the income attributable to the transferred property, and whether adjustments should be made for taxable years during that period while the statute of limitations for such taxable years is open, the Commissioner may take into account information with respect to taxable years after that period, such as the income attributable to the transferred property during those later years.

The final regulations revise the definition of useful life to provide that useful life includes the entire period during which exploitation of the transferred intangible property is reasonably anticipated to affect the determination of taxable income, in order to appropriately account for the fact that exploitation of intangible property can result in both revenue increases and cost decreases. A comment asserted that including use in subsequently developed intangibles within the useful life of the transferred intangible property would be too difficult to administer and was not consistent with the arm's length standard. The Treasury Department and the IRS disagree with this comment. The value of many types of intangible property is derived not only from use of the intangible property in its present form, but also from its use in further development of the next generation of that intangible and other property. For example, if a software developer were to sell all of its copyright rights in its software to an unrelated party, and the copyright rights are expected to derive value both from the exclusive right to use the current generation computer code to make and sell current generation software products and from the exclusive right to use the current generation code in the development of other versions of the software, which will then be used to make and sell future generation software products, the software developer would expect to be compensated for the latter right. That is, if the software has value in developing a future generation of products, the software developer would not ignore the value of the use of the software in future research and development and hand over those rights free of charge, and an uncontrolled purchaser would be willing to compensate the developer to obtain such rights.

III. *Applicability Date*

Several comments requested that the final regulations apply to transfers occurring after their date of publication, and not relate back to the date the proposed regulations were issued. These comments asserted that the proposed regulations change long-standing law in a way that would prejudice taxpayers that had arranged their business operations based on the 1986 temporary regulations. Others speculated that the final regulations might deviate from the proposed regulations to such an extent that substantial confusion would result for taxpayers attempting to determine their tax results in the interim period before the final regulations were published. Finally, one comment asserted that an applicability date relating back to the proposed regulations would violate the Administrative Procedure Act (APA), specifically 5 U.S.C. § 553, which provides that the effective date of certain final regulations must be at least 30 days after their date of publication.

After considering these comments, the Treasury Department and the IRS have determined that the proposed applicability date, under which the final regulations would apply to transfers occurring on or after September 14, 2015, should be retained. The proposed regulations were issued to curtail the potential for abuse that exists under the 1986 temporary regulations from treating value that should be attributed to enumerated section 936 intangibles instead as exempt foreign goodwill or going concern value. The proposed effective date was intended to prevent taxpayers from using the time while the proposed regulations were pending to accelerate transfers subject to section 367 in order to take abusive positions under the 1986 temporary regulations before the finalization of the proposed regulations.

The Treasury Department and the IRS have statutory authority to issue regulations applicable at least as of the date the proposed regulations were filed with the Federal Register. The pre-1996 version of section 7805(b)—which governs regulations related to statutory provisions enacted before July 30, 1996, such as section 367—provides express retroactive rulemaking authority by stating that the Secretary may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect. Section 7805(b) (1995). Because section 7805(b) is the more specific statute, it controls over the general notice requirements of 5 U.S.C. § 553. See, for example, *Redhouse v. Commissioner*, 728 F.2d 1249, 1253 (9th Cir. 1984); *Wing v. Commissioner*, 81 T.C. 17, 28–30 & n.17 (1983).

Finally, the Treasury Department and the IRS disagree with the comment that differences between the proposed and final regulations may create confusion. The final regulations are a logical outgrowth of the proposed regulations in light of the comments received and their consideration by the Treasury Department and the IRS. In particular, the final regulations do not differ from the proposed regulations with respect to the elimination of the favorable treatment for transfers of foreign goodwill and going concern value. Furthermore, a transfer of property that is subject to recognition treatment under section 367 under the final regulations would also have been subject to such treatment under section 367 under the proposed regulations.

For these reasons, the final regulations generally apply to transfers occurring on or after September 14, 2015, the date the proposed regulations were filed with the Federal Register, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–2 that are filed on or after September 14, 2015.

IV. *Qualification of Property Denominated in Foreign Currency for the ATB Exception*

Although section 367(a)(3)(B)(iii) provides that the ATB exception does not apply, and therefore that section 367(a)(1) applies, to foreign currency or other property denominated in foreign currency, current § 1.367(a)–5T(d)(2) generally provides that section 367(a)(1) nonetheless does not apply to certain transfers of property denominated in the currency of the country in which the transferee foreign corporation is organized. The proposed regulations eliminated this regulatory exception from the general rule in section 367(a)(3)(B)(iii) that turns off the ATB exception for such property. One comment recommended clarifying the regulations under section 367(a) by adopting the language and concepts reflected in the changes to the foreign currency rules in subpart J that were made after the publication of the 1986 temporary regulations. In response to this comment, § 1.367(a)–2(c)(3) of the final regulations, which corresponds to existing § 1.367(a)–5T(d)(2), reflects amendments that increase consistency with the rules in sections 987 and 988. In particular, the terms "foreign currency" and "property denominated in foreign currency" are no longer used. Rather, proposed § 1.367(a)–2(c)(3) is revised to refer to nonfunctional currency and other property that gives rise to a section 988 transaction of the taxpayer described in section 988(c)(1)(B), or that would give rise to such a section 988 transaction if it were acquired, accrued, or entered into directly by the taxpayer. The Treasury Department and the IRS consider that these modifications do not substantially change the scope of property subject to the rule at § 1.367(a)–5T(d)(2).

V. *Other Issues*

Other comments suggested that regulations address many outstanding issues in the context of section 367 that were not addressed in the proposed regulations. These suggestions include guidance to address the following topics: (i) the valuation of intangibles subject to section 367(d) and the forms that deemed payments should take, including guidance providing parity with the section 482 form-of-payment rules; (ii) whether a receivable is created upon an audit-related adjustment; (iii) the tax basis consequences under section 367(d), including how section 367(d) applies to intangibles subject to the section 197 anti-churning rules; (iv) coordination of the general rules and disposition rules in section 367(d); (v) issues raised in connection with Notice 2012–39 (2012–31 IRB 95); (vi) the definition of "property" for purposes of section 367; and (vii) the subsequent transfer rules under the ATB exception.

The Treasury Department and the IRS generally agree that additional guidance under section 367(a) and (d) is desirable and would benefit both taxpayers and the government. However, these issues are beyond the scope of this project. For example, while the Treasury Department and the IRS are aware that there is uncertainty regarding the application of the subsequent transfer rules to transactions involving hybrid partnerships, the Treasury Department and the IRS have determined that transactions involving partnerships merit a more holistic consideration and that this regulation package is not the appropriate vehicle to address the issue. Consequently, the regulations finalize the subsequent transfer rules in § 1.367(a)–2T(c) (located in § 1.367(a)–2(g) of these final regulations), but the Treasury Department and the IRS expect those rules will be amended after a more detailed consideration of transactions involving partnerships.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that the regulations under section 367(a) and (d) simplify existing regulations, and the regulations under section 6038B make relatively minor changes to existing information reporting requirements. Moreover, these regulations primarily will affect large domestic corporations filing consolidated returns. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting information

The principal author of these regulations is Ryan Bowen, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.367(d)–1 also issued under 26 U.S.C. 367(d).

* * * * *

Par. 2. Section 1.367(a)–0 is added to read as follows:

§ 1.367(a)–0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(a)–1 through 1.367 (a)–8.

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

§ 1.367(a)–2 Exceptions for transfers of property for use in the active conduct of a trade or business.

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

§ 1.367(a)–4 Special rule applicable to U.S. depreciated property.

§ 1.367(a)–5 [Reserved].

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

(a) Scope and purpose.
(b) General rule.
(1) Nonrecognition exchanges enumerated in section 367(a)(1).
(2) Nonrecognition exchanges not enumerated in section 367(a)(1).
(c) Elective exception.
(1) Control.
(2) Gain recognition.
(3) Basis adjustments required for control group members.
(4) Agreement to amend or file a U.S. income tax return.
(5) Election and reporting requirements.
(d) Section 361 exchange followed by successive distributions to which section 355 applies.
(e) Other rules.
(1) Section 367(a) property with respect to which gain is recognized.
(2) Relief for certain failures to comply that are not willful.
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(1) In general.
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(2) Applicability to transfers occurring before March 13, 2009.
(3) Applicability to requests for relief submitted before November 19, 2014.

Par. 3. Section 1.367(a)–1 is revised to read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) *Scope*. Section 367(a)(1) provides the general rule concerning certain transfers of property by a United States person (referred to at times in this section as the "U.S. person" or "U.S. transferor") to a foreign corporation. Paragraph (b) of this section provides general rules explaining the effect of section 367(a)(1). Paragraph (c) of this section describes transfers of property that are described in section 367(a)(1). Paragraph (d) of this section provides definitions that apply for purposes of sections 367(a) and (d) and the regulations thereunder. Paragraphs (e) and (f) of this section provide rules that apply to certain reorganizations described in section 368(a)(1)(F). Paragraph (g) of this section provides dates of applicability. For rules concerning the reporting requirements under section 6038B for certain transfers of property to a foreign corporation, see § 1.6038B–1.

(b) *General rules*—(1) *Foreign corporation not considered a corporation for purposes of certain transfers*. If a U.S. person transfers property to a foreign corporation in connection with an exchange described in section 351, 354, 356, or 361, then, pursuant to section 367(a)(1), the foreign corporation will not be considered to be a corporation for purposes of determining the extent to which gain is recognized on the transfer. Section 367(a)(1) denies nonrecognition treatment only to transfers of items of property on which gain is realized. Thus, the amount of gain recognized because of section 367(a)(1) is unaffected by the transfer of items of property on which loss is realized (but not recognized).

(2) *Cases in which foreign corporate status is not disregarded*. For circumstances in which section 367(a)(1) does not apply to a U.S. transferor's transfer of property to a foreign corporation, and thus the foreign corporation is considered to be a corporation, see §§ 1.367(a)–2, 1.367(a)–3, and 1.367(a)–7.

(3) *Determination of value*. In cases in which a U.S. transferor's transfer of property to a foreign corporation constitutes a controlled transaction as defined in § 1.482–1(i)(8), the value of the property transferred is determined in accordance with section 482 and the regulations thereunder.

(4) *Character, source, and adjustments*—(i) *In general*. If a U.S. person is required to recognize gain under section 367 upon a transfer of property to a foreign corporation, then —

(A) The character and source of such gain are determined as if the property had been disposed of in a taxable exchange with the transferee foreign corporation (unless otherwise provided by regulation); and

(B) Appropriate adjustments to earnings and profits, basis, and other affected items will be made according to otherwise applicable rules, taking into account the gain recognized under section 367(a)(1). For purposes of applying section 362, the foreign corporation's basis in the property received is increased by the amount of gain recognized by the U.S. transferor under section 367(a) and the regulations issued pursuant to that section. To the extent the regulations provide that the U.S. transferor recognizes gain with respect to a particular item of property, the foreign corporation increases its basis in that item of property by the amount of such gain recognized. For example, §§ 1.367(a)–2, 1.367(a)–3, and 1.367(a)–4 provide that gain is recognized with respect to particular items of property. To the extent the regulations do not provide that gain recognized by the U.S. transferor is with respect to a particular item of property, such gain is treated as recognized with respect to items of property subject to section 367(a) in proportion to the U.S. transferor's gain realized in such property, after taking into account gain recognized with respect to particular items of property transferred under any other provision of section 367(a). For example, § 1.367(a)–6 provides that branch losses must be recaptured by the recognition of gain realized on the transfer but does not associate the gain with particular items of property. See also § 1.367(a)–1(c)(3) for rules concerning transfers by partnerships or of partnership interests.

(C) The transfer will not be recharacterized for U.S. Federal tax purposes solely because the U.S. person recognizes gain in connection with the transfer under section 367(a)(1). For example, if a U.S. person transfers appreciated stock or securities to a foreign corporation in an exchange described in section 351, the transfer is not recharacterized as other than an exchange described in section 351 solely because the U.S. person recognizes gain in the transfer under section 367(a)(1).

(ii) *Example*. The rules of this paragraph (b)(4) are illustrated by the following example.

Example. Domestic corporation DC transfers inventory with a fair market value of $ 1 million and adjusted basis of $ 800,000 to foreign corporation FC in exchange for stock of FC that is described in section 351(a). Title passes within the United States. Pursuant to section 367(a), DC is required to recognize gain of $200,000 upon the transfer. Under the rule of this paragraph (b)(4), the gain is treated as ordinary income (sections 1201 and 1221) from sources within the United States (section 861) arising from a taxable exchange with FC. Appropriate adjustments to earnings and profits, basis, etc., will be made as if the transfer were subject to section 351. Thus, for example, DC's basis in the FC stock received, and FC's basis in the transferred inventory, will each be increased by the $200,000 gain recognized by DC, pursuant to sections 358(a)(1) and 362(a), respectively.

(5) *Treatment of certain property as subject to section 367(d)*. A U.S. transferor may apply section 367(d) and § 1.367(d)–1, rather than section 367(a) and the regulations thereunder, to a transfer of property to a foreign corporation that otherwise would be subject to section 367(a), provided that the property is not eligible property, as defined in § 1.367(a)–2(b) but determined without regard to § 1.367(a)–2(c). A U.S. transferor and any other U.S. transferor that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor must consistently apply this paragraph (b)(5) to all property described in this paragraph (b)(5) that is transferred to one or more foreign corporations pursuant to a plan. A U.S. transferor applies the provisions of this paragraph (b)(5) in the form and manner set forth in § 1.6038B–1(d)(1)(iv) and (v).

(c)(1) through (c)(3)(i) reserved. For further guidance, see § 1.367(a)–1T(c)(1) through (c)(3)(i).

(ii) *Transfer of partnership interest treated as transfer of proportionate share of assets*—(A) *In general*. If a U.S. person transfers an interest as a partner in a partnership (whether foreign or domestic) in an exchange described in section 367(a)

(1), then that person is treated as having transferred a proportionate share of the property of the partnership in an exchange described in section 367(a)(1). Accordingly, the applicability of the exception to section 367(a)(1) provided in § 1.367(a)–2 is determined with reference to the property of the partnership rather than the partnership interest itself. A U.S. person's proportionate share of partnership property is determined under the rules and principles of sections 701 through 761 and the regulations thereunder.

(c)(3)(i)(A) *Example* through (7) reserved. For further guidance, see § 1.367 (a)–1T(c)(3)(i)(A) *Example* through (7).

(d) *Definitions*. The following definitions apply for purposes of sections 367(a) and (d) and the regulations thereunder.

(1) *United States person*. The term "United States person" includes those persons described in section 7701(a)(30). The term includes a citizen or resident of the United States, a domestic partnership, a domestic corporation, and any estate or trust other than a foreign estate or trust. (For definitions of these terms, see section 7701 and the regulations thereunder.) For purposes of this section, an individual with respect to whom an election has been made under section 6013(g) or (h) is considered to be a resident of the United States while such election is in effect. A nonresident alien or a foreign corporation will not be considered a United States person because of its actual or deemed conduct of a trade or business within the United States during a taxable year.

(2) *Foreign corporation*. The term "foreign corporation" has the meaning set forth in section 7701(a)(3) and (5) and § 301.7701–5.

(3) *Transfer*. For purposes of section 367 and regulations thereunder, the term "transfer" means any transaction that constitutes a transfer for purposes of section 332, 351, 354, 355, 356, or 361, as applicable. A person's entering into a cost sharing arrangement under § 1.482–7 or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). See § 1.6038B–1T(b)(4) for the date on which the transfer is considered to be made.

(4) *Property*. For purposes of section 367 and the regulations thereunder, the term "property" means any item that constitutes property for purposes of section 351, 354, 355, 356, or 361, as applicable.

(5) *Intangible property*. The term "intangible property" means either property described in section 936(h)(3)(B) or property to which a U.S. person applies section 367(d) pursuant to paragraph (b)(5) of this section, but does not include property described in section 1221(a)(3) or a working interest in oil and gas property.

(6) *Operating intangibles*. An operating intangible is any property described in section 936(h)(3)(B) of a type not ordinarily licensed or otherwise transferred in transactions between unrelated parties for consideration contingent upon the licensee's or transferee's use of the property. Examples of operating intangibles may include long-term purchase or supply contracts, surveys, studies, and customer lists.

(f) *Exchanges under sections 354(a) and 361(a) in certain section 368(a)(1)(F) reorganizations*—(1) *Rule.* In every reorganization under section 368(a)(1)(F), where the transferor corporation is a domestic corporation, and the acquiring corporation is a foreign corporation, there is considered to exist—

(i) A transfer of assets by the transferor corporation to the acquiring corporation under section 361(a) in exchange for stock (or stock and securities) of the acquiring corporation and the assumption by the acquiring corporation of the transferor corporation's liabilities;

(ii) A distribution of the stock (or stock and securities) of the acquiring corporation by the transferor corporation to the shareholders (or shareholders and security holders) of the transferor corporation; and

(iii) An exchange by the transferor corporation's shareholders (or shareholders and security holders) of their stock (or stock and securities) of the transferor corporation for stock (or stock and securities) of the acquiring corporation under section 354(a).

(2) *Rule applies regardless of whether a continuance under applicable law.* For purposes of paragraph (f)(1) of this section, it shall be immaterial that the applicable foreign or domestic law treats the acquiring corporation as a continuance of the transferor corporation.

(g) *Effective/applicability dates*. (1) through (3) [Reserved]. For further guidance, *see* § 1.367(a)–1T(g)(1) through (3).

(4) The rules in paragraphs (b)(4)(i)(B) and (b)(4)(i)(C) of this section apply to transfers occurring on or after April 18, 2013. For guidance with respect to paragraph (b)(4)(i)(B) of this section before April 18, 2013, see 26 CFR part 1 revised as of April 1, 2012. The rules in paragraph (e) of this section apply to transactions occurring on or after March 31, 1987. The rules in paragraph (f) of this section apply to transactions occurring on or after January 1, 1985.

(5) Paragraphs (a), (b)(1) through (b)(4)(i)(B), (b)(4)(ii) through (b)(5), (c)(3)(ii)(A), (d) introductory text through (d)(2), (d)(4) through (d)(6) of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–1 and 1.367(a)–1T as contained in 26 CFR part 1 revised as of April 1, 2016.

§ 1.367(a)–1T [Amended]

Par. 4. Section 1.367(a)–1T is amended by removing and reserving paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(4)(i)(A), (b)(4)(ii), (c)(3)(ii)(A), (d) introductory text, (d)(1), (d)(2), (d)(4), and (d)(5), and adding and reserving new paragraphs (b)(5) and (d)(6).

Par. 5. Section 1.367(a)–2 is revised to read as follows:

§ 1.367(a)–2 Exceptions for transfers of property for use in the active conduct of a trade or business.

(a) *Scope and general rule*—(1) *Scope*. Paragraph (a)(2) of this section provides the general exception to section 367(a)(1) for certain property transferred for use in the active conduct of a trade or business. Paragraph (b) of this section describes property that is eligible for the exception provided in paragraph (a)(2) of this section. Paragraph (c) of this section describes property that is not eligible for the exception provided in paragraph (a)(2) of this section. Paragraph (d) of this section provides general rules, and paragraphs (e) through (h) of this section provide special rules, for determining whether property is used in the active conduct of a trade or business outside of the United States. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides relief for certain failures to comply with the reporting requirements under paragraph (a)(2)(iii) of this section that are not willful. Paragraph (k) of this section provides dates of applicability. The rules of this section do not apply to a transfer of stock or securities in an exchange subject to § 1.367(a)–3.

(2) *General rule*. Except as otherwise provided in §§ 1.367(a)–4, 1.367(a)–6, and 1.367(a)–7, section 367(a)(1) does not apply to property transferred by a United States person (U.S. transferor) to a foreign corporation if—

(i) The property constitutes eligible property;

(ii) The property is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States, as determined under paragraph (d), (e), (f), (g), or (h) of this section, as applicable; and

(iii) The U.S. transferor complies with the reporting requirements of section 6038B and the regulations thereunder.

(b) *Eligible property*. Except as provided in paragraph (c) of this section, eligible property means—

(1) Tangible property;

(2) A working interest in oil and gas property; and

(3) A financial asset. For purposes of this section, a financial asset is—

(i) A cash equivalent;

(ii) A security within the meaning of section 475(c)(2), without regard to the last sentence of section 475(c)(2) (referencing section 1256) and without regard to section 475(c)(4), but excluding an interest in a partnership;

(iii) A commodities position described in section 475(e)(2)(B), 475(e)(2)(C), or 475(e)(2)(D); and

(iv) A notional principal contract described in § 1.446–3(c)(1).

(c) *Exception for certain property*. Notwithstanding paragraph (b) of this section, property described in paragraph (c)(1), (2), (3), or (4) of this section does not constitute eligible property.

(1) *Inventory*. Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business (including raw materials and supplies, partially completed goods, and finished products).

(2) *Installment obligations, etc*. Installment obligations, accounts receivable, or similar property, but only to the extent that the principal amount of any such obligation has not previously been included by the taxpayer in its taxable income.

(3) *Nonfunctional currency, etc*.—(i) *In general*. Property that gives rise to a section 988 transaction of the taxpayer described in section 988(c)(1)(A) through (C), without regard to section 988(c)(1)(D) and (E), or that would give rise to such a section 988 transaction if it were acquired, accrued, entered into, or disposed of directly by the taxpayer.

(ii) *Limitation of gain required to be recognized*. If section 367(a)(1) applies to a transfer of property described in paragraph (c)(3)(i) of this section, then the gain required to be recognized is limited to the gain realized as part of the same transaction upon the transfer of property described in paragraph (c)(3)(i) of this section, less any loss realized as part of the same transaction upon the transfer of property described in paragraph (c)(3)(i) of this section. This limitation applies in lieu of the rule in § 1.367(a)–1(b)(1). No loss is recognized with respect to property described in this paragraph (c)(3).

(4) *Certain leased tangible property*. Tangible property with respect to which the transferor is a lessor at the time of the transfer, unless either the foreign corporation is the lessee at the time of the transfer or the foreign corporation will lease the property to third persons.

(d) *Active conduct of a trade or business outside the United States*—(1) *In general*. Except as provided in paragraphs (e), (f), (g), and (h) of this section, to determine whether property is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States, four factual determinations must be made:

(i) What is the trade or business of the foreign corporation (see paragraph (d)(2) of this section);

(ii) Do the activities of the foreign corporation constitute the active conduct of that trade or business (see paragraph (d)(3) of this section);

(iii) Is the trade or business conducted outside of the United States (see paragraph (d)(4) of this section); and

(iv) Is the transferred property used or held for use in the trade or business (see paragraph (d)(5) of this section)?

(2) *Trade or business*. Whether the activities of the foreign corporation constitute a trade or business is determined based on all the facts and circumstances. In general, a trade or business is a specific unified group of activities that constitute (or could constitute) an independent economic enterprise carried on for profit. For example, the activities of a foreign selling subsidiary could constitute a trade or business if they could be independently carried on for profit, even though the subsidiary acts exclusively on behalf of, and has operations fully integrated with, its parent corporation. To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. In this regard, one or more of such activities may be carried on by independent contractors under the direct control of the foreign corporation. (However, see paragraph (d)(3) of this section.) The group of activities must ordinarily include the collection of income and the payment of expenses. If the activities of the foreign corporation do not constitute a trade or business, then the exception provided by this section does not apply, regardless of the level of activities carried on by the corporation. The following activities are not considered to constitute by themselves a trade or business for purposes of this section:

(i) Any activity giving rise to expenses that would be deductible only under section 212 if the activities were carried on by an individual; or

(ii) The holding for one's own account of investments in stock, securities, land, or other property, including casual sales thereof.

(3) *Active conduct*. Whether a trade or business is actively conducted by the foreign corporation is determined based on all the facts and circumstances. In general, a corporation actively conducts a trade or business only if the officers and employees of the corporation carry out substantial managerial and operational activities. A corporation may be engaged in the active conduct of a trade or business even though incidental activities of the trade or business are carried out on behalf of the corporation by independent contractors. In determining whether the officers and employees of the corporation carry out substantial managerial and operational activities, however, the activities of independent contractors are disregarded. On the other hand, the officers and employees of the corporation are considered to include the officers and employees of related entities who are made available to and supervised on a day-to-day basis by, and whose salaries are paid by (or reimbursed to the lending related entity by), the foreign corporation. See paragraph (d)(6) of this section for the standard that applies to determine whether a trade or business that produces rents or royalties is actively conducted. The rule of this paragraph (d)(3) is illustrated by the following example.

Example. X, a domestic corporation, and Y, a foreign corporation not related to X, transfer property to Z, a newly formed foreign corporation organized for the purpose of combining the research activities of X and Y. Z contracts all of its operational and research activities to Y for an arm's-length fee. Z's activities do not constitute the active conduct of a trade or business.

(4) *Outside of the United States*. Whether the foreign corporation conducts a trade or business outside of the United States is determined based on all the facts and circumstances. Generally, the primary managerial and operational activities of the trade or business must be conducted outside the United States and immediately after the transfer the transferred assets must be located outside the United States. Thus, the exception provided by this section would not apply to the transfer of the assets of a domestic business to a foreign corporation if the domestic business continued to operate in the United States after the transfer. In such a case, the primary operational activities of the business would continue to be conducted in the United States. Moreover, the transferred assets would be located in the United States. However, it is not necessary that every item of property transferred be used outside of the United States. As long as the primary managerial and operational activities of the trade or business are conducted outside of the United States and substantially all of the transferred assets are located outside the United States, incidental items of transferred property located in the United States may be considered to have been transferred for use in the active conduct of a trade or business outside of the United States.

(5) *Use in the trade or business*. Whether property is used or held for use by the foreign corporation in a trade or business is determined based on all the facts and circumstances. In general, property is used or held for use in the foreign corporation's trade or business if it is—

(i) Held for the principal purpose of promoting the present conduct of the trade or business;

(ii) Acquired and held in the ordinary course of the trade or business; or

(iii) Otherwise held in a direct relationship to the trade or business. Property is considered held in a direct relationship to a trade or business if it is held to meet the present needs of that trade or business and not its anticipated future needs. Thus, property will not be considered to be held in a direct relationship to a trade or business if it is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies.

(6) *Active leasing and licensing*. For purposes of paragraph (d)(3) of this section, whether a trade or business that produces rents or royalties is actively conducted is determined under the principles of section 954(c)(2)(A) and the regulations thereunder, but without regard to whether the rents or royalties are received from an unrelated party. See §§ 1.954–2(c) and (d).

(e) *Special rules for certain property to be leased*—(1) *Leasing business of the foreign corporation*. Except as otherwise provided in this paragraph (e), tangible property that will be leased to another person by the foreign corporation will be considered to be transferred for use by the foreign corporation in an active trade or business outside the United States only if—

(i) The foreign corporation's leasing of the property constitutes the active conduct of a leasing business, as determined under paragraph (d)(6) of this section;

(ii) The lessee of the property is not expected to, and does not, use the property in the United States; and

(iii) The foreign corporation has a need for substantial investment in assets of the type transferred.

(2) *De minimis leasing by the foreign corporation*. Tangible property that will be leased to another person by the foreign corporation but that does not satisfy the conditions of paragraph (e)(1) of this section will, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if either—

(i) The property transferred will be used by the foreign corporation in the active conduct of a trade or business but will be leased during occasional brief periods when the property would otherwise be idle, such as an airplane leased during periods of excess capacity; or

(ii) The property transferred is real property located outside the United States and—

(A) The property will be used primarily in the active conduct of a trade or business of the foreign corporation; and

(B) Not more than ten percent of the square footage of the property will be leased to others.

(3) *Aircraft and vessels leased in foreign commerce*. For purposes of satisfying paragraph (e)(1) of this section, an aircraft or vessel, including component parts such as an engine leased separately from the aircraft or vessel, that will be leased to another person by the foreign corporation will be considered to be transferred for use in the active conduct of a trade or business if—

(i) The employees of the foreign corporation perform substantial managerial and operational activities of leasing aircraft or vessels outside the United States; and

(ii) The leased property is predominantly used outside the United States, as determined under § 1.954–2(c)(2)(v).

(f) *Special rules for oil and gas working interests*—(1) *In general*. A working interest in oil and gas property will be considered to be transferred for use in the active conduct of a trade or business if—

(i) The transfer satisfies the conditions of paragraph (f)(2) or (f)(3) of this section;

(ii) At the time of the transfer, the foreign corporation has no intention to farm out or otherwise transfer any part of the transferred working interest; and

(iii) During the first three years after the transfer there are no farmouts or other transfers of any part of the transferred working interest as a result of which the foreign corporation retains less than a 50-percent share of the transferred working interest.

(2) *Active use of working interest*. A working interest in oil and gas property that satisfies the conditions in paragraphs (f)(1)(ii) and (iii) of this section will be considered to be transferred for use in the active conduct of a trade or business if—

(i) The U.S. transferor is regularly and substantially engaged in exploration for and extraction of minerals, either directly or through working interests in joint ventures, other than by reason of the property that is transferred;

(ii) The terms of the working interest transferred were actively negotiated among the joint venturers;

(iii) The working interest transferred constitutes at least a five percent working interest;

(iv) Before and at the time of the transfer, through its own employees or officers, the U.S. transferor was regularly and actively engaged in—

(A) Operating the working interest, or

(B) Analyzing technical data relating to the activities of the venture;

(v) Before and at the time of the transfer, through its own employees or officers, the U.S. transferor was regularly and actively involved in decision making with respect to the operations of the venture, including decisions relating to exploration, development, production, and marketing; and

(vi) After the transfer, the foreign corporation will for the foreseeable future satisfy the requirements of subparagraphs (iv) and (v) of this paragraph (f)(2).

(3) *Start-up operations*. A working interest in oil and gas property that satisfies the conditions in paragraphs (f)(1)(ii) and (iii) of this section but that does not satisfy all the requirements of paragraph (f)(2) of this section will, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if—

(i) The working interest was acquired by the U.S. transferor immediately before the transfer and for the specific purpose of transferring it to the foreign corporation;

(ii) The requirements of paragraphs (f)(2)(ii) and (iii) of this section are satisfied; and

(iii) The foreign corporation will for the foreseeable future satisfy the requirements of paragraph (f)(2)(iv) and (v) of this section.

(4) *Other applicable rules*. A working interest in oil and gas property that is not described in paragraph (f)(1) of this section may nonetheless qualify for the exception to section 367(a)(1) contained in this section depending upon the facts and circumstances.

(g) *Property retransferred by the foreign corporation*—(1) *General rule*. Property will not be considered to be transferred for use in the active conduct of a trade or business outside of the United States if—

(i) At the time of the transfer, it is reasonable to believe that, in the reasonably foreseeable future, the foreign corporation will sell or otherwise dispose of any material portion of the property other than in the ordinary course of business; or

(ii) Except as provided in paragraph (g)(2) of this section, the foreign corporation receives the property in an exchange described in section 367(a)(1), and, as part of the same transaction, transfers the property to another person. For purposes of the preceding sentence, a subsequent transfer within six months of the initial transfer will be considered to be part of the same transaction, and a subsequent transfer more than six months after the initial transfer may be considered to be part of the same transaction under step-transaction principles.

(2) *Exception*. Notwithstanding paragraph (g)(1) of this section, the active conduct exception provided by this section shall apply to the initial transfer if—

(i) The initial transfer is followed by one or more subsequent transfers described in section 351 or 721; and

(ii) Each subsequent transferee is either a partnership in which the preceding transferor is a general partner or a corporation in which the preceding transferor owns common stock; and

(iii) The ultimate transferee uses the property in the active conduct of a trade or business outside the United States.

(h) *Compulsory transfers of property*. Property is presumed to be transferred for use in the active conduct of a trade or business outside of the United States, if—

(1) The property was previously in use in the country in which the foreign corporation is organized; and

(2) The transfer is either:

(i) Legally required by the foreign government as a necessary condition of doing business; or

(ii) Compelled by a genuine threat of immediate expropriation by the foreign government.

(i) [Reserved].

(j) *Failure to comply with reporting requirements of section 6038B*—(1) *Failure to comply*. For purposes of the exception to the application of section 367(a)(1) provided in paragraph (a)(2) of this section, a failure to comply with the reporting requirements of section 6038B and the regulations thereunder (failure to comply) has the meaning set forth in § 1.6038B–1(f)(2).

(2) *Relief for certain failures to comply that are not willful*—(i) *In general*. A failure to comply described in paragraph (j)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of this section if the taxpayer demonstrates that the failure was not willful using the procedure set forth in this paragraph (j)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to comply was a willful failure will be determined by the Director of Field Operations, Cross Border Activities Practice Area, Large Business & International (or any successor to the roles and respon-

sibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The taxpayer must submit a request for relief and an explanation as provided in paragraph (j)(2)(ii)(A) of this section. Although a taxpayer whose failure to comply is determined not to be willful will not be subject to gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b)(1) and (f). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) *Procedures for establishing that a failure to comply was not willful*—(A) *Time and manner of submission*. A taxpayer's statement that the failure to comply was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to comply. The amended return must be filed with the Internal Revenue Service at the location where the taxpayer filed its original return. The taxpayer may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–1(f).

(B) *Notice requirement*. In addition to the requirements of paragraph (j)(2)(ii)(A) of this section, the taxpayer must comply with the notice requirements of this paragraph (j)(2)(ii)(B). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard of this paragraph (j), see the examples in § 1.367(a)–8(p)(3).

(4) Paragraph (j) applies to requests for relief submitted on or after November 19, 2014.

(k) *Effective/applicability dates*—(1) *In general*. Except as provided in paragraphs (j)(4) and (k)(2) of this section, the rules of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–2, –2T, –4, –4T, –5, and –5T as contained in 26 CFR part 1 revised as of April 1, 2016.

(2) *Foreign currency exception*. Notwithstanding paragraph (c)(3)(i) of this section, § 1.367(a)–5T(d)(2) as contained in 26 CFR part 1 revised as of April 1, 2016, applies to transfers of property denominated in a foreign currency occurring before December 16, 2016, other than transfers occurring before that date resulting from entity classification elections made under § 301.7701–3 that are filed on or after that date.

§ 1.367(a)–2T [Removed]

Par. 6. Section 1.367(a)–2T is removed.

§ 1.367(a)–3 [Amended]

Par. 7. For each section listed in the following the table, remove the language in the "Remove" column and add in its place the language in the "Add" column.

Section	*Remove*	*Add*
§ 1.367(a)–3(a)(3), first sentence	§ 1.367(a)–1T(c)	§ 1.367(a)–1(c)
§ 1.367(a)–3(c)(3)(i)(A)	§ 1.367(a)–2T(b)(2) and (3)	§ 1.367(a)–2(d)(2), (3), and (4)
§ 1.367(a)–3(c)(3)(ii)(B), last sentence	§ 1.367(a)–2T(b)(2) and (3)	§ 1.367(a)–2(d)(2) and (3)
§ 1.367(a)–3(c)(4)(i), last sentence	§ 1.367(a)–1T(c)(3)	§ 1.367(a)–1(c)(3)
§ 1.367(a)–3(c)(5)(iv), first sentence	§ 1.367(a)–1T(d)(1)	§ 1.367(a)–1(d)(1)
§ 1.367(a)–3(d)(3) *Example 7A(ii)*, penultimate sentence	§ 1.367(a)–2T(a)(2)	§ 1.367(a)–2(a)(2)(iii)
§ 1.367(a)–3(d)(3) *Example 13(i)*, penultimate sentence	§ 1.367(a)–2T(c)(2)	§ 1.367(a)–2(g)(2)

Par. 8. Section 1.367(a)–4 is revised to read as follows:

§ 1.367(a)–4 Special rule applicable to U.S. depreciated property.

(a) *Depreciated property used in the United States*—(1) *In general*. A U.S. person that transfers U.S. depreciated property (as defined in paragraph (a)(2) of this section) to a foreign corporation in an exchange described in section 367(a)(1), must include in its gross income for the taxable year in which the transfer occurs ordinary income equal to the gain realized that would have been includible in the transferor's gross income as ordinary income under section 617(d)(1), 1245(a), 1250(a), 1252(a), 1254(a), or 1255(a), whichever is applicable, if at the time of the transfer the U.S. person had sold the property at its fair market value. Recapture of depreciation under this paragraph (a) is required regardless of whether the exception to section 367(a)(1) provided by § 1.367(a)–2(a)(2) applies to the transfer of the U.S. depreciated property. However, the transfer of the U.S. depreciated property may qualify for the exception with respect to realized gain that is not included in ordinary income pursuant to this paragraph (a).

(2) *U.S. depreciated property*. U.S. depreciated property subject to the rules of this paragraph (a) is any property that—

(i) Is either mining property (as defined in section 617(f)(2)), section 1245 property (as defined in section 1245(a)(3)), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)(2)), section 1254 property (as defined in section 1254(a)(3)), or section 126 property (as defined in section 1255(a)(2)); and

(ii) Has been used in the United States or has been described in section 168(g)(4) before its transfer.

(3) *Property used within and without the United States*. (i) If U.S. depreciated property has been used partly within and partly without the United States, then the amount required to be included in ordinary income pursuant to this paragraph (a) is reduced to an amount determined in accordance with the following formula:

$$\text{Full recapture amount} \times \frac{\text{U.S use}}{\text{Total use}}$$

(ii) For purposes of the fraction in paragraph (a)(3)(i) of this section, the "full recapture amount" is the amount that would otherwise be included in the transferor's income under paragraph (a)(1) of this section. "U.S. use" is the number of months that the property either was used within the United States or has been described in section 168(g)(4), and was subject to depreciation by the transferor or a related person. "Total use" is the total number of months that the property was used (or available for use), and subject to depreciation, by the transferor or a related person. For purposes of this paragraph (a)(3), property is not considered to have been in use outside of the United States during any period in which such property was, for purposes of section 168, treated as property not used predominantly outside the United States pursuant to section 168(g)(4). For purposes of this paragraph (a)(3), the term "related person" has the meaning set forth in § 1.367(d)–1(h).

(b) *Effective/applicability dates*. The rules of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–4 and 1.367(a)–4T as contained in 26 CFR part 1 revised as of April 1, 2016.

§ 1.367(a)–4T [Removed]

Par. 9. § 1.367(a)–4T is removed.

§ 1.367(a)–5 [Removed and Reserved]

Par. 10. Section 1.367(a)–5 is removed and reserved.

§ 1.367(a)–5T [Removed]

Par. 11. § 1.367(a)–5T is removed.

Par. 12. Section 1.367(a)–6 is revised to read as follows:

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

(a) through (b)(1) [Reserved]. For further guidance, see § 1.367(a)–6T(a) through (b)(1).

(b)(2) *No active conduct exception*. The rules of this paragraph (b) apply regardless of whether any of the assets of the foreign branch satisfy the active trade or business exception of § 1.367(a)–2(a)(2).

(c)(1) [Reserved]. For further guidance, see § 1.367(a)–6T(c)(1).

(2) *Gain limitation*. The gain required to be recognized under paragraph (b)(1) of this section will not exceed the aggregate amount of gain realized on the transfer of all branch assets (without regard to the transfer of any assets on which loss is realized but not recognized).

(3) [Reserved].

(4) *Transfers of certain intangible property*. Gain realized on the transfer of intangible property (computed with reference to the fair market value of the intangible property as of the date of the transfer) that is an asset of a foreign branch is taken into account in computing the limitation on loss recapture under paragraph (c)(2) of this section. For rules relating to the crediting of gain recognized under this section against income deemed to arise by operation of section 367(d), see § 1.367(d)–1(g)(3).

(d) through (i) [Reserved]. For further guidance, see § 1.367(a)–6T(d) through (i).

(j) *Effective/applicability dates*. The rules of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § 1.367(a)–6T as contained in 26 CFR part 1 revised as of April 1, 2016.

§ 1.367(a)–6T [Amended]

Par. 13. Section 1.367(a)–6T is amended by

1. Removing and reserving paragraphs (b)(2), (c)(2), and (c)(4).
2. Adding and reserving paragraph (j).

Par. 14. Section 1.367(a)–7 is amended by:

1. Revising paragraph (f)(11).
2. Redesignating paragraph (j) as (j)(1) and revising the first sentence, and adding paragraph (j)(2).

The revision and addition read as follows:

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

* * * * *

(f) * * *

(11) Section 367(d) property is intangible property as defined in § 1.367(a)–1(d)(5).

* * * * *

(j) *Effective/applicability dates*—(1) *In general*. Except for paragraph (e)(2) of this section, and as provided in paragraph (j)(2) of this section, this section applies to transfers occurring on or after April 18, 2013. * * *

(2) *Section 367(d) property*. The definition provided in paragraph (f)(11) of this section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § 1.367(a)–7 as contained in 26 CFR part 1 revised as of April 1, 2016.

§ 1.367(a)–7 [Amended]

Par. 15. For each section listed in the following table, remove the language in the "Remove" column and add in its place the language in the "Add" column.

Section	Remove	Add
§ 1.367(a)–7(a), sixth sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–4T, 1.367(a)–5T	§ 1.367(a)–4
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c)(2)(i)(B)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c)(2)(ii)(A)(*2*)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–4T, 1.367(a)–5T	§ 1.367(a)–4
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(1), last sentence	§ 1.367(a)–1T(b)(4) and § 1.367(a)–1(b)(4)(i)(B)	§ 1.367(a)–1(b)(4)
§ 1.367(a)–7(e)(2)(i), third sentence	Director of Field Operations International, Large Business & International	Director of Field Operations, Cross Border Activities Practice Area of Large Business & International
§ 1.367(a)–7(e)(4)(ii), first and second sentences	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5), heading	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(f)(4)(ii)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(g), last sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(g), *Example 1 (ii)(A)*, last sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(g), *Example 2 (ii)(A)*, last sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(h), first sentence	§ 1.367(a)–1(b)(4)(i)(B) and § 1.367(a)–1T(b)(4)	§ 1.367(a)–1(b)(4)

§ 1.367(a)–8 [Amended]

Par. 16. For each section listed in the following table, remove the language in the “Remove” column and add in its place the language in the “Add” column.

Section	Remove	Add
§ 1.367(a)–8(b)(1)(xvii), first sentence	§ 1.367(a)–1T(d)(1)	§ 1.367(a)–1(d)(1)
§ 1.367(a)–8(b)(1)(xvii), second sentence	§ 1.367(a)–1T(c)(3)(i)	§ 1.367(a)–1(c)(3)(i)
§ 1.367(a)–8(c)(3)(viii)	§ 1.367(a)–1T(c)(3)(i)	§ 1.367(a)–1(c)(3)(i
§ 1.367(a)–8(c)(3)(viii)	§ 1.367(a)–1T(c)(3)(ii)	§ 1.367(a)–1(c)(3)(ii)
§ 1.367(a)–8(c)(4)(iv), second sentence	§ 1.367(a)–1T(b)(4)	§ 1.367(a)–1(b)(4)
§ 1.367(a)–8(j)(3)	§ 1.367(a)–1T(c)(3)(ii)	§ 1.367(a)–1(c)(3)(ii)
§ 1.367(a)–8(j)(8), second sentence	Director of Field Operations International, Large Business & International	Director of Field Operations, Cross Border Activities Practice Area of Large Business & International

Par. 17. Section 1.367(d)–1 is added to read as follows:

§ 1.367(d)–1 Transfers of intangible property to foreign corporations.

(a) [Reserved]. For further guidance, see § 1.367(d)–1T(a).

(b) *Property subject to section 367(d)*. Section 367(d) and the rules of this section apply to the transfer of intangible property, as defined in § 1.367(a)–1(d)(5), by a U.S. person to a foreign corporation in an exchange described in section 351 or 361. See section 367(a) and the regulations thereunder for the rules that apply to the transfer of any property other than intangible property.

(c)(1) through (2) [Reserved]. For further guidance, see § 1.367(d)–1T(c)(1) and (2).

(3) *Useful life*—(i) *In general*. For purposes of determining the period of inclusions for deemed payments under § 1.367

(d)–1T(c)(1), the useful life of intangible property is the entire period during which exploitation of the intangible property is reasonably anticipated to affect the determination of taxable income, as of the time of transfer. Exploitation of intangible property includes any direct or indirect use or transfer of the intangible property, including use without further development, use in the further development of the intangible property itself (and any exploitation of the further developed intangible property), and use in the development of other intangible property (and any exploitation of the other developed intangible property).

(ii) *Procedure to limit inclusions to 20 years*. In cases where the useful life of the transferred property is indefinite or is reasonably anticipated to exceed twenty years, taxpayers may, in lieu of including amounts during the entire useful life of the intangible property, choose in the year of transfer to increase annual inclusions during the 20-year period beginning with the first year in which the U.S transferor takes into account income pursuant to section 367(d), to reflect amounts that, but for this paragraph (c)(3)(ii), would have been required to be included following the end of the 20-year period. See § 1.6038B–1(d)(1)(iv) for guidance on reporting this choice of method. If the taxpayer applies this method during the 20-year period, no adjustments will be made for taxable years beginning after the conclusion of the 20-year period. However, for purposes of determining whether amounts included during the 20-year period are commensurate with the income attributable to the transferred intangible property, the Commissioner may take into account information with respect to taxable years after that period, such as the income attributable to the transferred property during those later years. The application of this paragraph (c)(3)(ii) must be reflected in a statement (titled "Application of 20-Year Inclusion Period to Section 367(d) Transfers") attached to a timely filed original federal income tax return (including extensions) for the year of the transfer. An increase to the deemed payment rate made pursuant to this paragraph (c)(3)(ii) will be irrevocable, and a failure to timely file the statement under this paragraph (c)(3)(ii) may not be remedied.

(iii) Example. Property subject to section 367(d) is transferred from USP, a domestic corporation, to FA, a foreign corporation wholly owned by USP. The useful life of the transferred property, inclusive of derivative works, at the time of transfer is indefinite but is reasonably anticipated to exceed 20 years. In the first five years following the transfer, sales related to the property are expected to be $100x, $130x, $160x, $180x and $187.2x, respectively. Thereafter, for the remainder of the property's useful life, sales are expected to grow by four percent annually. In the first five years following the transfer, operating profits attributable to the property are expected to be $5x, $8x, $11x, $12.5x, and $13x, respectively. Thereafter, for the remainder of the property's useful life, operating profits are expected to grow by four percent annually. It is determined that the appropriate discount rate for sales and operating profits is 10 percent. The present value of operating profits through the property's indefinite useful life is $185x. The present value of sales through the property's indefinite useful life is $2698x. Accordingly, the sales based royalty rate during the property's useful life is 6.8 percent ($185x/$2698x). The taxpayer may choose to take income inclusions into account over a 20-year period. The present value of sales through the 20-year period is $1787x. Accordingly, the sales based royalty rate under the 20-year option is increased to 10.3 percent ($185x/$1787x).

(c)(4) through (g)(2) (introductory text) [Reserved]. For further guidance, see § 1.367(d)–1T(c)(4) through (g)(2) (introductory text).

(g)(2)(i) The intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)–1(d)(6).

(g)(2)(ii) through (iii)(D) [Reserved]. For further guidance, see § 1.367(d)–1T(g)(2)(ii) through (iii)(D).

(E) The transferred intangible property will be used in the active conduct of a trade or business outside of the United States within the meaning of § 1.367(a)–2 and will not be used in connection with the manufacture or sale of products in or for use or consumption in the United States.

(g)(2)(iii) undesignated concluding paragraph [Reserved]. For further guidance, see § 1.367(d)–1T(g)(2)(iii) undesignated concluding paragraph.

(3) *Intangible property transferred from branch with previously deducted losses*. (i) If income is required to be recognized under section 904(f)(3) and the regulations thereunder or under § 1.367 (a)–6 upon the transfer of intangible property of a foreign branch that had previously deducted losses, then the income recognized under those sections with respect to that property is credited against amounts that would otherwise be required to be recognized with respect to that same property under paragraphs (c) through (f) of this section in either the current or future taxable years. The amount recognized under section 904(f)(3) or § 1.367(a)–6 with respect to the transferred intangible property is determined in accordance with the following formula:

$$\text{Loss recapture income} \times \frac{\text{gain from intangible property}}{\text{gain from all branch assets}}$$

(ii) For purposes of the formula in paragraph (g)(3)(i) of this section, the "loss recapture income" is the total amount required to be recognized by the U.S. transferor pursuant to section 904(f)(3) or § 1.367(a)–6. The "gain from intangible property" is the total amount of gain realized by the U.S. transferor pursuant to section 904(f)(3) and § 1.367(a)–6 upon the transfer of items of property that are subject to section 367(d). "Gain from intangible property" does not include gain realized with respect to intangible property by reason of an election under paragraph (g)(2) of this section. The "gain from all branch assets" is the total amount of gain realized by the transferor upon the transfer of items of property of the branch for which gain is realized.

(g)(4) through (i) [Reserved]. For further guidance, see § 1.367(d)–1T(g)(4) through (i).

(j) *Effective/applicability dates*. This section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § 1.367(d)–1T as contained in 26 CFR part 1 revised as of April 1, 2016.

§ 1.367(d)–1T [Amended]

Par. 18. Section 1.367(d)–1T is amended by removing and reserving paragraphs (b), (c)(3), and (g)(2)(i), (g)(2)(iii)(E), and (g)(3).

Par. 19. Section 1.367(e)–2 is amended by

1. Revising paragraph (b)(3)(iii).
2. Revising paragraph (e)(4)(ii)(B).

The revisions read as follows.

§ 1.367(e)–2 Distributions described in section 367(e)(2).

* * * * *

(b) * * *

(3) * * *

(iii) *Other rules*. For other rules that may apply, see sections 381, 897, 1248, and § 1.482–1(f)(2)(i)(C).

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(B) The period of limitations on assessment of tax for the taxable year in which gain is required to be reported will be extended until the close of the third full taxable year ending after the date on which the domestic liquidating corporation, foreign distributee corporation, or foreign liquidating corporation, as applicable, furnishes to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) the information that should have been provided under this section.

* * * * *

§ 1.884–5 [Amended]

Par. 20. Section 1.884–5 is amended in paragraph (e)(3)(ii)(A) by removing the citation "§ 1.367(a)–2T(b)(5)," and adding the citation "§ 1.367(a)–2(d)(5)" in its place.

§ 1.1248–8 [Amended]

Par. 21. Section 1.1248–8 is amended in paragraph (b)(2)(iv)(B)(*1*)(*ii*) by removing the citation "§§ 1.367(a)–6T," and adding the citation "§ 1.367(a)–6" in its place.

§ 1.1248(f)–2 [Amended]

Par. 22. Section 1.1248(f)–2 is amended in the last sentence of paragraph (e) by removing the citation "§ 1.367(a)–2T," and adding the citation "§ 1.367(a)–2" in its place.

Par. 23. Section 1.6038B–1 is amended by:

1. Removing the citation "§ 1.367(a)–1T(c)," in the fourth sentence of paragraph (b)(1)(i) and adding the citation "§ 1.367(a)–1(c)" in its place.
2. Revising paragraphs (c)(1) through (5) and (d).
3. Revising the first sentence of paragraph (g)(1).
4. Adding paragraph (g)(7).

The additions and revision read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(c) * * *

(1) through (4) introductory text [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (4) introductory text.

(i) *Active business property*. Describe any transferred property that qualifies under § 1.367(a)–2(a)(2). Provide here a general description of the business conducted (or to be conducted) by the transferee, including the location of the business, the number of its employees, the nature of the business, and copies of the most recently prepared balance sheet and profit and loss statement. Property listed within this category may be identified by general type. For example, upon the transfer of the assets of a manufacturing operation, a reasonable description of the property to be used in the business might include the categories of office equipment and supplies, computers and related equipment, motor vehicles, and several major categories of manufacturing equipment. However, any property that is includible in both paragraphs (c)(4)(i) and (iii) of this section (property subject to depreciation recapture under § 1.367(a)–4(a)) must be identified in the manner required in paragraph (c)(4)(iii) of this section. If property is considered to be transferred for use in the active conduct of a trade or business under a special rule in paragraph (e), (f), or (g) of § 1.367(a)–2, specify the applicable rule and provide information supporting the application of the rule.

(ii) *Stock or securities*. Describe any transferred stock or securities, including the class or type, amount, and characteristics of the transferred stock or securities, as well as the name, address, place of incorporation, and general description of the corporation issuing the stock or securities.

(iii) *Depreciated property*. Describe any property that is subject to depreciation recapture under § 1.367(a)–4(a). Property within this category must be separately identified to the same extent as was required for purposes of the previously claimed depreciation deduction. Specify with respect to each such asset the relevant recapture provision, the number of months that such property was in use within the United States, the total number of months the property was in use, the fair market value of the property, a schedule of the depreciation deduction taken with respect to the property, and a calculation of the amount of depreciation required to be recaptured.

(iv) *Property not transferred for use in the active conduct of a trade or business*. Describe any property that is eligible property, as defined in § 1.367(a)–2(b) taking into account the application of § 1.367(a)–2(c), that was transferred to the foreign corporation but not for use in the active conduct of a trade or business outside the United States (and was therefore not listed under paragraph (c)(4)(i) of this section).

(v) *Property transferred under compulsion*. If property qualifies for the exception of § 1.367(a)–2(a)(2) under the rules of paragraph (h) of that section, provide information supporting the claimed application of such exception.

(vi) *Certain ineligible property*. Describe any property that is described in § 1.367(a)–2(c) and that therefore cannot qualify under § 1.367(a)–2(a)(2) regardless of its use in the active conduct of a trade or business outside of the United States. The description must be divided into the relevant categories, as follows:

(A) *Inventory, etc*. Property described in § 1.367(a)–2(c)(1);

(B) *Installment obligations, etc*. Property described in § 1.367(a)–2(c)(2);

(C) *Foreign currency, etc*. Property described in § 1.367(a)–2(c)(3); and

(D) *Leased property*. Property described in § 1.367(a)–2(c)(4).

(vii) *Other property that is ineligible property*. Describe any property, other than property described in § 1.367(a)–2(c), that cannot qualify under § 1.367(a)–2(a)(2) regardless of its use in the active conduct of a trade or business outside of the United States and that is not subject to the rules of section 367(d) under § 1.367(a)–1(b)(5) (treatment of certain property as subject to section 367(d)). Each item of property must be separately identified.

(viii) [Reserved]. For further guidance, see § 1.6038B–1T(c)(4)(viii).

(5) *Transfer of foreign branch with previously deducted losses*. If the property transferred is property of a foreign branch with previously deducted losses subject to §§ 1.367(a)–6 and –6T, provide the following information:

(i) through (iv) [Reserved]. For further information, see § 1.6038B–1T(c)(5)(i) through (iv).

* * * * *

(d)(1) through (1)(iii) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1) through (1)(iii).

(iv) *Intangible property transferred*. Provide a description of the intangible property transferred, including its adjusted basis. Generally, each item of intangible property must be separately identified, including intangible property described in § 1.367(d)–1(g)(2)(i). Identify all property that is subject to the rules of section 367(d) under § 1.367(a)–1(b)(5) (treatment of certain property as subject to section 367(d)). Describe any property for which the income required to be taken into account under section 367(d) and the regulations thereunder will be recognized over a 20-year period pursuant to § 1.367(d)–1(c)(3)(ii). Estimate the anticipated income or cost reductions attributable to the intangible property's use beyond the 20-year period.

(v)–(vi) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1)(v) through (1)(vi).

(vii) *Coordination with loss rules*. List any intangible property subject to section 367(d) the transfer of which also gives rise to the recognition of gain under section 904(f)(3) or §§ 1.367(a)–6 or –6T. Provide a calculation of the gain required to be recognized with respect to such property, in accordance with the provisions of § 1.367(d)–1(g)(3).

(d)(1)(viii) through (d)(2) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1)(viii) through (d)(2).

* * * * *

(g) *Effective/applicability dates*. (1) This section applies to transfers occurring on or after July 20, 1998, except as provided in paragraphs (g)(2) through (g)(7) of this section, and except for transfers of cash made in tax years beginning on or before February 5, 1999 (which are not required to be reported under section 6038B), and transfers described in paragraph (e) of this section (which applies to transfers that are subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e)). * * *

* * * * *

(7) Paragraphs (c)(4)(i) through (vii), (c)(5), and (d)(1)(iv) and (vii) of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For guidance with respect to paragraphs (c)(4), (c)(5), and (d)(1) of this section before this section is applicable, see §§ 1.6038B–1 and 1.6038B–1T as contained in 26 CFR part 1 revised as of April 1, 2016.

Par. 24. Section 1.6038B–1T is amended by removing and reserving paragraphs (c)(4)(i) through (c)(5) introductory text, and (d)(1)(iv) and (vii).

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved: November 23, 2016

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

(Filed by the Office of the Federal Register on December 15, 2016, at 8:45 a.m., and published in the issue of the Federal Register for December 16, 2016, 81 F.R. 91092)

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26 CFR 1.36B–1

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

T.D. 9804

Premium Tax Credit Regulation VI

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the health insurance premium tax credit (premium tax credit). These final regulations affect individuals who enroll in qualified health plans through Health Insurance Exchanges (Exchanges, also called Marketplaces) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals and employers. These final regulations also affect individuals who are eligible for employer-sponsored health coverage.

DATES: *Effective Date*: These regulations are effective December 19, 2016.

Applicability Date: For dates of applicability, see §§ 1.36B–1(o), 1.36B–2(e), 1.36B–3(n), 1.36B–5(h), and 1.6011–8(b).

FOR FURTHER INFORMATION CONTACT: Steve Toomey at (202) 317-4735, Shareen Pflanz at (202) 317-4727, or Lisa Mojiri-Azad at (202) 317-4649 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2232.

The collection of information in these regulations is in § 1.36B–5. The collection of information is necessary to reconcile advance payments of the premium tax credit and determine the allowable premium tax credit. The collection of information is required to comply with the provisions of section 36B of the Internal Revenue Code (Code). The likely respondents are Marketplaces that enroll individuals in qualified health plans.

The burden for the collection of information contained in these regulations will be reflected in the burden estimate for Form 1095–A, *Health Insurance Marketplace Statement*, which is the form that the Marketplace will use to submit the information described in the final regulations.

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

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 36B relating to the health insurance premium tax credit. Section 36B was enacted by the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30,385). These regulations were amended in 2014 by TD 9663, published on May 7, 2014 (79 FR 26,117), and in 2015 by TD 9745, published December 18, 2015 (80 FR 78,974). On July 8, 2016, a notice of proposed rulemaking (REG–109086–15) was published in the **Federal Register** (81 FR 44,557). Written comments responding to the proposed regulations were received. The comments have been considered in connection with these final regulations and are available for public inspection at www.regulations.gov or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted, in part, as amended by this Treasury decision. The rules proposed under REG–109086–15 on the effect of opt-out arrangements on an employee's required contribution for employer-sponsored coverage have been reserved and the Treasury Department and the IRS expect to finalize those regulations separately (see, section 1.d of this preamble).

Summary of Comments and Explanation of Provisions

1. *Eligibility*

a. *Applicable taxpayers*

A taxpayer is eligible for a premium tax credit only if the taxpayer is an applicable taxpayer. To be an applicable taxpayer, a taxpayer's household income generally must be between 100 percent and 400 percent of the Federal poverty line (FPL) for the taxpayer's family size. The existing regulations in § 1.36B–2(b)(6) allow a taxpayer whose household income is below 100 percent of the applicable FPL to be treated as an applicable taxpayer if (1) the taxpayer or a family member enrolls in a qualified health plan, (2) an Exchange estimates at the time of enrollment that the taxpayer's household income for the taxable year will be between 100 and 400 percent of the applicable FPL, (3) advance credit payments are authorized and paid for one or more months during the taxable year, and (4) the taxpayer would be an applicable taxpayer but for the fact that the taxpayer's household income for the taxable year is below 100 percent of the applicable FPL.

An applicable taxpayer is allowed a premium tax credit for a month only if one or more members of the applicable taxpayer's family is enrolled in one or more qualified health plans through an Exchange and is not eligible for minimum essential coverage in that month. Section 36B(c)(2), § 1.36B–2(a). In general, government-sponsored programs are minimum essential coverage. Section 1.36B–2(c)(1). Under § 1.36B–2(c)(2)(v), an individual is treated as not eligible for Medicaid, the Children's Health Insurance Program (CHIP), or a similar program for a period of coverage under a qualified health plan if, when the individual enrolls in the qualified health plan, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be ineligible for such program.

In addition, coverage under an eligible employer-sponsored plan is generally minimum essential coverage.[1] However, an individual who may (but does not) enroll in an employer-sponsored plan is generally considered eligible for that plan only if the plan is considered affordable and provides minimum value. Section 36B(c)(2)(C), § 1.36B–2(c)(3). In addition, under the employee safe harbor in § 1.36B–2(c)(3)(v)(A)(*3*), an employer-sponsored plan is not considered affordable for a plan year if, when the employee or a related individual enrolls in a qualified health plan for a period coinciding with the plan year, an Exchange determines that the employer-sponsored plan is not affordable for that plan year.

The existing regulations describing the employee safe harbor contain an exception for reckless disregard for the facts. Under the exception, the safe harbor does not apply in situations in which an Exchange determines that an individual is not eligible for affordable employer-sponsored coverage because an individual, with reckless disregard of the facts, provides incorrect information to the Exchange regarding affordability of the plan.

The proposed regulations add two additional intentional or reckless disregard exceptions to provisions regarding eligibility determinations by the Exchanges. First, to reduce the likelihood that individuals who recklessly or intentionally provide inaccurate information to an Exchange will benefit from the rule in § 1.36B–2(b)(6) (regarding an Exchange determination that the taxpayer's household income for the taxable year will be between 100 and 400 percent of the applicable FPL), the proposed regulations provide that a taxpayer whose household income is below 100 percent of the applicable FPL for the taxpayer's family size does not receive the benefit of that rule if, with intentional or reckless disregard for the facts, the taxpayer provided incorrect

[1]In general, an eligible employer-sponsored plan is coverage provided by an employer to its employees (and their dependents) under a group health plan maintained by the employer. *See* section 5000A(f)(2) and § 1.5000A–2(c). Under section 5000A(f)(3) and § 1.5000A–2(g), minimum essential coverage does not include any coverage that consists solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (PHS Act) (42 U.S.C. 300gg–91(c)), or regulations issued under those provisions (45 CFR 148.220). In general, excepted benefits are benefits that are limited in scope or are conditional.

information to an Exchange for the year of coverage.

Second, the proposed regulations provide that an individual who was determined or considered by an Exchange to be ineligible for Medicaid, CHIP, or a similar program (such as a Basic Health Program) does not receive the benefit of the rule in § 1.36B–2(c)(2)(v) (regarding an Exchange determination that an individual was not eligible for coverage under Medicaid, CHIP, or a similar program) if, with intentional or reckless disregard for the facts, the individual (or a person claiming a personal exemption for the individual) provided incorrect information to an Exchange for the year of coverage.

In each of the three instances in the existing and proposed section 36B regulations where an intentional or reckless disregard for the facts exception is provided, the proposed regulations clarify that a reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. The proposed regulations also provide that a disregard of the facts is intentional if the taxpayer knows the information provided to the Exchange is inaccurate.

Commenters asked that the final regulations clarify how the IRS will determine whether an individual has acted with reckless or intentional disregard of the facts, and how these standards will be applied and enforced. Some commenters requested that the final regulations clarify the definition of "reckless disregard" and provide examples. Other commenters expressed concern that the proposed rule would make taxpayers responsible for information provided by third parties who provide assistance with enrollment. Thus, the commenters recommended that the final regulations clarify that an individual is only responsible for information he or she provides to the Exchange and is not responsible for information provided by third parties. The commenters also suggested that the final regulations provide that individuals who use an expert to assist with enrolling in coverage should not be considered to have acted recklessly when relying on the expert's professional advice. Other commenters requested that the final regulations require that individuals be notified of the consequences of potential income-based eligibility fraud.

A commenter also stated that, under the final regulations, the IRS should have the burden of showing that a taxpayer's incorrect information was provided to the Exchange with intentional or reckless disregard for the facts. One commenter suggested that the final regulations clarify that the reckless or intentional disregard for the facts exceptions will be applied on an individual basis. In addition, the commenter asked that the final regulations address how the intentional or reckless disregard for the facts exception, as it applies to the employee safe harbor in § 1.36B–2(c)(3)(v)(A)(*3*), will be implemented by the Exchanges.

Finally, one commenter requested that the final regulations not adopt the intentional or reckless disregard for the facts exceptions.

After careful consideration of the comments received, the final regulations adopt the intentional or reckless disregard for the facts exception, and the definition of its terms, to the section 36B eligibility safe harbors for household income below 100 percent of the FPL, government programs such as Medicaid, and employer-sponsored coverage. As clarified in the proposed and final regulations, the intentional or reckless disregard for the facts exception applies only when the taxpayer knowingly provides inaccurate information to the Exchange or makes little or no effort to determine whether the information provided is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct of a reasonable person. The commenters' concerns are further addressed in this preamble.

These final regulations, in adopting the intentional or reckless disregard for the facts exceptions set forth in the proposed regulations without modification, do not create new or heightened standards or rules for determining whether a taxpayer acted with intentional or reckless disregard for the facts. Rather, the phrase "intentional or reckless disregard for the facts" as used in the section 36B regulations has a similar meaning and application currently used in other areas of the Code. For example, an intentional or reckless disregard standard also is applied in determining eligibility for other tax credits such as the earned income tax credit and the American opportunity tax credit, see sections 32(k) and 25A(i)(7)(A).

The IRS is responsible for enforcement of the intentional or reckless disregard for the facts exceptions during an examination of a taxpayer's tax return. Thus, the IRS must make the initial showing of facts demonstrating intentional or reckless behavior. Exchanges have no role in enforcing or implementing this standard, although other provisions of law provide Exchanges the authority to impose penalties on individuals who provide incorrect information to an Exchange.

To provide additional clarity, in general, the intentional or reckless disregard for the facts exception only applies to the conduct of the individual attesting to the Exchange. Thus, an individual is only responsible for the information that he or she provides to the Exchange and is not liable for inaccurate information provided by third parties, such as an employer.

An individual's attestations, however, may affect the eligibility of all individuals who are listed on a Marketplace Application for Health Coverage and who the taxpayer intends at the time of enrollment to claim as a dependent. For example, if a taxpayer, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange concerning his household income and receives advance credit payments for coverage of himself and his three dependents, and his actual household income is below 100% of the applicable FPL, then the taxpayer is not an applicable taxpayer and a premium tax credit is not allowed for his coverage or the coverage of his three dependents.

Similarly, many individuals solicit and receive assistance with enrollment and completing the Marketplace Application for Health Coverage. To ensure effective and efficient enrollment through the Exchange, the Department of Health and Human Services uses Navigators, as described at 45 CFR 155.210, to assist potential applicants. In addition, the Marketplaces administer a program for individuals and entities to apply for and receive recognition as a certified application counselor, as defined in 45 CFR 155.225, who may formally offer and provide enrollment assistance to individuals and small businesses. Finally, 45 CFR 155.220 provides standards under which agents and brokers may register and facilitate enrollments through the Marketplaces. Navigators, certified application counselors, agents, and brokers (collectively, authorized advisors) receive comprehensive training on enrollment and completion of a Marketplace Application for Health Coverage, and individuals are encouraged to use them when making enrollment and advance credit payment decisions. Accordingly, for purposes of the final regulations, an individual does not act recklessly when following the advice of an authorized advisor, so long as the individual provided the authorized advisor with necessary and accurate information. Whether reliance on advice provided by a person other than an authorized advisor is reckless will depend on all of the relevant facts and circumstances, including whether reliance was reasonable and whether the taxpayer provided necessary and accurate information to the other person.

To illustrate, assume Individual D is told by a Navigator that the child support payments D receives from her former spouse are included in her household income in determining whether she is eligible for advance credit payments. Relying on that information, D reports on a Marketplace Application for Health Coverage that her household income for the year of coverage will be over 100 percent of the applicable FPL for D's family size, and D receives the benefit of advance credit payments for the year. When filing her tax return for the year of coverage, D learns that child support payments are not included in her household income for the year of coverage and, thus, her household income is actually under 100 percent of the applicable FPL. D is not considered to have acted with intentional or reckless disregard for the facts because she relied on the advice of a Navigator in providing the information that the Marketplace used to determine whether she was eligible for advance credit payments. Thus, the provision in § 1.36B–2(b)(6) that allows a taxpayer whose household income is below 100 percent of the applicable FPL to be treated as an applicable taxpayer will apply to D despite the fact that her household income for the taxable year is below 100 percent of the applicable FPL.

In contrast, assume Individual E told the Navigator assisting with E's Marketplace Application for Health Coverage that E's lowest-cost option for purchasing self-only employer-sponsored coverage that provides minimum value would cost E $10,000 for the taxable year, when in fact E knew that he could purchase such coverage for $5,000. Based on the information E provided, the Navigator advises E that he should indicate on his Marketplace Application for Health Coverage that his required contribution for employer-sponsored coverage is $10,000. E follows this advice and consequently receives the benefit of advance credit payments for the year. During a subsequent examination, the IRS determines that E could have purchased employer-sponsored coverage that provides minimum value for $5,000. For the year of coverage, E is not considered to have reasonably relied on the advice of a Navigator in providing information to the Marketplace because E knowingly provided inaccurate information to the Navigator. Thus, the employee safe harbor in § 1.36B–2(c)(3)(v)(A)(*3*) does not apply to E.

b. *Nonappropriated Fund Health Benefits Program of the Department of Defense*

The proposed regulations provide that the Nonappropriated Fund Health Benefits Program of the Department of Defense (the Program) is treated as an eligible employer-sponsored plan for purposes of determining if an individual is eligible for minimum essential coverage under section 36B. This treatment conforms the regulations under section 36B to the regulations under section 5000A, which treat the Program as an eligible employer-sponsored plan. Thus, if coverage under the Program does not provide minimum value (under § 1.36B–2(c)(3)(vi)) or is not considered affordable (under § 1.36B–2(c)(3)(v)) for an individual who does not enroll in the coverage, he or she is not treated as eligible for minimum essential coverage under the Program for purposes of premium tax credit eligibility.

One commenter requested that the final regulations clarify how Marketplaces will determine and verify whether an offer of coverage under the Program provides minimum value and is affordable. In general, employers are required to provide certain information to employees about the coverage that they offer, including information that is relevant to affordability and minimum value. These regulations do not make any changes to those requirements.

c. *Eligibility for employer-sponsored coverage for months during a plan year*

The existing section 36B regulations provide that an individual is eligible for minimum essential coverage through an eligible employer-sponsored plan if the individual had the opportunity to enroll in the plan and the plan is affordable and provides minimum value. Because in some instances individuals may not be allowed an annual opportunity to decide whether to enroll in eligible employer-sponsored coverage, the proposed regulations provide that if an individual declines to enroll in employer-sponsored coverage for a plan year and does not have the opportunity to enroll in that coverage for one or more succeeding plan years, for purposes of section 36B, the individual is treated as ineligible for that coverage for the succeeding plan year or years for which there is no enrollment opportunity. This rule relating to eligibility for employer-sponsored coverage is proposed to apply for taxable years beginning after December 31, 2016.[2]

One commenter sought clarification on how this rule relating to eligibility for employer-sponsored coverage applies to employers with fiscal-year employer plans. The commenter also requests a delay in the effective date to allow additional time for implementation.

[2]Note that for purposes of section 4980H, in general, an applicable large employer will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll in the coverage at least once with respect to the plan year. For this purpose, a plan year must be twelve consecutive months, unless a short plan year of less than twelve consecutive months is permitted for a valid business purpose. For additional rules on the definition of ''offer'' and ''plan year'' under section 4980H, see §§ 54.4980H–1(a)(35), 54.4980H–4(b), and 54.4980H–5(b).

The rule in the proposed regulations relating to eligibility for employer-sponsored coverage applies to fiscal year plans in the same manner that it applies to calendar year plans. For example, assume an employer offers an employee affordable, minimum value coverage for a plan year of April 1, 2017 through March 30, 2018. In addition, under the terms of the employer's plan, if the employee declines the coverage beginning on April 1, 2017, the employee is precluded from enrolling for the plan year of April 1, 2018 through March 30, 2019, absent a special enrollment period. Under the proposed regulations, the employee is treated as eligible for this employer-sponsored coverage only for the period between April 1, 2017 and March 31, 2018. Thus, assuming the employee does not enroll in the employer-sponsored coverage through a special enrollment period, the employee is not considered eligible for this employer coverage during the period April 1, 2018 through March 31, 2019.

The final regulations do not adopt the commenter's suggestion to delay the applicability date of the provision relating to eligibility for employer-sponsored coverage to a year after 2017. The Treasury Department and the IRS believe that it would be unfair to employees and their family members who do not have an annual opportunity to enroll in coverage offered to them by an employer to delay the applicability date of this provision. Consequently, the final regulations provide that this provision is applicable for taxable years beginning after December 31, 2016.

d. *Opt-out arrangements and an employee's required contribution*

The proposed regulations provide rules on the effect of payments made available under opt-out arrangements on an employee's required contribution for purposes of eligibility for the premium tax credit and an exemption from the section 5000A individual shared responsibility provision.[3] An opt-out arrangement is an arrangement under which a payment (called an opt-out payment) is made available to an employee by an employer only if the employee declines coverage under an eligible employer-sponsored plan offered by the employer. Prior to the proposed regulations, the Treasury Department and the IRS released Notice 2015–87, 2015–52 I.R.B. 889, which also addressed the effect of opt-out arrangements on an employee's required contribution.

Several comments on the proposed rule were received. The Treasury Department and the IRS continue to examine the issues raised by opt-out arrangements and expect to finalize regulations on the effect of opt-out arrangements on an employee's required contribution at a later time.

As provided in Notice 2015–87, Q&A 9, and reiterated in the proposed rule, the regulations on opt-out arrangements generally will apply only for periods after the applicability of those final regulations. Until those final regulations are applicable, individuals and employers can continue to rely on the guidance provided in Notice 2015–87 and on the proposed rule, including transition relief as clarified and expanded in section 2.f of the preamble to the proposed rule (for opt-out arrangements contained in collective bargaining agreements in effect before December 16, 2015). See 81 FR 44,561.

Accordingly, until the applicability date of final regulations on opt-out arrangements, individuals may treat opt-out payments made available under unconditional opt-out arrangements (as defined in the Background section of the preamble to the proposed regulations (see 81 FR 44,560)) as increasing the employee's required contribution for purposes of sections 36B and 5000A. In addition, for the same period, an individual who can demonstrate that he or she meets the condition(s) (in addition to declining the employer's health coverage) that must be satisfied to receive an opt-out payment under a conditional opt-out arrangement (as defined in the Background section of the preamble to the proposed regulations (see 81 FR 44,560)), may treat the amount of the conditional opt-out payment as increasing the employee's required contribution for purposes of sections 36B and 5000A.

In contrast, until the applicability date of final regulations on opt-out arrangements, employers are not required to increase an employee's required contribution by the amount of an opt-out payment made available under an opt-out arrangement (other than a payment made available under a non-relief-eligible opt-out arrangement[4]) for purposes of section 6056 (Form 1095–C, Employer-Provided Health Insurance Offer and Coverage), and an opt-out payment made available under an opt-out arrangement (other than a payment made available under a non-relief-eligible opt-out arrangement) will not be treated as increasing an employee's required contribution for purposes of any potential consequences under section 4980H.

e. *Effective date of eligibility for minimum essential coverage when advance credit payments discontinuance is delayed*

The proposed regulations provide that if an individual who is enrolled in a qualified health plan for which advance credit payments are made informs the Exchange that the individual is or will soon be eligible for other minimum essential coverage and that advance credit payments should be discontinued, but the Exchange does not discontinue advance credit payments for the first calendar month beginning after the month the individual notifies the Exchange, the individual is treated as eligible for the other minimum essential coverage no earlier than the first day of the second calendar month beginning after the first month the individual may enroll in the other minimum essential coverage. Similarly, if a determination is made that an individual is eligible for Medicaid or CHIP but advance credit payments are not discontinued for the first calendar month beginning after the eligibility determination, the individual is treated as eligible for Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the determination.

[3]The amount of an employee's required contribution has consequences under section 4980H and the related reporting requirements under section 6056. For more information, see Notice 2015–87, Q&A 7-9 and section 2.f of the preamble to the proposed rule (see 81 FR 44,561).

[4]For a discussion of non-relief-eligible opt-out arrangements, see Notice 2015–87, Q&A 9 and section 2.f of the preamble of the proposed rule. See 81 FR 44,561.

Commenters noted that the proposed regulations do not address how the IRS will identify and verify scenarios in which an individual requested prospective discontinuation of advance credit payments but there was a delay in the discontinuation. The commenters also pointed out that consumers may request an accelerated termination if the Exchange and health plan issuer allow it and the proposed regulations do not address how these scenarios will be handled. Consequently, the commenters requested that the IRS issue clear instructions and guidance for taxpayers and tax preparers for situations in which there is a delay discontinuing or terminating advance credit payments to ensure that taxpayers will not be subject to penalties or repayment of advance credit payments for which they are not responsible.

The Instructions to Form 8962, Premium Tax Credit (PTC), and Publication 974, Premium Tax Credit, will include a discussion of this rule concerning eligibility for certain non-Marketplace minimum essential coverage when the discontinuance of advance credit payments is delayed. Furthermore, the IRS intends to, in Questions and Answers on *www.irs.gov*, address situations in which there is a delay in the discontinuance of advance credit payments and the taxpayer is allowed a premium tax credit for a month for which the taxpayer receives a Form 1095–B or Form 1095–C showing that the taxpayer was enrolled in non-Marketplace minimum essential coverage.

Commenters requested that the final regulations acknowledge that this rule concerning eligibility for non-Marketplace minimum essential coverage when there has been a delay in the discontinuance of advance credit payments does not change the obligations of health plan issuers for prior years, notwithstanding that the rule in the proposed regulations may be relied on by taxpayers for taxable years beginning after December 31, 2013. Although the obligations of health plan issuers are generally outside the scope of these regulations, it is the understanding of the Treasury Department and the IRS, in consultation with the Department of Health and Human Services (HHS), that this rule regarding when an individual is eligible for certain non-Marketplace coverage does not affect the obligations of health plan issuers or the deadlines imposed by or on those issuers.

One commenter requested that the rule extend to other situations, such as when an individual receiving the benefit of advance credit payments is incarcerated after disposition of charges. Under section 1312(f)(1)(B) of the Affordable Care Act (42 U.S.C. 18032(f)(1)(B)), incarcerated individuals may not be enrolled through a Marketplace. However, unlike an individual enrolled in minimum essential coverage outside of the Marketplace, if there is a delay in disenrolling the incarcerated individual and discontinuing the advance credit payments, neither section 36B nor its regulations prohibit a taxpayer from claiming a premium tax credit for an incarcerated individual's Marketplace coverage. Thus, the final regulations do not adopt this comment.

The same commenter also requested a change in the rule concerning delays in discontinuance of advance credit payments after a Medicaid or CHIP determination. Under the proposed regulations, if there is a delay in discontinuance of advance credit payments following a Medicaid or CHIP eligibility determination, the individual is treated as eligible for Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the determination. The commenter stated that, under the final regulations, an individual should be treated as eligible for Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the eligibility determination is communicated to the Exchange.

The final regulations do not adopt this comment. The commenter is likely concerned about a situation in which the office that made a Medicaid or CHIP determination for an individual does not promptly notify the Marketplace of that status and the individual remains enrolled in Marketplace coverage with advance credit payments for multiple months. However, individuals enrolled in Marketplace coverage with advance credit payments who are determined eligible for Medicaid or CHIP should also promptly notify their Marketplace to discontinue the advance credit payments. Amending the rule to delay eligibility until the second month after the determination is communicated to the Marketplace effectively allows individuals who fail to promptly communicate with their Marketplaces to be dual enrolled for multiple months with advance credit payments.

2. *Premium Assistance Amount*

a. *Payment of taxpayer's share of premiums for advance credit payments following appeal determinations*

Under existing § 1.36B–3(c)(1)(ii), a month is a coverage month for an individual only if the share of the premium for the individual's coverage for the month not covered by advance credit payments is paid by the unextended due date of the income tax return for the year of coverage of the taxpayer claiming a personal exemption for the individual.

As discussed in the preamble to the proposed regulations, instances arise in which an individual is initially determined ineligible for advance credit payments, does not enroll in a qualified health plan pending the individual's appeal of the determination, and is later determined to be eligible for advance credit payments through the appeals process. If the individual then elects to be retroactively enrolled in an Exchange health plan, the deadline for paying premiums for the retroactive coverage may be after the unextended due date for filing an income tax return for the year of coverage. To address this issue, the proposed regulations provide that a taxpayer who is eligible for advance credit payments pursuant to an eligibility appeal for a member of the taxpayer's coverage family who, based on the appeals decision, retroactively enrolls in a qualified health plan, is considered to have met the requirement in § 1.36B–3(c)(1)(ii) for a month if the taxpayer pays the individual's share of the premium for coverage under the plan for the month on or before the 120th day following the date of the appeals decision (the appeal premium payment period).

A commenter opined that to ensure accurate and consistent identification and reporting of payment deadlines, the triggering event that begins the appeal premium payment period under the section 36B regulations should align with the triggering event provided in 45 CFR 155.400

(e)(1)(iii), which provides as follows: "For coverage to be effectuated under retroactive effective dates, . . . the deadline for making the binder payment must be no earlier than 30 calendar days from the date the issuer receives the enrollment transaction." The commenter notes that the date the appeal premium payment period begins under the proposed regulations (the date of the appeals decision) is different from the date the period begins under 45 CFR 155.400(e)(1)(iii) (the date the issuer receives the enrollment transaction) and suggests that the final regulations conform to the language in 45 CFR 155.400(e)(1)(iii) because qualified health plan issuers would not know the date of the appeals decision and would not know whether the premium payment was made within 120 days of the appeals decision. The commenter also opined that the 120-day period in the proposed regulations may be too long for some retroactive enrollment scenarios, such as a situation in which an individual is enrolled in retroactive coverage for only a few months. The commenter also suggested that the appeal premium payment rule in the section 36B regulations should apply only in situations in which the appeal decision is after the individual's unextended due date for filing an income tax return for the year of coverage.

The final regulations do not adopt the suggested changes. The purpose of the appeal premium payment period in the section 36B regulations is to ensure that taxpayers who pay their premiums within a reasonable time following a favorable appeal decision may qualify for a premium tax credit. On the other hand, the payment date rule in 45 CFR 155.400(e)(1)(iii) relates to when the payment must be made to effectuate the retroactive coverage. Qualified health plan issuers need to know the date they received the enrollment transaction and thus whether the premium payments were timely made to effectuate the retroactive coverage, but have no need to know whether the payments were made within 120 days of the appeal decision. In addition, the 120-day period is needed to provide equitable treatment, whether the appeal decision is before or after the unextended due date for filing an income tax return for the year of coverage. It would be inequitable to allow a taxpayer who gets a favorable appeal decision five days after the unextended due date of his or her tax return the benefit of the 120-day appeal premium payment period but not extend the same benefit to a taxpayer who gets an appeal decision five days before the unextended due date.

3. *Benchmark Plan Premium*

a. *Pediatric dental benefits*

Under the existing section 36B regulations, if a member of a taxpayer's coverage family is enrolled in a stand-alone dental plan, the portion of the monthly premium for the stand-alone dental plan allocable to pediatric dental benefits is added to the taxpayer's monthly enrollment premium in determining the taxpayer's premium assistance amount for the month. Under the existing regulations, however, the portion of the monthly premium for a stand-alone dental plan allocable to pediatric dental benefits does not affect the taxpayer's applicable benchmark plan premium.

Because the existing regulations frustrate the goal of section 36B of making coverage for essential health benefits affordable to individuals eligible for the premium tax credit, the proposed regulations provide that, if an Exchange offers one or more silver-level qualified health plans that do not include pediatric dental benefits, the applicable benchmark plan is determined by ranking (1) the premiums for the silver-level qualified health plans that include pediatric dental benefits offered by the Exchange and (2) the aggregate of the premiums for the silver-level qualified health plans offered by the Exchange that do not include pediatric dental benefits plus the portion of the premium allocable to pediatric dental benefits for stand-alone dental plans offered by the Exchange. In constructing this ranking, the proposed regulations provide that the premium for the lowest-cost silver plan that does not include pediatric dental benefits is added to the lowest cost portion of the premium for a stand-alone dental plan that is allocable to pediatric dental benefits, and similarly, the premium for the second lowest-cost silver plan that does not include pediatric dental benefits is added to the second-lowest cost portion of the premium for a stand-alone dental plan that is allocable to pediatric dental benefits. The second lowest-cost amount from this combined ranking of premiums is the taxpayer's applicable benchmark plan premium. Finally, the proposed regulations provide that the rule for determining the applicable benchmark plan for situations in which an Exchange offers one or more silver-level qualified health plans that do not cover pediatric dental benefits (the pediatric dental rule) is applicable for taxable years beginning after December 31, 2018.

One commenter noted that the effect of the rule in the proposed regulations relating to pediatric dental benefits is that some taxpayers will have a lower monthly premium assistance amount as compared to their monthly premium assistance amount under the existing section 36B regulations. In particular, the commenter pointed to Example 4 of § 1.36B–3(f)(9) of the proposed regulations in which the taxpayer's benchmark plan premium is lower under the rules of the proposed regulations than under the existing section 36B regulations. Under this example, the applicable benchmark plan premium would be based on the lowest-cost rather than the second-lowest-cost silver-level qualified health plan. The commenter suggested that this is likely not a result intended by the Treasury Department and the IRS and recommended that the final regulations include a revision to the language of the proposed regulations to fix this unintended result.

The final regulations adopt the recommendation in this comment. Under the final regulations, if one or more silver-level qualified health plans offered through an Exchange do not cover pediatric dental benefits, the premium for the applicable benchmark plan is determined based on the second lowest-cost option among (i) the silver-level qualified health plans that are offered by the Exchange to the members of the coverage family and that provide pediatric dental benefits; and (ii) the silver-level qualified health plans that are offered by the Exchange to the members of the coverage family that do not provide pediatric dental benefits in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan (within the meaning of section 1311(d)(2)(B)(ii) of the Affordable Care

Act (42 U.S.C. 18031(d)(2)(B)(ii))) offered by the Exchange to the members of the coverage family that is properly allocable to pediatric dental benefits. Thus, under the final regulations, if a taxpayer's coverage family is able to enroll in one or more silver-level qualified health plans that do not provide pediatric dental benefits, the second lowest-cost portion of the premium for a stand-alone dental plan offered by the Exchange to the members of the coverage family that is properly allocable to pediatric dental benefits is added to the premium for each of those silver-level plans in determining the taxpayer's applicable benchmark plan.

One commenter requested clarification on how to determine the portion of the premium of a stand-alone dental plan properly allocable to the cost of pediatric dental benefits. According to the commenter, the portion of a plan's premium that is allocable to each essential health benefit (EHB) is determined by using an EHB factor (a multiplier that applies to the plan and represents the portion of the total benefit package that represents the EHB), and the EHB factor does not change based on who is purchasing the plan and what benefits they are eligible to use. The commenter asks for clarification on if, and how, an EHB factor is to be applied to a stand-alone dental plan and whether a stand-alone dental plan should have a different EHB factor apply based on whether children, or only adults, are enrolled in the plan.

The determination of the portion of the premium of a stand-alone dental plan properly allocable to pediatric dental benefits is outside the scope of these regulations. However, HHS has confirmed that, under its guidance, if no members of a taxpayer's coverage family are eligible for pediatric dental benefits, the portion of the premium allocable to pediatric dental benefits for all stand-alone dental plans the family may enroll in is $0.

Another commenter stated that the pediatric dental rule in the proposed regulations is inconsistent with the provisions of section 36B. Specifically, the commenter contends that the clear meaning of section 36B(b)(3)(E) is that the portion of a stand-alone pediatric dental plan premium allocable to pediatric dental benefits is added only to the enrollment premium, not the benchmark plan premium, in computing the premium tax credit, and is added only for taxpayers who have a family member who enrolls in a stand-alone dental plan. In addition, the commenter opines that the pediatric dental rule in the proposed regulations is overly complex and provides minimal benefit to a small group of taxpayers.

The Treasury Department and the IRS disagree that the pediatric dental rule is inconsistent with the provisions of section 36B. Although, as noted by the commenter, section 36B(b)(3)(E) relates only to the portion of a stand-alone dental plan premium that is added to a taxpayer's enrollment premium, the proposed regulations do not rely upon an interpretation of section 36B(b)(3)(E). Rather, as discussed in the preamble of the proposed regulations, the pediatric dental rule is based on statutory references to "self-only coverage" and "family coverage" in section 36B(b)(3)(B)(ii), and is consistent with the overall goal of section 36B, which is to make affordable the coverage of each of the essential health benefits described in section 1302(b) of the Affordable Care Act for individuals eligible for a premium tax credit. As discussed, that coverage may be obtained from either a qualified health plan covering all of the essential health benefits or one covering all benefits except pediatric dental in combination with a stand-alone dental plan. Finally, although the pediatric dental rule does add some complexity to the determination of a taxpayer's applicable benchmark plan, the rule will, in general, not result in more complexity to taxpayers because they generally use the benchmark plan premium amount reported to them by Exchanges to compute their premium tax credit. In addition, the pediatric dental rule in the final regulations, which, for stand-alone dental plans, considers just the second lowest-cost portion of the premium properly allocable to pediatric dental benefits in the determination of a taxpayer's applicable benchmark plan, is less complex than the rule in the proposed regulations, which requires consideration of both the lowest-cost and the second lowest-cost portion.

Other commenters supported the pediatric dental rule and asked that taxpayers be allowed to compute their applicable benchmark plan using the pediatric dental rule in the proposed regulations for taxable years beginning before January 1, 2019. However, taxpayers must know their benchmark plan premium amount to properly compute their premium tax credit and, consequently, Exchanges must provide this information to taxpayers. Because this pediatric dental rule involves a change in the manner in which a taxpayer's applicable benchmark plan is determined, Exchanges need time to implement the new rule and have indicated that they are likely unable to do so for taxable years beginning before January 1, 2019. Consequently, the final regulations do not adopt this comment.

b. *Members of coverage family residing in different states*

Under existing § 1.36B–3(f)(4), if members of a taxpayer's family reside in different states and enroll in separate qualified health plans, the premium for the taxpayer's applicable benchmark plan is the sum of the premiums for the applicable benchmark plans for each group of family members living in the same state. Because this rule may not accurately reflect the cost of available coverage for a taxpayer whose family members reside in different locations in the same state, the proposed regulations provide that if members of a taxpayer's coverage family reside in different locations, whether within the same state or in different states, the taxpayer's benchmark plan premium is the sum of the premiums for the applicable benchmark plans for each group of coverage family members residing in different locations, based on the plans offered to the group through the Exchange for the rating area where the group resides. The proposed regulations provide that the rules for calculating the premium tax credit operate the same for families residing in multiple locations within a state and families residing in multiple states.

One commenter expressed concern that the rule in the proposed regulations concerning the benchmark plan premium for members of the coverage family residing in different locations could result in unequal treatment of separate families, particularly in Marketplaces in which there are many rating areas within a relatively small geographic area and numerous plans are available for enrollment in many or all rating areas. Thus, the commenter asked that Marketplaces be allowed to use their own benchmark plan rating methodology rather than the rule in the proposed regulations for members of the coverage family who reside in different locations within a state.

The final regulations do not adopt this comment. The amount of a taxpayer's premium tax credit depends on the taxpayer's applicable benchmark plan and the premium for that plan. Allowing Exchanges to use different methodologies to determine the benchmark plan premium could result in inequitable treatment of taxpayers in different locations. One Exchange's methodology would undoubtedly provide a more generous benchmark plan premium for taxpayers who enroll in a qualified health plan through that Exchange as compared to taxpayers who enroll through another Exchange using a different methodology.

Another commenter asked that the final regulations clarify how the rule relating to family members residing in different locations works for farm workers who frequently migrate to find agricultural work, especially those who stay enrolled in the same plan despite the relocations. The rule concerning family members residing in different locations has no unique effect for individuals who frequently move to new locations and thus the final regulations include no new rules addressing this situation. HHS regulations at 45 CFR 155.335(e) require individuals who move to a new rating area to inform the Exchange in the new rating area of their move. The move may require a recomputation of the individual's advance credit payments, or perhaps necessitate the individual to enroll in a new qualified health plan, both of which are determined by the Exchange in the new rating area.

c. *Aggregation of silver-level policies*

Existing § 1.36B–3(f)(3) provides that if one or more silver-level plans offered through an Exchange do not cover all members of a taxpayer's coverage family under one policy (for example, because an issuer will not cover a taxpayer's dependent parent on the same policy the taxpayer enrolls in), the premium for the applicable benchmark plan may be the premium for a single policy or for more than one policy, whichever is the second lowest-cost silver option. Because this rule is complex for taxpayers and difficult for Exchanges and the IRS to administer, the proposed regulations delete the existing rule and provide a new rule in its place. Under the proposed regulations, if a silver-level plan offers coverage to all members of a taxpayer's coverage family who reside in the same location under a single policy, the plan premium taken into account for purposes of determining the applicable benchmark plan is the premium for that policy. However, if a silver-level plan would require multiple policies to cover all members of a taxpayer's coverage family who reside in the same location, the plan premium taken into account for purposes of determining the applicable benchmark plan is the sum of the premiums for self-only policies under the plan for each member of the coverage family who resides in the same location. The proposed regulations also requested comments on an alternative rule under which the sum of the premiums for self-only policies under a plan for each member of the taxpayer's coverage family would always be used to determine a taxpayer's applicable benchmark plan.

One commenter asked that the final regulations adopt the alternative rule discussed in the preamble to the proposed regulations concerning the determination of a taxpayer's applicable benchmark plan, not the rules in the proposed regulations, which vary based on whether a single policy or multiple policies are needed to cover a taxpayer's family. The commenter opined that this alternative rule has the potential to streamline the applicable benchmark plan calculation with minimal impact to the amount of premium tax credit a taxpayer is allowed.

The final regulations do not adopt this comment. Under HHS regulations, the qualified health plan premium for a taxpayer with three dependents is not increased by adding one or more additional dependents to the taxpayer's family. 45 CFR 147.102(c)(1). That is, the portion of the premium due to the taxpayer's dependents is capped at three dependents and does not increase as a result of adding more dependents to the family. However, if the alternative rule suggested by the commenter is adopted, a taxpayer with four or more dependents would have a higher benchmark plan premium than a similarly-situated taxpayer with three dependents even though the additional dependents do not add to the cost of the coverage for the taxpayer with four or more dependents. Thus, aggregating the sum of the self-only policies under a plan for each member of a taxpayer's coverage family may provide an undue benefit to taxpayers with four or more dependents. Accordingly, this approach should be limited to situations in which a silver-level plan requires multiple policies to cover all members of a taxpayer's coverage family who reside in the same location.

d. *Effective/applicability dates*

Under the proposed regulations, the changes to the rules concerning the determination of a taxpayer's applicable benchmark plan are proposed to be applicable for tax years beginning after December 31, 2018. Commenters noted that State-based Marketplaces often have very different eligibility and enrollment systems from the Federally-Facilitated Marketplace and from each other, and the changes to the applicable benchmark plan rules will require significant changes to their systems and long timelines for implementation. Consequently, the commenters asked that the Treasury Department and the IRS provide flexibility to State-based Marketplaces and provide ample time between the effective date of the final regulations and the date the states must implement the benchmark plan changes.

The final regulations do not alter the applicability date for the rule for computing the benchmark plan. Doing so would permit inequitable treatment of taxpayers in different locations and potentially have an adverse impact on certain taxpayers. Thus, the final regulations provide that the changes to the benchmark plan rules are applicable for taxable years beginning after December 31, 2018.

4. *Information Reporting*

The proposed regulations provide that when multiple families enroll in a single qualified health plan and advance credit payments are made for the coverage, the enrollment premiums reported by the Exchange for each family are the family's allocable share of the enrollment premiums, which is based on the proportion of each family's applicable benchmark plan premium. One commenter requested clarification that this reporting rule applies only in situations in which a taxpayer requests financial assistance through advance credit payments or cost-sharing reductions, or is seeking to enroll in Medicaid. The final regulations, like the proposed regulations, provide that the Exchange must report a portion of the plan's enrollment premium to each enrolled family if multiple families enroll in a single qualified health plan and advance credit payments are made for coverage under the plan. The portion reported is based on the proportion of each family's applicable benchmark plan premium.

The proposed regulations also provide that, if an individual's coverage in a qualified health plan is terminated before the last day of a month, or if an individual is enrolled in coverage after the first day of a month and the coverage is effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, an Exchange must report the enrollment premiums for the month (excluding the premium allocated to benefits in excess of essential health benefits), reduced by any amount that was refunded because the enrollment was for less than a full month. This reporting requirement was proposed to apply for taxable years beginning after December 31, 2016.

One commenter expressed concern with the rule requiring that Exchanges reduce the reported enrollment premium by any amounts of the enrollment premiums that are refunded by the issuer of the qualified health plan. The commenter stated that this requirement is not something that currently is captured by its reporting system, and updating the system would require an effort that would be out of scale with the small size of the population enrolled for less than a full month. The commenter suggests that refund information could be obtained when a taxpayer computes his or her premium tax credit on the taxpayer's Federal income tax return. Alternatively, the commenter requested that this requirement become effective for a taxable year later than 2017. To provide enrollment systems additional time to implement the updates and system modifications necessary to accurately report refunds for partial months of coverage, the final regulations delay the applicability date for this rule by two years, so that it applies for taxable years beginning after December 31, 2018. Exchanges able to comply with the reporting rule before that date are encouraged to do so.

Effective/Applicability Date

Except as otherwise provided, these final regulations apply for taxable years beginning after December 31, 2016. The rules relating to the benchmark plan premium described in section 3 of this preamble and the rules relating to reporting by the Exchanges described in section 4 of this preamble apply for taxable years beginning after December 31, 2018. As discussed in the Effective/Applicability Date section of the preamble to the proposed regulations, taxpayers may rely on certain provisions of the proposed regulations for taxable years ending after December 31, 2013.

See section 1.d of this preamble for a discussion of the effective date/applicability date for proposed regulations regarding opt-out arrangements.

Special Analyses

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

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the information collection required under these regulations is imposed under section 36B. Consistent with the statute, these regulations require Exchanges to report certain coverage information to the IRS and to furnish a statement to the responsible individual who enrolled an individual or family in the coverage. These regulations merely provide the method for reporting the information and furnishing the statements required under section 36B. Moreover, the regulations attempt to minimize the burden associated with this collection of information by limiting reporting to the information that the IRS requires to administer the premium tax credit.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal authors of these proposed regulations are Lisa Mojiri-Azad, Shareen S. Pflanz, and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

26 CFR Part 301

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

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.36B–0 is amended by:

1. Adding the entries for § 1.36B–2(b)(6)(i) and (ii).

2. Redesignating entry for § 1.36B–2(c)(4) as (c)(5) and adding new entries

for § 1.36B–2(c)(3)(v)(A)(*7*), (c)(4), (c)(4)(i), (c)(4)(ii), (c)(4)(ii)(A), (c)(4)(ii)(B), (c)(5), (d), and (e).

3. Redesignating entry for § 1.36B–3(c)(4) as (c)(5) and adding a new entry for § 1.36B–3(c)(4).

4. Revising entries for § 1.36B–3(d)(1) and (2).

5. Revising entries for § 1.36B–3(f)(3), (4), and (5).

6. Adding entries for § 1.36B–3(f)(5)(i) and (ii).

7. Revising entries for § 1.36B–3(f)(6) and (7).

8. Adding entries for § 1.36B–3(f)(8), (f)(9), (m), and (n).

9. Adding entries for § 1.36B–5(c)(3)(iii), (c)(3)(iii)(A), and (c)(3)(iii)(B).

The revisions and additions read as follows:

§ 1.36B–0 Table of contents.

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§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(6) * * *

(i) In general.

(ii) Exceptions.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(*7*) Opt-out arrangements.

* * * * *

(4) Special eligibility rules.

(i) Related individual not claimed as a personal exemption deduction.

(ii) Exchange unable to discontinue advance credit payments.

(A) In general.

(B) Medicaid or CHIP.

(5) Related individuals not claimed as a personal exemption deduction.

(d) [Reserved]

(e) Effective/applicability dates.

* * * * *

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(4) Appeals of coverage eligibility.

(d) * * *

(1) Premium assistance amount.

(2) Examples.

* * * * *

(f) * * *

(3) Silver-level plan not covering pediatric dental benefits.

(4) Family members residing in different locations.

(5) Single or multiple policies needed to cover the family.

(i) Policy covering a taxpayer's family.

(ii) Policy not covering a taxpayer's family.

(6) Plan not available for enrollment.

(7) Benchmark plan terminates or closes to enrollment during the year.

(8) Only one silver-level plan offered to the coverage family.

(9) Examples.

* * * * *

(m) [Reserved]

(n) Effective/applicability date.

§ 1.36B–5 Information reporting by Exchanges.

* * * * *

(c) * * *

(3) * * *

(iii) Partial month of coverage.

(A) In general.

(B) Certain mid-month enrollments.

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Par. 3. Section 1.36B–1 is amended by revising paragraphs (l), (m), and (o) to read as follows:

§ 1.36B–1 Premium tax credit definitions.

* * * * *

(l) *Self-only coverage*. Self-only coverage means health insurance that covers one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the Affordable Care Act (42 U.S.C. 18022).

(m) *Family coverage*. Family coverage means health insurance that covers more than one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the Affordable Care Act (42 U.S.C. 18022).

* * * * *

(o) *Effective/applicability date*. Except for paragraphs (l) and (m), this section applies to taxable years ending after December 31, 2013. Paragraphs (l) and (m) of this section apply to taxable years beginning after December 31, 2018. Paragraphs (l) and (m) of § 1.36B–1 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

Par. 4. Section 1.36B–2 is amended by:

1. Revising paragraph (b)(6) introductory text and paragraphs (b)(6)(i) and (ii).

2. Adding three sentences to the end of paragraph (c)(2)(v).

3. Revising paragraph (c)(3)(i).

4. Revising paragraph (c)(3)(iii)(A).

5. Removing the sentence at the end of the paragraph (c)(3)(v)(A)(*3*) and adding in its place three new sentences.

6. Adding paragraph (c)(3)(v)(A)(*7*).

7. Revising paragraph (c)(4).

8. Removing and reserving paragraph (d).

9. Adding paragraph (e).

The revisions and additions read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(6) *Special rule for taxpayers with household income below 100 percent of the Federal poverty line for the taxable year*—(i) *In general*. A taxpayer (other than a taxpayer described in paragraph (b)(5) of this section) whose household income for a taxable year is less than 100 percent of the Federal poverty line for the taxpayer's family size is treated as an applicable taxpayer for the taxable year if—

(A) The taxpayer or a family member enrolls in a qualified health plan through an Exchange for one or more months during the taxable year;

(B) An Exchange estimates at the time of enrollment that the taxpayer's household income will be at least 100 percent but not more than 400 percent of the Federal poverty line for the taxable year;

(C) Advance credit payments are authorized and paid for one or more months during the taxable year; and

(D) The taxpayer would be an applicable taxpayer if the taxpayer's household income for the taxable year was at least 100 but not more than 400 percent of the Federal poverty line for the taxpayer's family size.

(ii) *Exceptions*. This paragraph (b)(6) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange for the year of coverage. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows the information provided to the Exchange is inaccurate.

* * * * *

(c) * * *

(2) * * *

(v) * * * This paragraph (c)(2)(v) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange for the year of coverage. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows that information provided to the Exchange is inaccurate.

* * * * *

(3) * * *

(i) *In general*. For purposes of section 36B, an employee who may enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) and the regulations under that section) that is minimum essential coverage, and an individual who may enroll in the plan because of a relationship to the employee (a related individual), are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value. Except for the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note), government-sponsored minimum essential coverage is not an eligible employer-sponsored plan. The Nonappropriated Fund Health Benefits Program of the Department of Defense is considered eligible employer-sponsored coverage, but not government-sponsored coverage, for purposes of determining if an individual is eligible for minimum essential coverage under this section.

* * * * *

(iii) * * *

(A) *Failure to enroll in plan*. An employee or related individual may be eligible for minimum essential coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period for the plan year. If an enrollment period relates to coverage for not only the upcoming plan year (or the current plan year in the case of an enrollment period other than an open enrollment period), but also coverage in one or more succeeding plan years, this paragraph (c)(3)(iii)(A) applies only to eligibility for the coverage in the upcoming plan year (or the current plan year in the case of an enrollment period other than an open enrollment period).

* * * * *

(v) * * *

(A) * * *

(*3*) * * * This paragraph (c)(3)(v)(A)(*3*) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange concerning the portion of the annual premium for coverage for the employee or related individual under the plan. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows that the information provided to the Exchange is inaccurate.

* * * * *

(*7*) *Opt-out arrangements*. [Reserved]

* * * * *

(4) *Special eligibility rules*—(i) *Related individual not claimed as a personal exemption deduction*. An individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage, but for whom the other eligible person does not claim a personal exemption deduction under section 151, is treated as eligible for minimum essential coverage under the coverage only for months that the related individual is enrolled in the coverage.

(ii) *Exchange unable to discontinue advance credit payments*—(A) *In general*. If an individual who is enrolled in a qualified health plan for which advance credit payments are made informs the Exchange that the individual is or will soon be eligible for other minimum essential coverage and that advance credit payments should be discontinued, but the Exchange does not discontinue advance credit payments for the first calendar month beginning after the month the individual informs the Exchange, the individual is treated as eligible for the other minimum essential coverage no earlier than the first day of the second calendar month beginning after the first month the individual may enroll in the other minimum essential coverage.

(B) *Medicaid or CHIP*. If a determination is made that an individual who is enrolled in a qualified health plan for which advance credit payments are made is eligible for Medicaid or CHIP but the advance credit payments are not discontinued for the first calendar month beginning after the eligibility determination, the individual is treated as eligible for the Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the eligibility determination.

(d) [Reserved]

(e) *Effective/applicability date*. (1) Except as provided in paragraph (e)(2) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraph (b)(6)(ii), the last three sentences of paragraph (c)(2)(v), paragraph (c)(3)(i), paragraph (c)(3)(iii)(A), the last three sentences of paragraph (c)(3)(v)(A)(*3*), and paragraph (c)(4) of this section apply to taxable years beginning after December 31, 2016. Paragraphs

(b)(6), (c)(3)(i), (c)(3)(iii)(A), and (c)(4) of § 1.36B–2 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017.

Par. 5. Section 1.36B–3 is amended by:

1. Redesignating paragraph (c)(4) as paragraph (c)(5) and adding a new paragraph (c)(4).

2. Revising paragraph (d)(1).

3. Revising paragraph (d)(2).

4. Revising paragraph (f).

5. Adding paragraph (n).

The revisions and additions read as follows:

§ 1.36B–3 Computing the premium tax credit amount.

* * * * *

(c) * * *

(4) *Appeals of coverage eligibility*. A taxpayer who is eligible for advance credit payments pursuant to an eligibility appeal decision implemented under 45 CFR § 155.545(c)(1)(ii) for coverage of a member of the taxpayer's coverage family who, based on the appeal decision, retroactively enrolls in a qualified health plan is considered to have met the requirement in paragraph (c)(1)(ii) of this section for a month if the taxpayer pays the taxpayer's share of the premiums for coverage under the plan for the month on or before the 120th day following the date of the appeals decision.

* * * * *

(d) * * *

(1) *Premium assistance amount*. The premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month, reduced by any amounts that were refunded, for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

(ii) The excess of the adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (the taxpayer's contribution amount).

(2) *Examples*. The following examples illustrate the rules of paragraph (d)(1) of this section.

Example 1. Taxpayer Q is single and has no dependents. Q enrolls in a qualified health plan with a monthly premium of $400. Q's monthly benchmark plan premium is $500, and his monthly contribution amount is $80. Q's premium assistance amount for a coverage month is $400 (the lesser of $400, Q's monthly enrollment premium, and $420, the difference between Q's monthly benchmark plan premium and Q's contribution amount).

Example 2. (i) Taxpayer R is single and has no dependents. R enrolls in a qualified health plan with a monthly premium of $450. The difference between R's benchmark plan premium and contribution amount for the month is $420.

(ii) The issuer of R's qualified health plan is notified that R died on September 20. The issuer terminates coverage as of that date and refunds the remaining portion of the September enrollment premiums ($150) for R's coverage.

(iii) R's premium assistance amount for each coverage month from January through August is $420 (the lesser of $450 and $420). Under paragraph (d)(1) of this section, R's premium assistance amount for September is the lesser of the enrollment premiums for the month, reduced by any amounts that were refunded ($300 ($450 – $150)) or the difference between the benchmark plan premium and the contribution amount for the month ($420). R's premium assistance amount for September is $300, the lesser of $420 and $300.

Example 3. The facts are the same as in *Example 2* of this paragraph (d)(2), except that the qualified health plan issuer does not refund any enrollment premiums for September. Under paragraph (d)(1) of this section, R's premium assistance amount for September is $420, the lesser of $450 and $420.

* * * * *

(f) *Applicable benchmark plan*—(1) *In general*. Except as otherwise provided in this paragraph (f), the applicable benchmark plan for each coverage month is the second- lowest-cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B))) offered to the taxpayer's coverage family through the Exchange for the rating area where the taxpayer resides for—

(i) Self-only coverage for a taxpayer—

(A) Who computes tax under section 1(c) (unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year;

(B) Who purchases only self-only coverage for one individual; or

(C) Whose coverage family includes only one individual; and

(ii) Family coverage for all other taxpayers.

(2) *Family coverage*. The applicable benchmark plan for family coverage is the second lowest-cost silver plan that would cover the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults).

(3) *Silver-level plan not covering pediatric dental benefits*. If one or more silver-level qualified health plans offered through an Exchange do not cover pediatric dental benefits, the premium for the applicable benchmark plan is determined based on the second lowest-cost option among—

(i) The silver-level qualified health plans that are offered by the Exchange to the members of the coverage family and that provide pediatric dental benefits; and

(ii) The silver-level qualified health plans that are offered by the Exchange to the members of the coverage family that do not provide pediatric dental benefits in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan (within the meaning of section 1311(d)(2)(B)(ii) of the Affordable Care Act (42 U.S.C. 18031(d)(2)(B)(ii))) offered by the Exchange to the members of the coverage family that is properly allocable to pediatric dental benefits determined under guidance issued by the Secretary of Health and Human Services.

(4) *Family members residing in different locations*. If members of a taxpayer's coverage family reside in different locations, the taxpayer's benchmark plan premium is the sum of the premiums for the applicable benchmark plans for each group of coverage family members residing in different locations, based on the plans offered to the group through the Exchange where the group resides. If all members of a taxpayer's coverage family reside in a single location that is different from where the taxpayer resides, the taxpayer's benchmark plan premium is the premium for the applicable benchmark plan for the coverage family, based on the plans offered through the Exchange to the taxpayer's coverage family for the rating area where the coverage family resides.

(5) *Single or multiple policies needed to cover the family*—(i) *Policy covering a taxpayer's family*. If a silver-level plan or

a stand-alone dental plan offers coverage to all members of a taxpayer's coverage family who reside in the same location under a single policy, the premium (or allocable portion thereof, in the case of a stand-alone dental plan) taken into account for the plan for purposes of determining the applicable benchmark plan under paragraphs (f)(1), (f)(2), and (f)(3) of this section is the premium for this single policy.

(ii) *Policy not covering a taxpayer's family*. If a silver-level qualified health plan or a stand-alone dental plan would require multiple policies to cover all members of a taxpayer's coverage family who reside in the same location (for example, because of the relationships within the family), the premium (or allocable portion thereof, in the case of a standalone dental plan) taken into account for the plan for purposes of determining the applicable benchmark plan under paragraphs (f)(1), (f)(2), and (f)(3) of this section is the sum of the premiums (or allocable portion thereof, in the case of a stand-alone dental plan) for self-only policies under the plan for each member of the coverage family who resides in the same location.

(6) *Plan not available for enrollment*. A silver-level qualified health plan or a stand-alone dental plan that is not open to enrollment by a taxpayer or family member at the time the taxpayer or family member enrolls in a qualified health plan is disregarded in determining the applicable benchmark plan.

(7) *Benchmark plan terminates or closes to enrollment during the year*. A silver-level qualified health plan or a stand-alone dental plan that is used for purposes of determining the applicable benchmark plan under this paragraph (f) for a taxpayer does not cease to be the applicable benchmark plan for a taxable year solely because the plan or a lower cost plan terminates or closes to enrollment during the taxable year.

(8) *Only one silver-level plan offered to the coverage family*. If there is only one silver-level qualified health plan or one stand-alone dental plan offered through an Exchange that would cover all members of a taxpayer's coverage family who reside in the same location (whether under one policy or multiple policies), that plan is used for purposes of determining the taxpayer's applicable benchmark plan.

(9) *Examples*. The following examples illustrate the rules of this paragraph (f). Unless otherwise stated, in each example the plans are open to enrollment to a taxpayer or family member at the time of enrollment and are offered through the Exchange for the rating area where the taxpayer resides:

Example 1. Single taxpayer enrolls in Exchange coverage. Taxpayer A is single, has no dependents, and enrolls in a qualified health plan. The Exchange in the rating area in which A resides offers only silver-level qualified health plans that provide pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, A's applicable benchmark plan is the second lowest cost silver plan providing self-only coverage for A.

Example 2. Single taxpayer enrolls with dependent child through an Exchange where all qualified health plans provide pediatric dental benefits. Taxpayer B is single and claims her 12-year old daughter, C, as a dependent. B purchases family coverage for herself and C. The Exchange in the rating area in which B and C reside offers qualified health plans that provide pediatric dental benefits but does not offer qualified health plans without pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, B's applicable benchmark plan is the second lowest-cost silver plan providing family coverage to B and C.

Example 3. Single taxpayer enrolls with dependent child through an Exchange where one or more qualified health plans do not provide pediatric dental benefits. (i) Taxpayer D is single and claims his 10-year old son, E, as a dependent. The Exchange in the rating area in which D and E reside offers three silver-level qualified health plans, one of which provides pediatric dental benefits (S1) and two of which do not (S2 and S3), in which D and E may enroll. The Exchange also offers two stand-alone dental plans (DP1 and DP2) available to D and E. The monthly premiums allocable to essential health benefits for the silver-level plans are as follows:

S1 – $650
S2 – $620
S3 – $590

(ii)The monthly premiums, and the portion of the premium allocable to pediatric dental benefits, for the two dental plans are as follows:

DP1 – $50 ($20 allocable to pediatric dental benefits)
DP2 – $40 ($15 allocable to pediatric dental benefits).

(iii) Under paragraph (f)(3) of this section, D's applicable benchmark plan is the second lowest cost option among the following offered by the rating area in which D resides: silver-level qualified health plans providing pediatric dental benefits ($650 for S1) and the silver-level qualified health plans not providing pediatric dental benefits, in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan properly allocable to pediatric dental benefits ($590 for S3 in conjunction with $20 for DP1 = $610 and $620 for S2 in conjunction with $20 for DP1 = $640). Under paragraph (e) of this section, the adjusted monthly premium for D's applicable benchmark plan is $640.

Example 4. Single taxpayer enrolls with dependent adult through an Exchange where one or more qualified health plans do not provide pediatric dental benefits. (i) The facts are the same as in *Example 3*, except Taxpayer D's coverage family consists of D and D's 22-year old son, F, who is a dependent of D. The monthly premiums allocable to essential health benefits for the silver-level plans are as follows:

S1 – $630
S2 – $590
S3 – $580

(ii) Because no one in D's coverage family is eligible for pediatric dental benefits, $0 of the premium for a stand-alone dental plan is allocable to pediatric dental benefits in determining D's applicable benchmark plan. Consequently, under paragraphs (f)(1), (f)(2), and (f)(3) of this section, D's applicable benchmark plan is the second lowest-cost option among the following options offered by the rating area in which D resides: silver-level qualified health plans providing pediatric dental benefits ($630 for S1) and the silver-level qualified health plans not providing pediatric dental benefits, in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan properly allocable to pediatric dental benefits ($580 for S3 in conjunction with $0 for DP1 = $580 and $590 for S2 in conjunction with $0 for DP1 = $590). Under paragraph (e) of this section, the adjusted monthly premium for D's applicable benchmark plan is $590.

Example 5. Single taxpayer enrolls with dependent and nondependent. Taxpayer G is single and resides with his 25-year old daughter, H, and with his 14-year old son, I. G may claim I, but not H, as a dependent. G, H, and I enroll in coverage through the Exchange in the rating area in which they all reside. The Exchange offers only silver-level plans providing pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, G's applicable benchmark plan is the second lowest-cost silver plan covering G and I. However, H may qualify for a premium tax credit if H is otherwise eligible. See paragraph (h) of this section.

Example 6. Change in coverage family. Taxpayer J is single and has no dependents when she enrolls in a qualified health plan. The Exchange in the rating area in which she resides offers only silver-level plans that provide pediatric dental benefits. On August 1, J has a child, K, whom she claims as a dependent. J enrolls in a qualified health plan covering J and K effective August 1. Under paragraphs (f)(1) and (f)(2) of this section, J's applicable benchmark plan for January through July is the second lowest-cost silver plan providing self-only coverage for J, and J's applicable benchmark plan for the months August through December is the second lowest-cost silver plan covering J and K.

Example 7. Minimum essential coverage for some coverage months. Taxpayer L claims his 6-year old daughter, M, as a dependent. L and M are enrolled for the entire year in a qualified health plan that offers only silver-level plans that provide pediatric dental benefits. L, but not M, is eligible for government-sponsored minimum essential coverage for September to December. Thus, under paragraph (c)(1)(iii) of this section, January through December are coverage months for M, and January through August are coverage months for L. Because, under paragraphs (d) and (f)(1) of this section, the premium assistance amount for a coverage month is computed based on the applicable benchmark plan for that coverage month, L's applicable benchmark plan for January through August is the second lowest-cost option covering L and M. Under paragraph (f)(1)(i)(C) of this section, L's applicable benchmark plan for September through December is the second lowest-cost silver plan providing self-only coverage for M.

Example 8. Family member eligible for minimum essential coverage for the taxable year. The facts are the same as in *Example 7*, except that L is not eligible for government-sponsored minimum essential coverage for any months and M is eligible for government sponsored minimum essential coverage for the entire year. Under paragraph (f)(1)(i)(C) of this section, L's applicable benchmark plan is the second lowest-cost silver plan providing self-only coverage for L.

Example 9. Benchmark plan premium for a coverage family with family members who reside in different locations. (i) Taxpayer N's coverage family consists of N and her three dependents O, P, and Q. N, O, and P reside together but Q resides in a different location. The monthly applicable benchmark plan premium for N, O, and P is $1,000 and the monthly applicable benchmark plan premium for Q is $220.

(ii) Under paragraph (f)(4) of this section, because the members of N's coverage family reside in different locations, the monthly premium for N's applicable benchmark plan is the sum of $1,000, the monthly premiums for the applicable benchmark plan for N, O, and P, who reside together, and $220, the monthly applicable benchmark plan premium for Q, who resides in a different location than N, O, and P. Consequently, the premium for N's applicable benchmark plan is $1,220.

Example 10. Aggregation of silver-level policies for plans not covering a family under a single policy. (i) Taxpayers R and S are married and live with S's mother, T, whom they claim as a dependent. The Exchange for their rating area offers self-only and family coverage at the silver level through Issuers A, B, and C, which each offer only one silver-level plan. The silver-level plans offered by Issuers A and B do not cover R, S, and T under a single policy. The silver-level plan offered by Issuer A costs the following monthly amounts for self-only coverage of R, S, and T, respectively: $400, $450, and $600. The silver-level plan offered by Issuer B costs the following monthly amounts for self-only coverage of R, S, and T, respectively: $250, $300, and $450. The silver-level plan offered by Issuer C provides coverage for R, S, and T under one policy for a $1,200 monthly premium.

(ii) Under paragraph (f)(5) of this section, Issuer C's silver-level plan that covers R, S, and T under one policy ($1,200 monthly premium) and Issuer A's and Issuer B's silver-level plans that do not cover R, S and T under one policy are considered in determining R's and S's applicable benchmark plan. In addition, under paragraph (f)(5)(ii) of this section, in determining R's and S's applicable benchmark plan, the premium taken into account for Issuer A's plan is $1,450 (the aggregate premiums for self-only policies covering R ($400), S ($450), and T ($600) and the premium taken into account for Issuer B's plan is $1,000 (the aggregate premiums for self-only policies covering R ($250), S ($300), and T ($450). Consequently, R's and S's applicable benchmark plan is the Issuer C silver-level plan covering R's and S's coverage family and the premium for their applicable benchmark plan is $1,200.

Example 11. Benchmark plan premium for a taxpayer with family members who cannot enroll in one policy and who reside in different locations. (i) Taxpayer U's coverage family consists of U, U's mother, V, and U's two daughters, W and X. U and V reside together in Location 1 and W and X reside together in Location 2. The Exchange in the rating area in which U and V reside does not offer a silver-level plan that covers U and V under a single policy, whereas all the silver-level plans offered through the Exchange in the rating area in which W and X reside cover W and X under a single policy. Both Exchanges offer only silver-level plans that provide pediatric dental benefits. The silver plan offered by the Exchange for the rating area in which U and V reside that would cover U and V under self-only policies with the second-lowest aggregate premium costs $400 a month for self-only coverage for U and $600 a month for self-only coverage for V. The monthly premium for the second-lowest cost silver plan covering W and X that is offered by the Exchange for the rating area in which W and X reside is $500.

(ii) Under paragraph (f)(5)(ii) of this section, because multiple policies are required to cover U and V, the members of U's coverage family who reside together in Location 1, the premium taken into account in determining U's benchmark plan is $1,000, the sum of the premiums for the second-lowest aggregate cost of self-only policies covering U ($400) and V ($600) offered by the Exchange to U and V for the rating area in which U and V reside. Under paragraph (f)(5)(i) of this section, because all silver-level plans offered by the Exchange in which W and X reside cover W and X under a single policy, the premium for W and X's coverage that is taken into account in determining U's benchmark plan is $500, the second-lowest cost silver policy covering W and X that is offered by the Exchange for the rating area in which W and X reside. Under paragraph (f)(4) of this section, because the members of U's coverage family reside in different locations, U's monthly benchmark plan premium is $1,500, the sum of the premiums for the applicable benchmark plans for each group of family members residing in different locations ($1,000 for U and V, who reside in Location 1, plus $500 for W and X, who reside in Location 2).

Example 12. Qualified health plan closed to enrollment. Taxpayer Y has two dependents, Z and AA. Y, Z, and AA enroll in a qualified health plan through the Exchange for the rating area where the family resides. The Exchange, which offers only qualified health plans that include pediatric dental benefits, offers silver-level plans J, K, L, and M, which are, respectively, the first, second, third, and fourth lowest cost silver plans covering Y's family. When Y's family enrolls, Plan J is closed to enrollment. Under paragraph (f)(6) of this section, Plan J is disregarded in determining Y's applicable benchmark plan. Plan L is Y's applicable benchmark plan.

Example 13. Benchmark plan closes to new enrollees during the year. (i) Taxpayers BB, CC, and DD each have coverage families consisting of two adults. In that rating area, Plan 2 is the second lowest cost silver plan and Plan 3 is the third lowest cost silver plan covering the two adults in each coverage family offered through the Exchange. The BB and CC families each enroll in a qualified health plan that is not the applicable benchmark plan (Plan 4) in November during the annual open enrollment period. Plan 2 closes to new enrollees the following June. Thus, on July 1, Plan 3 is the second lowest cost silver plan available to new enrollees through the Exchange. The DD family enrolls in a qualified health plan in July.

(ii) Under paragraphs (f)(1), (f)(2), (f)(3), and (f)(7) of this section, with BB's and CC's applicable benchmark plan for all coverage months during the year is plan 2. DD's applicable benchmark plan is Plan 3, because Plan 2 is not open to enrollment through the Exchange when the DD family enrolls.

Example 14. Benchmark plan terminates for all enrollees during the year. The facts are the same as in *Example 13*, except that Plan 2 terminates for all enrollees on June 30. Under paragraphs (f)(1), (f)(2), (f)(3), and (f)(7) of this section, Plan 2 is BB's and CC's applicable benchmark plan for all coverage months during the year, and Plan 3 is DD's applicable benchmark plan.

Example 15. Exchange offers only one silver-level plan. Taxpayer EE's coverage family consists of EE, his spouse FF, and their two dependent children GG and HH, who all reside together. The Exchange for the rating area in which they reside offers only one silver-level plan that EE's family may enroll in and the plan does not provide pediatric dental benefits. The Exchange also offers one stand-alone dental plan in which the family may enroll. Under paragraph (f)(8) of this section, the silver-level plan and the stand-alone dental plan offered by the Exchange are used for purposes of determining EE's applicable benchmark plan under paragraph (f)(3) of this section. Moreover, the lone silver-level plan and the lone stand-alone dental plan offered by the Exchange are used for purposes of determining EE's applicable benchmark plan regardless of whether these plans cover EE's family under a single policy or multiples policies.

* * * * *

(n) *Effective/applicability date*. (1) Except as provided in paragraph (n)(2) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraphs (c)(4), (d)(1) and (d)(2) of this section apply to taxable years beginning after December 31, 2016. Paragraph (f) of this section applies to taxable years beginning after December 31, 2018. Paragraphs (d)(1) and (d)(2) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (f) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

Par. 6. Section 1.36B–5 is amended by:

1. Adding a sentence to the end of paragraph (c)(3)(i).

2. Adding paragraphs (c)(3)(iii) and (h).

The additions read as follows:

§ 1.36B–5 Information reporting by Exchanges.

* * * * *

(c) * * *

(3) * * *

(i) * * * If advance credit payments are made for coverage under the plan, the enrollment premiums reported to each family under paragraph (c)(1)(viii) of this section are the premiums allocated to the family under § 1.36B–3(h) (allocating enrollment premiums to each taxpayer in proportion to the premiums for each taxpayer's applicable benchmark plan).

* * * * *

(iii) *Partial month of coverage*.—(A) *In general*. Except as provided in paragraph (c)(3)(iii)(B) of this section, if an individual is enrolled in a qualified health plan after the first day of a month, the amount reported for that month under paragraphs (c)(1)(iv), (c)(1)(v), and (c)(1)(viii) of this section is $0.

(B) *Certain mid-month enrollments*. For information reporting that is due on or after January 1, 2019, if an individual's qualified health plan is terminated before the last day of a month, or if an individual is enrolled in coverage after the first day of a month and the coverage is effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the amount reported under paragraphs (c)(1)(iv) and (c)(1)(v) of this section is the premium for the applicable benchmark plan for a full month of coverage (excluding the premium allocated to benefits in excess of essential health benefits), and the amount reported under paragraph (c)(1)(viii) of this section is the enrollment premium for the month required to be reported under paragraphs (c)(1)(Viii)(A), (B), and (C) of this section, reduced by any amounts that were refunded.

* * * * *

(h) *Effective/applicability date*. Except for the last sentence of paragraph (c)(3)(i) of this section and paragraph (c)(3)(iii) of this section, this section applies to taxable years ending after December 31, 2013. The last sentence of paragraph (c)(3)(i) of this section and paragraph (c)(3)(iii) of this section apply to taxable years beginning after December 31, 2018. Paragraph (c)(3) of § 1.36B–5 as contained in 26 CFR part I edition revised as of April 1, 2016, applies to information reporting for taxable years ending after December 31, 2013, and beginning before January 1, 2019.

Par. 7. Section 1.5000A–3 is amended by adding a new paragraph (e)(3)(ii)(G) to read as follows:

§ 1.5000A–3 Exempt individuals.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *Opt-out arrangements*. [Reserved]

* * * * *

Par. 8. Section 1.6011–8 is revised to read as follows:

§ 1.6011–8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return*. Except as otherwise provided in this paragraph (a), a taxpayer who receives the benefit of advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing) and reconcile the advance credit payments. However, if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attests to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the determination that the taxpayer is eligible for advance credit payments must file a tax return and reconcile the advance credit payments.

(b) *Effective/applicability date*. Except as otherwise provided, this section applies for taxable years beginning after December 31, 2016. Paragraph (a) of § 1.6011–8 as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

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

Section 301.6011–2 also issued under 26 U.S.C. 6011(e). * * *

§ 301.6011–2 [Amended]

Par. 10. Section 301.6011–2(b)(1) is amended by adding "1095–B, 1095–C" after "1094 series", and removing "1095 series".

John Dalrymple,
Deputy Commissioner for Service and Enforcement.

Approved: December 8, 2016

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

(Filed by the Office of the Federal Register on December 14, 2016, at 4:15 p.m., and published in the issue of the Federal Register for December 19, 2016, 81 F.R. 91755)

Part III. Administrative, Procedural, and Miscellaneous

Extension of Eligibility Rule Waivers for Certain Automatic Changes Made To Comply with the Final Tangible Property Regulations

Notice 2017–06

PURPOSE

This notice extends the waiver of the eligibility rule set out in section 5.01(1)(f) of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, (which Revenue Procedure was clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, and modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1) that was provided under Rev. Proc. 2016–29, 2016–21 I.R.B. 880, for making certain automatic changes in accounting methods. Specifically, this notice extends this eligibility rule waiver for one year to any taxable year beginning before January 1, 2017, for taxpayers making certain automatic changes to utilize the final tangible property regulations under §§ 162(a) and 263(a) of the Internal Revenue Code (the Code) and for making certain automatic changes to depreciation and dispositions under § 168 of the Code.

BACKGROUND

On September 19, 2013, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the Federal Register (78 Fed. Reg. 57686) final regulations under §§ 1.162–3, 1.162–4, 1.168(i)–1, 1.168(i)–7, 1.168(i)–8, 1.263(a)–1, 1.263 (a)–2, and 1.263(a)–3 of the Income Tax Regulations (T.D. 9636). *See also* 2013–43 I.R.B. 331. Corrections to those regulations were published in the Federal Register (79 Fed. Reg. 42189) on July 21, 2014, and the final regulations and the corrections thereto are referred to collectively in this notice as the final tangible property regulations. The final tangible property regulations provide guidance on the treatment of amounts paid to acquire, produce, or improve tangible property and generally apply to taxable years beginning on or after January 1, 2014, or, at the option of the taxpayer, to taxable years beginning on or after January 1, 2012.

On August 18, 2014, the Treasury Department and the IRS published in the Federal Register (79 Fed. Reg. 48661) final regulations under §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8 (T.D. 9689). *See also* 2014–36 I.R.B. 456. Corrections to those regulations were published in the Federal Register (79 Fed. Reg. 78696) on December 31, 2014, and the final regulations and the corrections thereto are referred to collectively in this notice as the final depreciation and disposition regulations. The final depreciation and disposition regulations provide guidance regarding accounting for property depreciated under § 168, the Modified Accelerated Cost Recovery System (MACRS), and for dispositions of MACRS property. These rules also generally apply to taxable years beginning on or after January 1, 2014, or, at the option of the taxpayer, to taxable years beginning on or after January 1, 2012.

Except as otherwise provided in the Code or regulations, a change to comply with the final tangible property regulations and the final depreciation and disposition regulations is a change in method of accounting to which the provisions of §§ 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change its method of accounting under these regulations must secure the consent of the Commissioner of Internal Revenue in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii).

Rev. Proc. 2015–13 provides the general procedures under § 446(e) for a taxpayer to obtain the automatic or non-automatic consent of the Commissioner to change a method of accounting. Rev. Proc. 2016–29 provides the list of automatic changes in methods of accounting to which the automatic change procedures of Rev. Proc. 2015–13 apply.

Section 11.08 of Rev. Proc. 2016–29 provides for certain automatic changes to utilize the final tangible property regulations. Section 6.14 of Rev. Proc. 2016–29 provides for automatic changes to permissible methods of accounting for depreciation of MACRS property under sections §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8. In addition, sections 6.15 through 6.17 of Rev. Proc. 2016–29 provide for automatic changes related to dispositions of certain MACRS property under §§ 1.168(i)–1 and 1.168(i)–8.

Section 5 of Rev. Proc. 2015–13 provides certain eligibility rules for a taxpayer that applies for the Commissioner's consent to make a change in method of accounting under the automatic change procedures. Section 5.01(1)(f) provides that the automatic change procedures may not be utilized if the taxpayer has made or requested a change for the same item during any of the five taxable years ending with the year of change. This rule generally precludes a taxpayer from using the automatic change procedures to change the treatment of the same item more than once within a five-year period. However, in order to facilitate the transition to the final tangible property regulations and the final depreciation and disposition regulations, sections 6.14(2)(b), 6.15(2)(b), 6.16(2)(b), 6.17(2)(b), and 11.08(2) of Rev. Proc. 2016–29 provide a waiver of this eligibility rule for a limited period of time. Each of these sections of Rev. Proc. 2016–29 specifically provides that the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to a taxpayer that makes one or more of the changes in method of accounting permitted under that section for any taxable year beginning before January 1, 2016.

DISCUSSION

The Treasury Department and the IRS are aware that taxpayers continue to request consent to change their methods of accounting to utilize the final tangible property regulations and final depreciation and disposition regulations. To continue to ease taxpayers' transition to these final regulations and to reduce the administrative burden that would result from requiring taxpayers to apply for non-automatic changes of accounting methods for each of the changes specified above, this notice modifies the applicable sections of Rev. Proc. 2016–29 to extend the waiver of the eligibility rule under section 5.01(1)(f) of Rev. Proc. 2015–13 for one year to any taxable year beginning before January 1, 2017. The applicable sections are:

(1) Section 6.14, relating to a change from a permissible to another permissible method of accounting for depreciation of MACRS property under § 1.168(i)–1, § 1.168(i)–7, and § 1.168(i)–8, as applicable;

(2) Section 6.15, relating to a change in method of accounting for dispositions of a building or structural component under § 1.168(i)–8;

(3) Section 6.16, relating to a change in method of accounting for dispositions of tangible depreciable assets (other than a building or its structural components) under § 1.168(i)–8;

(4) Section 6.17, relating to a change in method of accounting for dispositions of tangible depreciable assets in a general asset account under § 1.168(i)–1; and

(5) Section 11.08, relating to changes in methods of accounting for tangible property under the final tangible property regulations.

Specifically, sections 6.14(2)(b), 6.15(2)(b), 6.16(2)(b), and 6.17(2)(b) of Rev. Proc. 2016–29, which waive certain eligibility rules for making automatic changes under the final depreciation and disposition regulations, are modified by replacing the references to the date, "January 1, 2016," with the date, "January 1, 2017." In addition, section 11.08(2) of Rev. Proc. 2016–29, which waives certain eligibility rules for making automatic changes under the tangible property regulations, including the eligibility rule under section 5.01(1)(d) of Rev. Proc. 2015–13, is modified by replacing all references to the date, "January 1, 2016," with the date, "January 1, 2017." These modifications also apply for purposes of the concurrent automatic changes that are specifically referenced in these sections.

TRANSITION RULE

If, before December 20, 2016**,** a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev. Proc. 2015–13 requesting the Commissioner's consent for a change in method of accounting described in this notice, and the Form 3115 is pending with the national office on December 20, 2016, the taxpayer may choose to make the change of accounting method under the automatic change procedures in Rev. Proc. 2015–13 by following the requirements and procedures in subsection .02(1) of the EFFECTIVE DATE section in Rev. Proc. 2016–29 with the following modifications:

(1) The references to the date, "May 5, 2016," are replaced with the date, "December 20, 2016" and

(2) The references to the date, "June 6, 2016," are replaced with the date, "January 19, 2017."

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016–29 is modified.

EFFECTIVE DATE

This notice is effective December 20, 2016.

CONTACT INFORMATION

The principal author of this notice is Merrill D. Feldstein of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Feldstein at (202) 317-5100 (not a toll-free number).

Foreign currency guidance under section 987

Notice 2017–07

On December 7, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) filed with the Federal Register Treasury Decision 9795, which includes temporary regulations under § 1.987–12T relating to the recognition and deferral of foreign currency gain or loss under section 987 with respect to a qualified business unit in connection with a deferral event or outbound loss event. Section 1.987–12T(j)(1) provides that § 1.987–12T generally applies to any deferral event or outbound loss event that occurs on or after January 6, 2017. Under § 1.987–12T(j)(2), however, § 1.987–12T also applies to any deferral event or outbound loss event that occurs on or after December 7, 2016, if such deferral event or outbound loss event is undertaken with a principal purpose of recognizing section 987 gain or loss.

In order to prevent abuse, § 1.987–12T(j)(2) will be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that is undertaken with a principal purpose of recognizing section 987 gain or loss and that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after December 22, 2016, and that is effective before December 7, 2016. Additionally, § 1.987–12T(j)(1) will be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017.

The principal author of this notice is Steven D. Jensen of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Steven D. Jensen at (202) 317-6938 (not a toll-free number).

Transaction of Interest—Section 831(b) Micro-Captive Transactions

Notice 2017–08

SECTION 1. BACKGROUND

On November 1, 2016, the Department of the Treasury (the "Treasury Department") and the Internal Revenue Service (the "IRS") released Notice 2016–66, 2016–47 I.R.B. 745, identifying transactions that are the same as, or substantially similar to, the transaction described in section 2.01 of Notice 2016–66 as transactions of interest for purposes of § 1.6011–4(b)(6) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. Notice 2016–66 alerted persons involved in these transactions to certain responsibilities and penalties that may arise from their involvement with these transactions.

Generally, § 1.6011–4(e)(1) provides that the disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to the Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

In addition, § 1.6011–4(e)(2)(i) provides that if a transaction becomes a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a transaction of interest, with OTSA within 90 calendar days after the date on which the transaction became a transaction of interest.

Section 301.6111–3(e) of the Procedure and Administration Regulations, provides that the material advisor's disclosure statement for a reportable transaction must be filed with OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur.

Section 3.03 of Notice 2016–66 provided that the rules regarding the time for providing disclosure of a transaction described in section 2.01 of Notice 2016–66 are in § 1.6011–4(e), with respect to participants in the transaction of interest, and § 301.6111–3(e), with respect to material advisors. Notice 2016–66 further provided that, if, under § 1.6011–4(e), a participant is required to file a disclosure statement with respect to a transaction described in section 2.01 of Notice 2016–66 after November 1, 2016, and prior to January 30, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the OTSA by January 30, 2017.

After the release of Notice 2016–66, the Treasury Department and the IRS received several requests for an extension of time for participants and material advisors filing disclosure statements. This notice modifies section 3.03 of Notice 2016–66 to provide an extension of time for the filing of those disclosure statements.

SECTION 2. EXTENSION AND MODIFICATION OF TIME FOR DISCLOSURE

The time for providing disclosure of a transaction described in section 2.01 of Notice 2016–66 set forth in § 1.6011–4(e), with respect to participants in the transaction of interest, and § 301.6111–3(e), with respect to material advisors, is extended. Accordingly, section 3.03 of Notice 2016–66 is modified as follows:

.03 *Time for Disclosure*

a. Participants

For rules regarding the time for providing disclosure of a transaction described in section 2.01 of this notice, see § 1.6011–4(e). However, if, under § 1.6011–4(e)(1), a taxpayer is required to file a disclosure statement with respect to a transaction described in section 2.01 of this notice after November 1, 2016, and prior to May 1, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday). In addition, for purposes of disclosure of transactions described in section 2.01 of this notice, the 90-day period provided in § 1.6011–4(e)(2)(i) is extended to 180 days.

b. Material advisors

For rules regarding the time for providing disclosure of a transaction described in section 2.01 of this notice, see § 301.6111–3(e). However, if, under § 301.6111–3(e), a material advisor is required to file a disclosure statement with respect to a transaction described in section 2.01 of this notice by January 31, 2017, that disclosure statement will be considered to be timely filed if the material advisor files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday).

SECTION 3. EFFECT ON OTHER DOCUMENTS

Section 3.03 of Notice 2016–66 is modified.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is John E. Glover of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Mr. Glover at (202) 317-6995 (not a toll-free number).

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26 CFR § 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

Rev. Proc. 2017–12

SECTION 1. PURPOSE

This revenue procedure provides that the Internal Revenue Service (IRS) will treat an instrument described in section 3 of this revenue procedure as indebtedness for federal tax purposes.

SECTION 2. BACKGROUND

.01 In addition to special provisions of the Internal Revenue Code and Treasury regulations relating to the federal income taxation of banks, banks are generally subject to comprehensive non-tax regulation that governs their capital structure and their transactions with affiliates. To promote consistency between the rules of different countries, and to enhance global financial stability by improving the quality of banking supervision worldwide, an international body known as the Basel Committee on Banking Supervision (Basel) sets internationally agreed minimum standards for the regulation and supervision of banks. Another international body, the Financial Stability Board (FSB) also develops regulatory and supervisory policies for financial entities, including banks. The FSB focuses on the risk that the failure of one financial institution or the collapse of one financial system could trigger a chain reaction throughout the broader financial system, commonly referred to as systemic risk. Additionally, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (124

Stat. 1376 (2010)) (Dodd-Frank), includes rules prescribing the "orderly liquidation authority," which permits the Federal Deposit Insurance Corporation to take over and resolve certain bank holding companies in a process similar to that which it uses to resolve a failing bank. Dodd-Frank also requires each large bank to prepare a "living will," which sets out a plan for unwinding the bank group so that the critical services provided to the U.S. financial system by core members – notably the bank – can continue even if other services are terminated or other members are liquidated or sold off. The living will process has required banks to restructure to facilitate the implementation of these plans.

.02 The current framework for bank capital is commonly known as Basel III.[1] Basel III responds to events of the past decade by strengthening both capital and liquidity requirements for banks, especially global systemically important banking organizations (GSIBs). In addition to the enhanced capital required by Basel III, regulators have sought to minimize the risk of insolvency by requiring GSIBs to issue instruments that provide total loss-absorbing capacity (TLAC). Standards issued by the FSB describe the requirements for an instrument to qualify as a TLAC and require GSIBs to issue an amount of TLAC determined by reference to the bank group's risk-weighted assets and Basel III leverage ratio. The FSB standard distinguishes between "external" and "internal" TLAC. External TLAC are securities issued to third-party investors by an entity subject to resolution powers (generally, the top-most parent bank or bank holding company). Internal TLAC are securities issued by a subsidiary of a resolution entity to the resolution entity. Thus, for example, a foreign GSIB with a significant U.S. presence would be required under the FSB standard to establish a domestic intermediate holding company (IHC) to hold its U.S. subsidiaries, and the IHC would be required to issue internal TLAC to the foreign GSIB.

.03 Both external and internal TLAC are issued in the form of debt. The FSB standard requires TLAC to have a maturity of at least one year, to be callable prior to maturity only with regulatory approval, to be unsecured, and generally to be subordinated to insured deposits, other short-term deposits, derivatives, structured notes, non-contractual liabilities like tax liabilities, and secured liabilities. TLAC may rank senior to certain securities that can qualify for equity credit under Basel III,[2] but generally must be subordinate to a bank's depositors and general creditors. The FSB standard also calls for TLAC to contain a contractual trigger or be subject to a statutory mechanism that permits the relevant resolution authority to effectively write the TLAC down or convert TLAC to equity in resolution.

.04 Separately, the Board of Governors of the Federal Reserve Bank (Board) has issued regulations (Board regulations)[3] that prescribe the amount and form of both external and internal TLAC required for domestic GSIBs and the U.S. operations of foreign GSIBs. In the case of internal TLAC, the Board regulations require the IHC of a foreign GSIB to issue a specified minimum amount of TLAC to its foreign parent (and not to third parties). Under 12 CFR § 252.161, the Board regulations generally require that internal TLAC:

- not be secured, not be guaranteed by the IHC or a subsidiary of the IHC, and not be subject to any other arrangement that legally or economically enhances the seniority of the instrument;
- have a maturity of greater than or equal to one year from the date of issuance;
- be governed by the laws of the United States or any State thereof;
- not provide the holder of the TLAC a contractual right to accelerate payment of items denominated as principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of (A) a receivership, insolvency, liquidation, or similar proceeding of the IHC or (B) a failure of the IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;
- be issued to and held by a company that is incorporated or organized outside of the United States, and directly or indirectly controls the IHC or is a wholly owned subsidiary of such company; and
- have a contractual provision approved by the Board that provides for the immediate conversion or exchange of the instrument into common equity tier 1 of the IHC upon the Board's issuance of an internal debt conversion order for the TLAC.

An internal debt conversion order means an order by the Board to immediately convert or exchange to common equity tier 1 capital an amount of TLAC specified by the Board in its discretion. The Board may issue an internal debt conversion order only if the Board has determined that the IHC is in default or danger of default and any of three enumerated circumstances apply. 12 CFR § 252.163(a). One of those circumstances is that the home country supervisor of the top-tier foreign banking organization has consented or not promptly objected after notification by the Board to the conversion or exchange of the TLAC issued by the IHC. 12 CFR § 252.163(a)(2)(ii). The Board regulations also prescribe the circumstances in which an IHC will be considered to be in default or danger of default. 12 CFR § 252.163(b). An objection by the home country supervisor to the conversion or exchange of TLAC issued by the IHC is considered to be prompt if the Board receives the objection no later than 24 hours after the Board requests the consent or non-objection from the home country supervisor. 12 CFR § 252.163(b)(2). Finally, the preamble to the Board regulations acknowledges that the regulations do not restrict the ability of an IHC to include certain traditional debt terms in TLAC, provided that such terms are consistent with applicable law. Examples of such terms noted in the preamble are terms providing that existing

[1]*See* Basel Committee on Banking Supervision, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (December 2010; revised June 2011), available online at *http://www.bis.org/publ/bcbs189.pdf* (Basel III Bank Capital Rules).

[2]Basel III 2011 Bank Capital Rules, Part I.B.3, at 17-19.

[3]The final regulations were approved by the Board of Governors of the Federal Reserve System on December 15, 2016.

equity would be transferred to the IHC and canceled upon transfer if the TLAC converts to equity, or debt covenants on the same terms permissible for covered bank holding companies.

.05 TLAC is issued in the form of debt. An instrument issued in the form of debt, however, may have one or more features, or lack one or more features, that cause the instrument not to be respected as indebtedness for federal tax purposes. In particular, an instrument that does not unconditionally obligate the issuer to pay a sum certain on demand or at one or more fixed dates, or that does not provide the holder with the rights of a creditor to enforce the obligation, generally will not be treated as indebtedness for federal tax purposes. The rights of a creditor typically include the right to force an issuer into insolvency, and a right superior to that of a shareholder to share in the assets of the issuer in case of dissolution. Despite being debt in form, internal TLAC issued under the Board regulations lacks several of the elements that generally are required for an instrument to be treated as indebtedness for federal tax purposes.

.06 GSIBs play a unique role in the global economy, and are consequently subject to extensive oversight of their transactions and capital structure. As part of this oversight the Board has prescribed unique and highly specific rules to minimize the risks that GSIBs present, including the use of TLAC to enable the Board to resolve an IHC owned by a GSIB. The Treasury Department and the IRS believe that it is in the interest of sound tax administration to apply federal tax principles in a manner that will support the rules promulgated by the Board for recapitalizing the issuer of internal TLAC on a going-concern basis.

SECTION 3. SCOPE

This revenue procedure applies to internal TLAC that is issued by an IHC of a foreign GSIB pursuant to the Board regulations described in section 2.04 of this revenue procedure.

SECTION 4. APPLICATION

The IRS will treat an instrument described in section 3 of this revenue procedure as indebtedness for federal tax purposes to the extent that the internal TLAC has not been subject to a debt conversion order.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for an instrument described in section 3 of this revenue procedure issued on or after December 15, 2016.

SECTION 6. NO INFERENCE

This revenue procedure provides guidance with respect to the federal tax characterization of an instrument described in section 3 of this revenue procedure. No inference should be drawn about the federal tax characterization of an instrument that is outside the scope of this revenue procedure.

SECTION 7. CONTACT INFORMATION

For further information regarding this revenue procedure, contact William E. Blanchard or Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions & Products) at (202) 317-3900 (not a toll-free number).

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26 CFR 301.7705: Maintaining certification as a certified professional employer organization.

Rev. Proc. 2017–14

SECTION 1. BACKGROUND AND DEFINITIONS

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295), added new sections 3511 and 7705 to the Internal Revenue Code (Code) relating to the certification requirements for, and the federal employment tax consequences of being, a certified professional employer organization (CPEO). The ABLE Act requires the establishment of a voluntary program for persons to apply to become certified as a CPEO. Temporary and final regulations under section 7705 of the Code (TD 9768, published May 6, 2016, at 81 FR 27315, as corrected July 12, 2016, at 81 FR 45012) describe the certification requirements necessary for a person to become and remain a CPEO, and proposed regulations under section 3511 of the Code (REG–127561–15, published May 6, 2016, at 81 FR 27360) describe the federal employment tax consequences of becoming a CPEO. Revenue Procedure 2016–33, 2016–25 I.R.B. 1034, sets forth the detailed procedures for applying to be certified as a CPEO. Notice 2016–49, 2016–34 I.R.B. 265, provides interim guidance and describes modifications to certain certification requirements that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) intend to make when publishing final regulations and updating Rev. Proc. 2016–33.

This revenue procedure addresses the requirements for a CPEO to remain certified and the procedures relating to suspension and revocation of CPEO certification, and consolidates in one place the ongoing requirements articulated in the regulations (both proposed and temporary) under sections 3511 and 7705 of the Code as well as certain applicable requirements of Rev. Proc. 2016–33, as modified by Notice 2016–49. In addition, this revenue procedure provides guidance, including certain transition relief, to CPEOs with an effective date of certification of January 1, 2017, that receive notice of certification after that date.

.01 *Definitions*. For purposes of this revenue procedure—

(1) The term “application” means the electronic submission by a CPEO applicant and its responsible individuals of all information required by the online application form for CPEO certification (made available by the IRS on *www.irs.gov*), as well as all accompanying forms and documentation required by § 301.7705–2T, Rev. Proc. 2016–33, Notice 2016–49, and instructions accompanying the application.

(2) The term “controlled group” means any controlled group of corporations or trades or businesses under common control within the meaning of sections 414(b) and (c) of the Code, and the regulations thereunder.

(3) The term “certified public accountant” (CPA) means a certified public accountant who—

(a) With respect to a CPEO, is independent of the CPEO (as prescribed by the

American Institute of Certified Public Accountants' Professional Standards, Code of Professional Conduct, and its interpretations and rulings);

(b) Is not currently under suspension or disbarment from practice before the IRS;

(c) Is duly qualified to practice in any state; and

(d) Files with the IRS a written declaration that he or she is currently qualified as a CPA.

(4) The term "covered employee" means, with respect to a customer, any individual (other than a self-employed individual, as defined in section 1.01(14) of this revenue procedure) who performs services for the customer and who is covered by a CPEO contract between the CPEO and the customer.

(5) The term "CPEO" means a person that has been certified by the Commissioner as meeting the requirements of § 301.7705–2T, Rev. Proc. 2016–33, Notice 2016–49, the instructions accompanying the application, and any applicable subsequent guidance and whose certification has not been revoked or voluntarily terminated.

(6) The term "CPEO contract" means a service contract between a CPEO and a customer that satisfies the requirements in section 7705(e)(2) of the Code.

(7) The term "customer" means any person who enters into a CPEO contract with a CPEO, except that a provider of employment-related services that uses its own employer identification number (EIN) for filing federal employment tax returns on behalf of its clients (or that used its own EIN immediately prior to entering into a CPEO contract with the CPEO) is not a customer, even if it has entered into a CPEO contract with the CPEO.

(8) The term "federal employment taxes" means the taxes imposed by subtitle C of the Code.

(9) The term "guidance" includes guidance published in the Federal Register or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the irs.gov Web site.

(10) The term "precursor entity" means an entity described in § 301.7705–1T(b)(10).

(11) The term "qualified surety" means a surety that meets the requirements of § 301.7705–2T(g)(6).

(12) The term "related entity" means an entity described in § 301.7705–1T(b)(12).

(13) The term "responsible individual" means an individual described in § 301.7705–1T(b)(13).

(14) The term "self-employed individual" means an individual with net earnings from self-employment (as defined in section 1402(a) of the Code and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such net earnings from self-employment are derived from providing services as a non-employee to a customer of the CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as an individual who is a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings.

(15) The term "work site" means a physical location at which an individual regularly performs services for a customer of a CPEO or, if there is no such location, the location from which the customer assigns work to the individual. A work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. For purposes of this section 1.01(15), work sites that are contiguous locations will be treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate will be treated as separate physical locations and thus separate work sites. A CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate for purposes of this section 1.01(15).

(16) The term "work site employee" means, with respect to a customer, a covered employee who performs services for such customer at a work site where, at any time during a calendar quarter, at least 85 percent of the individuals performing services for the customer are covered employees of the customer. To be a work site employee, a covered employee regularly performing services for a customer at a work site during a calendar quarter is not required to be performing services for the customer at the time the work site coverage requirement is met at that work site.

(a) Solely for purposes of determining whether the 85 percent threshold described in this section 1.01(16) is met, a self-employed individual described in section 1.01(14) of this revenue procedure is treated as a covered employee if such individual is performing services at the work site and would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee in section 1.01(4) of this revenue procedure.

(b) In determining whether the 85 percent threshold described in this section 1.01(16) is met, an individual who is an excluded employee described in section 414(q)(5) of the Code is not treated either as an individual providing services or a covered employee.

(c) Notwithstanding the first sentence of this section 1.10(16), a covered employee will be considered a work site employee for the entirety of a calendar quarter with respect to all services performed for a customer at one or more work sites if the employee qualifies as a work site employee with respect to such customer at any work site during that calendar quarter.

(d) The determination of whether a work site meets the 85 percent threshold described in this section 1.01(16) is made separately with respect to each customer of a CPEO and with respect to each work site of a customer. In making this determination, a covered employee is taken into account at each work site of a customer at which the employee regularly performs services for such customer.

.02 *Changes and request for comments*. This revenue procedure may be updated periodically to improve CPEO program procedures. The IRS solicits comments on this revenue procedure and the administration of the CPEO program. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

(1) By mail to CC:PA:LPD:PR (Rev. Proc. 2017–14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

(2) Electronically to Notice.Comments@irscounsel.treas.gov. Please include "Rev. Proc. 2017–14" in the subject line of any electronic communications.

(3) By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Proc. 2017–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

SECTION 2. PROCEDURES FOR MAINTAINING CERTIFICATION AS A CPEO

.01 *In general*. To maintain certification, a CPEO must meet the applicable requirements described in § 301.7705–2T, this revenue procedure, and other guidance. In addition, any responsible individuals of the CPEO must meet any requirements applicable to them that are described in § 301.7705–2T, this revenue procedure, and other guidance. Except as otherwise provided in this revenue procedure or other guidance, the information and documents required in sections 2.02 through 2.05, 2.06(3), and 2.06(4) of this revenue procedure must be submitted electronically via the online account created by the CPEO or responsible individual, as applicable. The individual submitting information and documents on behalf of the CPEO through the CPEO's online account must be authorized by section 6103(e) of the Code to inspect the returns and return information of the CPEO. For more information on how to electronically submit the information and documents required in this revenue procedure, see instructions accompanying the CPEO's or responsible individual's online account (accessible on *www.irs.gov*).

.02 *Annual verification*.

(1) *In general*. Consistent with § 301.7705–2T(j), a CPEO must submit a properly completed and executed online annual verification to maintain certification. CPEOs that are members of a controlled group must each submit a separate annual verification. The due date for submitting the annual verification is 30 days before the anniversary of the date (month and day) on which the CPEO's certification became effective.

(2) *User fee*. Consistent with section 7528(b)(4) of the Code, upon submission of the online annual verification, the individual that submits the verification on behalf of the CPEO will be automatically directed to pay a user fee in the amount of $1,000 through *www.pay.gov*. Payment confirmations are provided through the *www.pay.gov* portal. Additional information about payment submission can be found under Frequently Asked Questions at *www.pay.gov*. No CPEO annual verification will be processed until a user fee in the amount of $1,000 is received. Once processing of the annual verification has begun, the user fee will not be returned.

(3) *Background check and tax compliance check*. As part of a CPEO's annual verification, the IRS may investigate the accuracy of statements and representations made by a CPEO and its responsible individuals by conducting background checks, including checks on tax compliance, criminal background, professional experience, credit history, professional sanctions, and other relevant facts. By submitting an annual verification, a CPEO and its responsible individuals agree to provide the IRS with such additional information as the IRS may request to facilitate its background investigations. A CPEO and each of its responsible individuals must take such actions as are necessary to authorize the IRS to conduct background checks and to investigate the accuracy of statements and submissions. This may include waiving confidentiality and privilege in situations in which the IRS would otherwise be prevented from obtaining or confirming information necessary to evaluate a CPEO's qualification for certification from relevant third parties (such as former employers) because of the existence of confidentiality, nondisclosure, or similar agreements. Failure to provide such information or take such action may result in revocation of certification.

.03 *Bond requirements*.

(1) *In general*. In addition to the bond that must be posted within 30 days of the notice of certification, as provided in section 7705(c) of the Code, § 301.7705–2T(g), and section 2.04(2) of Rev. Proc. 2016–33, a CPEO must continue to post a bond (or bonds, as described in section 2.03(3) of this revenue procedure) from a qualified surety for the payment of federal employment taxes using Form 14751, *Certified Professional Employer Organization Surety Bond,* in the amount described in § 301.7705–2T(g)(2) and this section 2.03, for each period beginning on April 1 of any calendar year and ending on March 31 of the following calendar year (the bond period). As prescribed by § 301.7705–2T(g)(2)(i), the amount of the bond (or bonds, as described in section 2.03(3) of this revenue procedure) with respect to the bond period must be at least equal to the greater of 5 percent of the CPEO's liability under section 3511 of the Code during the preceding calendar year (up to $1,000,000) or $50,000. See § 301.7705–2T(g)(2)(ii) for special rules applying to a CPEO in its first or second year of certification. The bond, any riders thereto, and any strengthening bonds posted to satisfy the requirements of section 2.03(3) of this revenue procedure, are considered one continuous obligation of the surety for unpaid tax liabilities accrued by the CPEO under subtitle C from the effective date of the bond until the bond is superseded, as described in section 2.03(3) of this revenue procedure, or cancelled, as described in section 2.03(4) of this revenue procedure (the term of the bond).

(2) *Controlled Groups*. All CPEO members of a controlled group are required to be covered by the same bond in the amount required by § 301.7705–2T(g)(2), applied as if all such CPEO members were one organization.

(3) *Increase in bond amount*. By March 1 in any calendar year, a CPEO must determine if an increase in bond amount for the new bond period beginning on April 1 of that calendar year is necessary and, if so, increase the amount of the bond covering the new bond period. That is, if 5 percent of a CPEO's liability under section 3511 of the Code (or other applicable federal employment tax liability) for the preceding calendar year exceeds the current amount of the bond, the CPEO must increase the amount of its bond with respect to the new bond period beginning on April 1 (up to the $1,000,000 maximum bond amount). To increase the amount of the bond, the CPEO must submit a properly completed and executed Form 14751, or such other form or document required by the IRS in the instructions for Form 14751 or further guidance, by March 1 of the calendar year

in which the new bond period begins. The CPEO must also increase the amount of its bond if, at a later point in the bond period, the CPEO or the IRS determines that the applicable federal employment tax liability for the preceding calendar year was higher than the amount reported and paid and on which the bond amount for the bond period was based and makes an adjustment or assessment reflecting such determination. To increase the amount of its bond due to such an adjustment or assessment, the CPEO must submit a properly completed and executed Form 14751, or such other form or document required by the IRS in the instructions for Form 14751 or further guidance, within 30 days of the date of the adjustment or assessment. To increase the bond amount, a CPEO may amend an existing bond through the use of a rider, or post a strengthening, superseding, or new bond, where applicable.

(a) For these purposes, a rider is an amendment to an existing bond that increases the bond amount. The rider must apply to liabilities that arise on or after the effective date of the bond that the rider amends. The surety remains liable under the existing bond, as amended by the rider, for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502 of the Code, respectively, with respect to any taxable period that occurs during the term of the bond unless and until the bond is superseded.

(b) For these purposes, a strengthening bond is an additional bond posted in the incremental amount of the increase so that the strengthening bond together with the existing bond equal the total required bond amount. The strengthening bond must apply to liabilities that arise on or after the effective date of the bond it strengthens. Both the strengthening bond and the bond it strengthens must remain in effect, and the surety remains liable under both bonds for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502 of the Code, respectively, with respect to any taxable period that occurs during the term of the bonds, unless and until the bonds are superseded.

(c) For these purposes, a superseding bond is a bond posted for the total required bond amount, not just the incremental increase. Upon execution of the superseding bond, the superseded bond is no longer in effect, and the surety that provided the superseded bond is no longer liable under the superseded bond. The superseding bond must apply to liabilities that arise on or after the effective date of the superseded bond.

(d) For these purposes, a new bond is a bond posted for the total required bond amount and may only be posted upon the CPEO's initial certification or immediately following cancellation of an existing bond. In the case of a cancellation of an existing bond, the effective date of the new bond must be no later than the effective date of the cancellation of the existing bond, and the surety providing the existing (now cancelled) bond remains liable for liabilities that accrued during the term of the cancelled bond for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502 of the Code, respectively, with respect to any taxable period that occurred during the term of that bond.

(4) *Cancellation of bond*. Consistent with § 301.7705–2T(g)(3), a bond may be cancelled by the surety only after the surety gives written notice of such cancellation to the IRS and the CPEO in the manner provided in the instructions for Form 14751. Similarly, a bond may be cancelled by the CPEO only after the CPEO gives written notice of such cancellation to the IRS in the manner provided in the instructions for Form 14751 or other guidance. If a CPEO either receives a notice of cancellation from the surety provider of its bond, or gives notice to the IRS of the CPEO's intent to cancel the bond, the CPEO must post a new or superseding bond for the required amount by submitting Form 14751 no later than 30 days prior to the effective date of the cancellation of the previous bond.

(5) *Loss of qualified surety*. If the surety provider of a CPEO's bond no longer meets the requirements for a qualified surety, the CPEO must post a new or superseding bond with a qualified surety for the required amount by submitting Form 14751 no later than 30 days after notification that the previous surety no longer meets the requirements of a qualified surety.

.04 *Submission of annual audited financial statements*.

(1) *Copy of financial statements*. By the last day of the sixth month after the end of each fiscal year of the CPEO (the audit date as defined in section 7705(c)(6) of the Code), and beginning with the first fiscal year that ends after the CPEO's effective date of certification, a CPEO must submit a copy of its annual audited financial statements for the fiscal year.

(2) *CPA opinion*. With its annual audited financial statements, a CPEO must submit an opinion of a CPA that such financial statements are presented fairly and in accordance with generally accepted accounting principles (GAAP). The CPA opinion must be an unmodified opinion (i.e., it cannot be a qualified opinion, an adverse opinion, or an opinion subject to a disclaimer of opinion) and accompanied by a written declaration, signed by the CPA, that he or she is currently qualified as a CPA.

(3) *Working capital statement*. Either the CPA opinion or a Note to the Financial Statements covered by the CPA opinion must state that the CPEO's financial statements reflect positive working capital (as defined by GAAP), or, only if the requirements of section 2.04(4) of this revenue procedure are met, reflect negative working capital, and, in either case, set forth in detail a calculation of the CPEO's working capital as reflected in the financial statements.

(4) *Exception for negative working capital*. A working capital statement that states that a CPEO's annual audited financial statements reflect negative working capital will meet the requirements of section 2.04(3) of this revenue procedure only if—

(a) The CPEO has negative working capital for no more than two consecutive fiscal quarters of the fiscal year, as demonstrated by the required annual audited financial statements or the statements described in section 2.05(3) of this revenue procedure, or the submission of quarterly unaudited financial statements;

(b) The CPEO provides with the statement a detailed calculation of its negative working capital and an explanation to the IRS describing the reason for the negative working capital; and

(c) The IRS determines, in its sole discretion, that the negative working capital does not present a material risk to the IRS's collection of federal employment taxes. The determination of whether the failure presents a material risk to the IRS's collection of federal employment taxes may depend, in part, on whether the CPEO has identified facts and circumstances that will result in positive working capital in the near future.

(5) *Annual audited financial statements for controlled groups*. In the case of a controlled group in which more than one member of the controlled group is a CPEO, each CPEO in the controlled group must submit the annual audited financial statements described in section 2.04(1) of this revenue procedure, with an accompanying CPA opinion described in section 2.04(2) of this revenue procedure, on a combined or consolidated basis for all CPEOs in the controlled group, rather than for the CPEO individually. Although the CPEO is not required to provide a copy of its separate financial statements as part of its submission, if the financial position of a CPEO is unclear from the combined or consolidated financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information that is needed to evaluate the CPEO's position, such as the annual balance sheet, income statement, and statement of cash flow of the individual CPEO.

(a) The combined or consolidated annual audited financial statements provided pursuant to this section 2.04(5) may, but are not required to, also include all members of the controlled group that are not CPEOs. The name and EIN of each member of the controlled group that is included within the consolidated audited financial statements of the controlled group so provided (including each member that is not a CPEO) must be listed in the CPA opinion, a Note to the Financial Statements covered by the CPA opinion, or in a separate attachment signed by a responsible individual of the CPEO under penalties of perjury.

(b) As required by section 2.04(3) of this revenue procedure, a CPEO that is a member of a controlled group of which other members are CPEOs must provide, in the CPA opinion or in a Note to the Financial Statements covered by the CPA opinion, a statement that the individual CPEO's financial statements reflect positive working capital (as defined by GAAP) or, if the requirements of section 2.04(4) of this revenue procedure are met, reflect negative working capital, with the statement in either case setting forth in detail a calculation of the individual CPEO's working capital. If it is unclear whether the CPEO has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information on an individual CPEO basis. The status of other CPEOs in the controlled group is not affected if the CPEO's certification is suspended or revoked because the CPEO's working capital statement reflects negative working capital and the CPEO fails to meet the exception described in section 2.04(4).

.05 *Submission of quarterly assertions, attestations, and working capital statements.* By the last day of the second month after the end of each calendar quarter, a CPEO must provide an assertion, as described in section 2.05(1) of this revenue procedure, that it has withheld and made deposits of all federal employment taxes for which the CPEO is liable for the quarter; an examination level attestation from a CPA, as described in section 2.05(2) of this revenue procedure, stating that this assertion is fairly stated in all material respects; and a statement verifying that the CPEO has positive working capital, as described in section 2.05(3) of this revenue procedure.

(1) *Assertion*. The assertion must be signed under penalties of perjury by a responsible individual of the CPEO and state that the CPEO has withheld and made deposits of all federal employment taxes for the calendar quarter as required by subtitle C (except that the assertion is not required with respect to federal employment taxes imposed by chapter 23 of the Code).

(2) *Examination level attestation*. The examination level attestation from a CPA must state that the assertion described in section 2.05(1) of this revenue procedure is fairly stated in all material respects and complies with the requirements of the American Institute of Certified Public Accountants' Statements of Standards for Attestation Engagements, including the specific requirements for Examination Reports. The attestation must be accompanied by a written declaration, signed by the CPA, that he or she is currently qualified as a CPA. A CPEO will not fail to meet the requirements of this section 2.05(2) if the examination level attestation indicates that the CPEO has failed to withhold or make deposits in certain immaterial respects, provided that—

(a) The attestation provides a summary of the immaterial failures that were found;

(b) The attestation states that, and explains why, the failures were immaterial and isolated and do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements; and

(c) The IRS determines, in its sole discretion, that the isolated and immaterial failures identified by the CPA do not present a material risk to the IRS's collection of federal employment taxes.

(3) *Working capital statement*. The statement verifying positive working capital must be signed by a responsible individual under penalties of perjury and verify that the CPEO has positive working capital (as defined by GAAP) with respect to the most recently completed fiscal quarter. The statement must include a detailed calculation of the CPEO's working capital and be accompanied by a copy of the CPEO's unaudited financial statements for the most recently completed fiscal quarter, if such statements are available. A CPEO will not fail to meet the requirements of this section 2.05(3) as a result of having negative working capital at the end of the fiscal quarter if—

(a) The CPEO does not have negative working capital at the end of the two fiscal quarters immediately preceding such fiscal quarter, as demonstrated by the required annual audited financial statements described in section 2.04 of this revenue procedure or the statements described in this section 2.05(3), or by the submission of quarterly unaudited financial statements;

(b) The CPEO provides a detailed calculation of its negative working capital, unaudited financial statements for the quarter, if available, and an explanation to the IRS describing the reason for such negative working capital; and

(c) The IRS determines, in its sole discretion, that the negative working capital does not present a material risk to the IRS's collection of federal employment taxes. The determination of whether the negative working capital presents a material risk to the IRS's collection of federal employment taxes may depend, in part, on whether the CPEO has identified facts and circumstances that will result in positive working capital in the near future.

(4) *Quarterly assertions, attestations, and working capital statements for controlled groups*. In the case of a controlled group in which more than one member of the controlled group is a CPEO, each CPEO in the controlled group must submit for each calendar quarter the assertion described in section 2.05(1) of this revenue procedure and the examination level attestation described in section 2.05(2) of this revenue procedure on a combined or consolidated basis for all CPEOs in the controlled group, rather than for the CPEO individually. The assertion must contain the name and EIN of each CPEO in the controlled group. However, the working capital statement described in section 2.05(3) of this revenue procedure must relate to the CPEO alone and must not be prepared on a combined or consolidated basis with other members of the controlled group. For purposes of the requirements of section 2.05(3), if it is unclear whether the CPEO has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated annual audited financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information about the individual CPEO. The status of other CPEOs in the controlled group is not affected if the CPEO's certification is suspended or revoked because the working capital statement described in section 2.05(3) reflects negative working capital and the CPEO fails to meet the exception described in section 2.05(3).

.06 *Reporting Requirements*.

(1) *Commencement and termination of contracts*. A CPEO must report the commencement or termination of any CPEO contract between the CPEO and a customer, or any service agreement described in § 31.3504–2(b)(2) between the CPEO and a client, and the name and EIN of such customer or client, using Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*.

(a) Except as provided in section 2.06(1)(b) of this revenue procedure, a CPEO must submit Form 8973 within 30 days of the commencement of any CPEO contract or service agreement described in § 31.3504–2(b)(2) (including the conversion of an existing service agreement described in § 31.3504–2(b)(2) to a CPEO contract and vice versa).

(b) To provide a newly certified CPEO with sufficient time to complete Forms 8973 for clients with whom it has had service agreements prior to certification as a CPEO (existing clients), a CPEO has six months from the date of its notice of certification to submit Forms 8973 with respect to the commencement of any CPEO contracts with existing clients (including the conversion of a service agreement described in § 31.3504–2(b)(2) with an existing client to a CPEO contract) or the commencement of any service agreements described in § 31.3504–2(b)(2) with existing clients (including the continuation by a newly certified CPEO of a service agreement described in § 31.3504–2(b)(2) with an existing client).

(c) A CPEO must submit Form 8973 to the IRS within 30 days of the termination of any CPEO contract or service agreement described in § 31.3504–2(b)(2).

(d) Form 8973 includes a CPEO Consent to Disclosure of Tax Information, on which the CPEO consents to the IRS disclosing to the customer or client identified on the Form 8973 information from the CPEO's employment tax returns (for example, Forms 940 and 941) filed with respect to the customer or client identified on the Form 8973 and information about the CPEO's certification. The CPEO consents to such disclosure only to the extent necessary to carry out the purposes of the CPEO program, and will list on the CPEO Consent to Disclosure of Tax Information the specific year(s) or period(s) for which consent to disclosure of employment tax return information is provided. The CPEO must file a new CPEO Consent to Disclosure of Tax Information before the end of the last year or period listed on the most recent prior consent for the customer or client, unless and until the CPEO submits a Form 8973 to report the termination of such CPEO contract or service agreement. For more information, see Form 8973 and its instructions.

(2) *Employment tax reporting*. A CPEO that is treated as an employer of a covered employee under section 3511 of the Code must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers, in a manner consistent with such treatment. Specifically, with any Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return,* and Form 941, *Employer's QUARTERLY Federal Tax Return,* that it files, a CPEO must file Schedule R (Form 940), *Allocation Schedule for Aggregate Form 940 Filers*, and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers,* respectively, providing all the information required by the form and its instructions. In addition, Form 940 and, except with respect to the first calendar quarter for which the CPEO is certified, Form 941, along with all required schedules, including Schedule R, must be electronically filed. A CPEO may file the Form 941, along with all required schedules, including Schedule R, on paper with respect to the calendar quarter that begins on the effective date of certification. See the instructions for Form 940, Form 941, Schedule R (Form 940), and Schedule R (Form 941) for additional information on filing these forms. The IRS may waive the electronic filing requirements of this section 2.06(2) in case of undue economic hardship. The principal factor in determining undue economic hardship will be the amount, if any, by which the cost of electronically filing Form 940 and Form 941 (and all applicable schedules) exceeds the cost of paper filing. To request a waiver from electronic filing requirements, a CPEO must submit in writing a request that specifies the type of filing (that is, the name of the form or schedule), as well as the period to which it applies, and that explains the undue economic hardship caused by electronic filing. In addition, the waiver will be subject to such terms

and conditions regarding the method of filing as may be prescribed by the IRS. For additional information on how to request a waiver from electronic filing requirements, see the information provided on the IRS CPEO web page on *www.irs.gov*.

(3) *Reporting of material changes*. A CPEO must notify the IRS of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS (material change), including a modification or update to previously provided information, as well as new information (for example, a new responsible individual). A CPEO must notify the IRS of a material change no later than 30 days (45 days in the case of a new responsible individual) after the date of the material change. Notification must be provided through the online account of the CPEO by which the initial application was submitted, or through such other means as the IRS prescribes in further guidance. Material changes that must be reported as prescribed in this section 2.06(3) include, but are not limited to, the following items:

(a) Any change to the information previously provided by the CPEO as part of its initial application for certification or as part of a prior material change notification or annual verification related to business name or organization, address, fiscal year, licensing information, precursor entities, related entities, controlled group information, responsible individuals, or background information.

(b) Any change to the tax compliance information previously provided by the CPEO as part of its initial application for certification or as part of a prior material change notification or annual verification. When reporting material changes to the CPEO's tax compliance information, the CPEO must specifically report: (i) the discovery of any failure (other than immaterial and isolated failures that do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements) by the CPEO or any of its precursor or related entities within the last six years to timely and accurately file federal, state, or local tax or information returns (including federal employment tax returns) or pay any applicable federal, state, or local tax (including federal employment taxes), except that with respect to precursor entities that are no longer related entities, the CPEO must report only those failures of which it becomes aware and that relate to the precursor entity's tax and reporting responsibilities connected with any assets that were transferred to the CPEO from the precursor entity; and (ii) the assessment of fraud penalties by the IRS or a state or local tax authority against the CPEO or any of its precursor or related entities for any year, including for years before the CPEO was certified, except that with respect to precursor entities that are no longer related entities, the CPEO must report only those assessments of fraud penalties of which it becomes aware and that relate to the precursor entity's tax and reporting responsibilities connected with any assets that were transferred to the CPEO from the precursor entity.

(c) Any change to any annual audited financial statements or annual working capital statements previously submitted to the IRS in accordance with section 2.04 of this revenue procedure, section 2.05 of Rev. Proc. 2016–33, and § 301.7705–2T(e), that would require a restatement of previously submitted annual audited financial statements.

(d) Any change to the quarterly working capital statements previously submitted to the IRS in accordance with section 2.05 of this revenue procedure, section 2.06 of Rev. Proc. 2016–33, and § 301.7705–2T(f), that causes working capital to no longer be positive or that causes a CPEO with negative working capital that met the requirements of section 2.05(3) of this revenue procedure to no longer meet those requirements.

(e) The discovery by the CPEO of tax fraud or criminal activity in violation of federal, state, or local laws by a responsible individual.

(f) The charging or conviction of the CPEO, or a related entity or a responsible individual of the CPEO, with or for any federal, state, or local criminal offense.

(g) The commencement of an active IRS criminal investigation of the CPEO, or the discovery by the CPEO of an active IRS criminal investigation of a related entity or a responsible individual.

(h) The occurrence of a transaction by which a person or group of persons gain control or effective control, directly or indirectly (including through control of the owner of the CPEO), of 50 percent or more of the stock or other ownership interests in a CPEO (determined by vote or value).

(i) The sale, transfer, or disposition of all or substantially all of the CPEO business, or the reorganization, spin off or similar division, liquidation, or closure of the CPEO business, directly or indirectly (including through sale, transfer, disposition, reorganization, spin off, or division of the owner of the CPEO) regardless of whether the event is taxable or tax free.

(4) *Reporting of material changes by responsible individuals and reporting of new responsible individuals*. Responsible individuals of a CPEO must notify the IRS of any material changes to the information they submitted on the Responsible Individual Personal Attestation (RIPA) pursuant to section 2.01 of Rev. Proc. 2016–33 or this section 2.06(4), within 30 days of the change, by submitting an update through the online account of the responsible individual who submitted the previous RIPA. Material changes that must be reported as prescribed in this section 2.06(4) include any change to the responsible individual's basic information, address, business information, related entities, and other attestations (such as attestations related to the denial, suspension, or revocation of licenses, registrations, or accreditations; disbarments; charges or convictions for any federal, state, or local criminal offense; IRS criminal investigations; any failures to file any required federal, state, or local tax or information returns, or to pay any required federal, state, or local taxes, in a timely or accurate manner; the initiation of a bankruptcy proceeding by the responsible individual; and any assessments of the Trust Fund Recovery Penalty on the responsible individual). This reporting requirement is in addition to the requirement that the CPEO report material changes relating to responsible individuals, as provided in sections 2.06(3)(a), (e), (f), and (g) of this revenue procedure. In addition, each individual who, since the CPEO's effective date of certification, becomes a responsible individual of the CPEO must, within 30 days of becoming a responsible individual, either, (i) if the responsible indi-

vidual had previously completed a RIPA for any CPEO, submit an update through his or her online account adding the CPEO as a CPEO with which the responsible individual is associated; or, (ii) if the responsible individual had not previously completed a RIPA, electronically submit a properly completed and executed online RIPA and provide a FD-258, Fingerprint Card, obtain an individual (INDV) number from the IRS, and provide this INDV number to the CPEO in the manner described on *www.irs.gov* (all of which must take place before the CPEO can update its responsible individual information).

(5) *Reporting to customers*. A CPEO must meet the following reporting requirements with respect to its customers:

(a) A CPEO must notify a customer in writing if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the remuneration of any individuals covered by its CPEO contract with the customer) and provide the customer with the name and EIN of such other person no later than 10 days after the transfer or other applicable event.

(b) A CPEO must provide its customers with the information necessary to claim the credits specified in section 3511(d)(2) of the Code and any other credits specified in future guidance, and the information necessary to properly report employee tips, as provided in section 6053(c)(8) of the Code.

(c) If a CPEO's certification is suspended or revoked, as described in section 3 of this revenue procedure, the CPEO must provide written notice to each of its customers within 10 days of the effective date of such suspension or revocation, as provided in sections 3.03(1) and 3.09 of this revenue procedure.

(d) If any covered employees are not, or cease to be, work site employees because they perform services at a location at which the 85 percent threshold described in section 7705(e)(3) of the Code is not met, the CPEO must notify the customer in writing within 30 days following the end of the applicable calendar quarter that the customer may also be liable for the federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees.

(6) *Information and agreements required in any contract between a CPEO and a client or customer*.

(a) *In general*. In the case of a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract (as a result of which the individuals covered by that service agreement are not covered employees), or if section 3511 of the Code does not apply to a CPEO contract in accordance with paragraph (b) of this section 2.06(6), the agreement or contract must notify, or be accompanied by a notification to, the client or customer that the service agreement or contract is not covered by section 3511 of the Code and does not alter the client or customer's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the service agreement or contract.

(b) Section 3511 of the Code does not apply to a CPEO contract under the following circumstances—

(i) The customer has a relationship to a CPEO described in section 267(b) of the Code (including by cross-reference to section 267(f) of the Code) or section 707(b) of the Code, except that "10 percent" shall be substituted for "50 percent" wherever it appears in the applicable sections;

(ii) The customer has commenced a CPEO contract with the CPEO but such commencement has not been reported to the IRS in accordance with section 2.06(1) of this revenue procedure;

(iii) The CPEO contract has been entered into by the CPEO while its certification has been suspended by the IRS; or

(iv) The certification of a CPEO has been revoked or voluntarily terminated but only for the period following the revocation or voluntary termination, and in such case the notification required by paragraph (a) of this section 2.06(6) should be sent as required by sections 3.09 and 4.01 of this revenue procedure.

(c) In situations in which a CPEO contract with a customer covers remuneration paid by a CPEO to self-employed individuals, the CPEO contract must notify, or be accompanied by notification to, the customer that the remuneration paid by the CPEO to any self-employed individuals is not covered by section 3511 of the Code.

(7) *Penalties and additions to tax*. A CPEO is subject to the penalty under section 6652(n) of the Code for failure to make any report required by sections 3511 and 7705 of the Code (and the guidance thereunder), which includes the reporting requirements described in this section 2.06. In addition, a CPEO is subject to the same penalties and additions to tax as any employer that fails to meet the applicable employment tax reporting requirements discussed in section 2.06(2) of this revenue procedure, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723 of the Code. However, the failure to file Forms 940 and 941, along with all required schedules, electronically, as provided in section 2.06(2) of this revenue procedure, does not constitute a failure to file for purposes of the section 6651(a)(1) addition to tax or a failure to make a report for purposes of the section 6652(n) penalty. The consequence of any failure to file these forms and associated schedules electronically is the potential suspension or revocation of certification as a CPEO, addressed in section 3 of this revenue procedure.

SECTION 3. SUSPENSION AND REVOCATION OF CPEO CERTIFICATION

.01 *In general*. The IRS may suspend and/or revoke the certification of any CPEO as a result of one or more failures to comply with any of the requirements for CPEOs described in sections 3511 and 7705 of the Code, the regulations thereunder, Rev. Proc. 2016–33, Notice 2016–49, this revenue procedure, and any other guidance issued by the IRS applicable to CPEOs, and will do so if the IRS determines, in its sole discretion and based on a review of the relevant facts and circumstances, that one or more of such failures present a material risk to the IRS's collection of federal employment taxes. Section 3.02 of this revenue procedure provides examples of specific failures that may result in the issuance of a notice of suspension and proposed revocation, the consequences of which are described in section 3.03(1) of this revenue procedure. A CPEO may request review of the proposed revocation, in the manner described in section 3.03(2) of this revenue procedure, which may result in the lifting of the suspension or the issuance of a notice of final revocation. Consequences of revocation of certification are described in section 3.09 of this revenue procedure.

.02 *Specific failures resulting in suspension and proposed revocation*. Specific circumstances that may result in suspension and proposed revocation of certification include, but are not limited to—

(1) A failure to timely complete an annual verification, timely submit annual audited financial statements and an accompanying CPA opinion, or timely submit a quarterly assertion, attestation, or working capital statement, as provided in sections 2.02, 2.04, and 2.05 of this revenue procedure;

(2) A failure to maintain a bond or bonds in the required bond amount, as provided in section 2.03 of this revenue procedure;

(3) A failure to satisfy the reporting requirements provided in section 2.06 of this revenue procedure, including a failure of the CPEO or a responsible individual of the CPEO to notify the IRS of a material change (as provided in sections 2.06(3) and 2.06(4) of this revenue procedure);

(4) The charging or conviction of the CPEO, or a related entity or a responsible individual of the CPEO, with or for any criminal offense under the laws of the United States or a state or political subdivision;

(5) The CPEO, or a related entity or a responsible individual of the CPEO, being the subject of an active IRS criminal investigation;

(6) A failure (other than an immaterial and isolated failure that does not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements) by the CPEO or any responsible individual to pay any applicable federal, state, or local taxes or file any required federal, state, or local tax or information returns in a timely and accurate manner, unless the failure is determined to be due to reasonable cause and not due to willful neglect;

(7) The assessment of fraud penalties against the CPEO or any of its responsible individuals or related entities by the IRS or another tax authority; and

(8) The discovery of any errors or omissions in any annual audited financial statements or working capital statements previously submitted to the IRS in accordance with sections 2.04 and 2.05 of this revenue procedure, sections 2.05 and 2.06 of Rev. Proc. 2016–33, and §§ 301.7705–2T(e) and (f), that would require a restatement of previously submitted statements.

.03 *Notice of suspension and proposed revocation*. If the CPEO program office determines that suspension and proposed revocation of certification is appropriate, the IRS will issue a notice of suspension and proposed revocation to the CPEO that will explain the reason(s) for and consequences of the suspension and proposed revocation, as described in section 3.03(1) of this revenue procedure, and advise the CPEO of its opportunity to request review of the proposed revocation, as described in section 3.03(2) of this revenue procedure. The CPEO's suspension is effective as of the date on the notice.

(1) *Consequences of suspension of certification*. Within 10 days of the date of the notice of suspension and proposed revocation, the CPEO must provide written notice to its customers of its suspended status. Moreover, the IRS will include the suspended CPEO in the published list of suspended CPEOs, available on *www.irs.gov*, and may also individually notify the CPEO's customers of the suspension. A CPEO that has received a notice of suspension and proposed revocation is still responsible for meeting all applicable certification requirements contained in the regulations and this revenue procedure. However, section 3511 of the Code will not apply to any new CPEO contract (not including modifications or extensions to existing contracts) that the CPEO enters into while its certification is suspended. Notwithstanding the foregoing, any new CPEO contract entered into while the CPEO's certification is suspended is still subject to the applicable provisions of sections 2.06(1), (2), and (6) of this revenue procedure, which restate requirements stated in § 31.3511–1(g) of the proposed regulations, assuming such contract otherwise constitutes a service agreement described in § 31.3504–2(b)(2).

(2) *Request for review of proposed revocation*. A notice of suspension and proposed revocation, in accordance with this section 3.03, will advise the CPEO of its opportunity to request review of the proposed revocation. To request a review, the CPEO must submit to the CPEO program office identified in the notice of suspension and proposed revocation, within 30 days of the date of the notice and in the manner prescribed by the notice, a written request for review that contains a statement of the facts, law, and arguments in support of the CPEO's position, including a description of the actions it has taken, is taking, or intends to take to cure the failure(s) identified in the notice (if possible) and to prevent the failure(s) from reoccurring. The arguments in support of the CPEO's position should focus on the factual information being provided by the CPEO concerning its failure(s) to comply with the requirements for CPEOs and/or on the factual information being provided as evidence disputing any underlying facts on which the IRS based its conclusion, as well as on the actions it has taken or intends to take to cure the failure(s) (if possible) and to prevent the failure(s) from reoccurring. Although arguments concerning whether the actions the CPEO has taken or intends to take have cured or will cure the failure(s) (if possible) and will prevent the failure(s) from reoccurring are appropriate for the CPEO to make in its request for review, arguments concerning whether the failure(s) presented or continue to present a material risk to the IRS's collection of federal employment taxes are outside the scope of review and will not be considered.

.04 *Notice of final revocation issued if no request for review of the proposed revocation is submitted*. If the CPEO does not timely submit a request for review of the proposed revocation in accordance with section 3.03(2) of this revenue procedure, a notice of final revocation will be issued to the CPEO by the CPEO program office.

.05 *How the IRS handles a request for review of the proposed revocation*. The CPEO program office will first review the request.

(1) If the CPEO program office finds that the CPEO's actions have cured or will cure the failure(s) (if possible) and will

prevent the failure(s) from reoccurring, the suspension will be lifted. The CPEO program office will provide to the CPEO written notice of this finding that will include the date the suspension is lifted. Section 3511 of the Code will apply to any new CPEO contract that the CPEO enters into on or after the date the suspension is lifted. However, section 3511 of the Code does not apply to any CPEO contract that the CPEO entered into while it was suspended. The IRS will remove the listed CPEO from the published list of suspended CPEOs as soon as practicable, but no later than the next update of the list that occurs after the suspension is lifted.

(2) If, upon review of the CPEO's request for review of the proposed revocation, the CPEO program office determines that the CPEO's actions have not cured or will not cure the failure(s) and will not prevent the failure(s) from reoccurring, it will forward the notice of suspension and proposed revocation, the CPEO's request for review, and all accompanying supporting documentation to the IRS Office of Professional Responsibility (OPR).

.06 *Consideration by OPR*. If the request for review of the proposed revocation is forwarded to OPR, OPR will consider the CPEO's request for review. OPR will apply an abuse-of-discretion standard to its review, and if, applying this standard, OPR finds that the CPEO program office erred in proposing revocation or in determining that the CPEO's actions have not cured or will not cure the failure(s) and will not prevent the failure(s) from reoccurring, the CPEO's certification will not be revoked, and its suspension will be lifted. OPR will provide written notice of its finding to both the CPEO and the CPEO program office, which will include the date the suspension is lifted. As of the date the suspension is lifted, the CPEO will be restored to full status as a CPEO, section 3511 of the Code will once again apply to any new CPEO contract that the CPEO enters into. However, section 3511 of the Code does not apply to any CPEO contract that the CPEO entered into while it was suspended. The IRS will remove the listed CPEO from the list of suspended CPEOs as soon as practicable, but no later than the next update of the list that occurs after the suspension is lifted. If OPR finds no abuse of discretion, OPR will provide written notice of its finding to both the CPEO and the CPEO program office and will issue a notice of final revocation to the CPEO, which is described in section 3.08 of this revenue procedure.

.07 *A request for review may be withdrawn*. A CPEO may withdraw its request for review of the notice of proposed revocation before OPR provides written notice of its finding to the CPEO. A request for review may be withdrawn only upon the written request of the CPEO. Upon receipt of the CPEO's withdrawal request, the IRS will issue a notice of final revocation.

.08 *Notice of final revocation*. The notice of final revocation will incorporate by reference the notice of suspension and proposed revocation (including an explanation of the reason(s) for the suspension and proposed revocation) and explain the consequences of revocation of certification, as described in section 3.09 of this revenue procedure. If the CPEO requested review of the proposed revocation (and did not withdraw its request for review), the notice of final revocation will also include additional discussion of the IRS's rationale for revocation of certification in response to arguments made in the CPEO's request for review. The notice of final revocation will state the effective date of the revocation.

.09 *Consequences of revocation*. A CPEO is no longer a CPEO as of the effective date of revocation stated in the notice of final revocation, and the provisions of section 3511 of the Code no longer apply to the organization as of that date. Unless otherwise stated in the notice of final revocation, within 10 days after the date of the notice of final revocation and no less than 30 days before the effective date of revocation, the CPEO must provide written notice to each of its customers that the CPEO's certification has been revoked, that the provisions of section 3511 of the Code no longer apply to the customer's relationship with the CPEO, and that the customers may also be liable (as of the effective date of revocation) for federal employment taxes imposed on remuneration remitted by the CPEO to all employees covered by the customer's contract with the CPEO. Moreover, the IRS will include the CPEO in the published list of revoked CPEOs, available on *www.irs.gov*, as soon as practicable, but no later than the next update of the list that occurs after the effective date of revocation, and may also individually notify the CPEO's customers of the revocation. The former CPEO may not reapply to be certified as a CPEO until one year has passed after the effective date of its revocation.

SECTION 4. VOLUNTARY TERMINATION

.01 *Notice of voluntary termination*. A CPEO may voluntarily terminate its certification at any time other than while its certification is suspended. To voluntarily terminate its certification, the CPEO must submit to the IRS, via the CPEO's online account or such other method as the IRS shall prescribe in further guidance, a written notice of voluntary termination at least 30 days prior to the date on which the CPEO intends for the termination to take effect. The effective date chosen by the CPEO must coincide with the first day of a calendar quarter. Prior to sending the IRS the notice of voluntary termination, the CPEO must notify each of its customers in writing of the CPEO's intention to terminate its certification and of the proposed effective date of termination, and provide an explanation of the employment tax consequences of termination, including a statement that the customer may also be liable (as of the effective date of termination) for federal employment taxes imposed on remuneration remitted by the CPEO to all employees covered by the customer's contract with the CPEO. A sample of the notification to customers referred to in the preceding sentence must be attached to the notice of voluntary termination submitted by the CPEO to the IRS.

.02 *Notice of termination sent to customers by IRS*. Upon receipt of a CPEO's notice of voluntary termination, the IRS may also send notification of the CPEO's intent to terminate certification to the CPEO's customers.

.03 *Effect of voluntary termination*. A CPEO that voluntarily terminates its certification is, as of the effective date stated in the notice of voluntary termination, no longer a CPEO and the provisions of section 3511 of the Code will no longer apply to the organization. The CPEO will also be removed from the list of CPEOs that the IRS publishes on *www.irs.gov*, which is updated by the 15th day of the first month of every calendar quarter.

SECTION 5. GUIDANCE FOR CPEOS WITH AN EFFECTIVE DATE OF CERTIFICATION OF JANUARY 1, 2017, THAT RECEIVE NOTICE OF CERTIFICATION AFTER THAT DATE

.01 *In general*. Rev. Proc. 2016–33, as modified by Notice 2016–49, provides that the effective date of certification for a CPEO applicant that submits a complete and accurate application before October 1, 2016, and is certified, will be January 1, 2017, even if the date of its notice of certification is after January 1, 2017. A CPEO applicant that submitted a complete and accurate application before October 1, 2016, under this special rule should begin keeping track of the information necessary to properly complete a Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers* (a draft of the new Schedule R (Form 941) that includes CPEO reporting is available at *www.irs.gov*) as of January 1, 2017, even if the CPEO applicant has not yet received notice of certification. The IRS anticipates that a CPEO that receives a notice of certification during the first quarter of 2017 providing for an effective date of certification of January 1, 2017, will be able to comply with CPEO employment tax reporting requirements, as described in section 2.06(2) of this revenue procedure, and file Form 941 with an attached Schedule R by the first quarter deadline of April 30, 2017. However, in the event a CPEO receives a notice of certification after the end of the first quarter of 2017 (that is, after March 31, 2017) that provides for an effective date of certification of January 1, 2017, the CPEO may file Form 941 for the first quarter of 2017 without an attached Schedule R, but then must file Form 941–X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, with a properly completed Schedule R for the first quarter by July 31, 2017.

.02 *Transition rule for filing Form 14751*. Under § 301.7705–2T(g) and section 2.04(2) of Rev. Proc. 2016–33, a CPEO applicant that is certified under the special rule described in section 5.01 of this revenue procedure would have 30 days to post a bond that is effective beginning January 1, 2017, (using Form 14751) in the amount required by § 301.7705–2T(g)(2). To comply with section 2.03(3) of this revenue procedure, a CPEO that is certified under the special rule and whose bond amount under § 301.7705–2T(g)(2) increases for the bond period beginning April 1, 2017, would need to increase its bond amount (using Form 14571) for the new bond period by March 1, 2017. If a CPEO that is certified under the special rule receives its notice of certification after March 1, 2017, meeting this March 1 deadline will not be possible. Moreover, whether or not notice of certification is received by the March 1 deadline, obtaining a bond for a three-month period beginning January 1, 2017, and then within a short timeframe increasing that bond amount for a period beginning April 1, 2017, may prove administratively difficult.

Accordingly, Treasury and the IRS are providing transition relief for newly certified CPEOs that are certified with an effective date of January 1, 2017, under the special rule described in section 5.01 of this revenue procedure. Specifically, with respect to both the bond period from January 1, 2017, to March 31, 2017, and the bond period from April 1, 2017, to March 31, 2018, such a CPEO will be required to submit only one properly completed and executed Form 14751 covering both bond periods. The single bond posted using this Form 14751 must have an effective date of January 1, 2017, and cover both bond periods using the same bond amount, which is in the amount required by § 301.7705–2T(g)(2), calculated for the bond period beginning April 1, 2017, and ending March 31, 2018. In addition, the CPEO will have 30 days from the date of its notice of certification to submit this Form 14751, without regard to when the CPEO's notice of certification is received.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective December 29, 2016.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2266.

The collection of information in this revenue procedure relates to the information a person must submit to the IRS to maintain certification as a CPEO for purposes of sections 3511 and 7705 of the Code and to the information a CPEO must report to the IRS and to its customers and clients to ensure the accurate, efficient, and transparent payment and reporting of employment taxes. Generally, the collection of information burden associated with sections 2 through 4 of this revenue procedure is reflected in the burden estimates for Form 14737, *Request for Voluntary IRS Certification of a Professional Employer Organization*; Form 14737–A, *Responsible Individual Personal Attestation*; Form 14751, *Certified Professional Employer Organization Surety Bond*; and § 301.7705–2T and § 31.3511–1, all of which are under the same control number. The collection of information burden associated with sections 2.06(1) and 2.06(2) of this revenue procedure, in particular, will be reflected in the burden estimates for new Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*, and for the amendments made to the applicable Schedules R of Forms 940 and 941.

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

Books and records relating to the 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 of the Code.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Andrew Holubeck and Melissa Duce of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, please contact Andrew Holubeck at (202) 317-4774 (not a toll-free number).

Qualified Intermediary Agreement

Revenue Procedure 2017–15

SECTION 1. PURPOSE

.01 In General. This Revenue Procedure sets forth the final qualified intermediary (QI) withholding agreement (QI agreement) entered into under §1.1441–1(e)(5).[4] In general, the QI agreement allows foreign persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify their obligations as withholding agents under chapters 3 and 4 and as payors under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement also allows certain foreign persons to enter into an agreement with the IRS to act as qualified derivatives dealers (QDDs) and to assume primary withholding and reporting responsibilities on all dividend equivalent payments that they make.

.02 Withholding Foreign Partnership and Withholding Foreign Trust Agreements. Revenue Procedure 2014-47, 2014-35 I.R.B. 393, includes the withholding foreign partnership (WP) and withholding foreign trust (WT) agreements that are currently in effect, and that are supposed to expire on December 31, 2016. This revenue procedure announces that because the updated WP and WT agreements will not be published before December 31, 2016, WPs and WTs with agreements currently in effect may continue to treat those agreements as in effect until updated agreements are issued in January 2017.

SECTION 2. SCOPE

.01 Entities Eligible to Execute a QI Agreement. A QI agreement may be entered into by persons described in §1.1441–1(e)(5)(ii), including foreign financial institutions (FFIs) (as defined in §1.1471–5(d)), foreign clearing organizations, and foreign branches of U.S. financial institutions and clearing organizations. An eligible entity (as defined in §1.1441–1(e)(6)(ii)) may also enter into a QI agreement for purposes of becoming a qualified derivatives dealer (QDD).

An 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), or (3) a registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the 2017 QI Agreement). 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 is able to 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 act as a QI for all of the accounts it maintains). 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 registered deemed-compliant FFI (including a reporting Model 1 FFI) with respect to any account that it maintains 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 or clearing organization may also apply to enter into a QI agreement provided that 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).

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 to enter into a QI agreement.

A foreign corporation that is a nonfinancial foreign entity or NFFE (as defined in §1.1471–1(b)(80)) that is described in one of the categories in §1.1441–1(e)(5)(ii) may also apply to enter into a QI agreement. An NFFE that seeks to act as an intermediary on behalf of its shareholders should not apply for QI status and instead should apply for withholding foreign partnership status as a reverse hybrid entity. An NFFE that enters into a QI agreement to act an as intermediary 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 generally does not apply to a foreign partnership or foreign trust. A foreign partnership or foreign trust may apply for status as a withholding foreign partnership or withholding foreign trust. See §§1.1441–5(c)(2)(ii) and 1.1441–5(e)(5)(v).

.02 Effect on Other Documents. Revenue Procedure 2014-39, 2014-29 I.R.B. 150, is superseded with respect to a QI's requirements that apply after December 31, 2016. A QI agreement in effect prior to December 31, 2016 expires, in accordance with its terms, on December 31, 2016.

SECTION 3. BACKGROUND – WITHHOLDING AND REPORTING REQUIREMENTS UNDER CHAPTERS 3, 4, AND 61 AND SECTION 3406

.01 Withholding and Reporting under Chapter 4 on Payments Made to FFIs 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 the requirements under section 1471(b) (a deemed-compliant FFI), or is treated as an

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[1]Unless otherwise provided, all citations in this Revenue Procedure and the QI agreement included in this Revenue Procedure are to the Internal Revenue Code of 1986, as amended (Code) and the Income Tax Regulations thereunder.

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 (other than an excepted NFFE) unless such entity provides a certification that it does not have any substantial U.S. owners or provides information regarding its substantial U.S. owners.

A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) will satisfy its requirement to withhold under sections 1471(a) and 1472(a) on withholdable payments made to accounts held by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs and recalcitrant account holders under the FFI agreement, §1.1471–5(f), or an applicable Model 2 IGA. A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) is also required to withhold on withholdable payments made to accounts held by individuals that the FFI is required to treat as recalcitrant account holders to the extent required under the FFI agreement, §1.1471–5(f), or an applicable Model 2 IGA. See, however, the Model 2 IGA for the suspension of withholding on non-consenting U.S. accounts. A QI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI will satisfy its requirement to withhold under section 1471(a) on withholdable payments made to accounts held by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs.

A participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI, and a registered deemed-compliant Model 1 IGA FFI must report certain account information regarding each U.S. account (or U.S. reportable account) that it maintains to the extent required under the FFI agreement, §1.1471–5(f), or a Model 1 or Model 2 IGA. A participating FFI (including a reporting Model 2 FFI) or a 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 withholding agent making payments to an NFFE that is not reported by an FFI as a U.S. account (or U.S. reportable account) 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*. See §§1.1472–1(b)(1)(iii) and 1.1474–1(i). 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*.

.02 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 (for example, section 1443), the regulations, or an income tax treaty. Generally, a withholding agent must also report the payments on Form 1042-S regardless of whether withholding was required. See §1.1461–1(c).

.03 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 (that is, 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. non-exempt recipient receiving a payment reportable on a Form 1099 or must otherwise backup withhold under section 3406 and report the payment on Form 1099.

.04 Coordination of Withholding and Reporting Requirements under Chapters 3 and 4. With respect to a withholdable 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 is required to report on a single Form 1042-S the information required under both chapters 3 and 4 with respect to a payment subject to withholding under both chapters 3 and 4. With respect to a withholdable payment that is not subject to withholding under chapter 4 and that is an amount subject to withholding under chapter 3, a withholding agent is also required to report on Form 1042-S the applicable chapter 4 exemption code for the payment and the recipient's chapter 4 status.

.05 Responsibilities of Intermediaries that Enter into QI Agreements. When the IRS enters into a QI agreement with a foreign person (or foreign branch of a U.S. person), that foreign person (or foreign branch of a U.S. 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.

SECTION 4. SUMMARY OF CHANGES TO THE QI AGREEMENT

Notice 2016-42, 2016-19 I.R.B. 67, set forth a proposed QI agreement (the Proposed QI Agreement) that included revisions to the QI agreement currently in effect, contained in Revenue Procedure 2014-39 (the 2014 QI Agreement) as well as provisions relating to QDDs. Comments were received in response to the Proposed QI Agreement. This section provides a summary of changes reflected in the QI agreement provided in this Revenue Procedure (the 2017 QI Agreement), including changes made in response to certain of the comments received to the Proposed QI Agreement.

.01 Provisions Applicable to Qualified Derivatives Dealers. On September 18, 2015, final and temporary regulations under section 871(m) and sections 1441, 1461, and 1473 (collectively, the 871(m) regulations) were published in T.D. 9734, which addressed the treatment of dividend equivalents from U.S. sources. On July 1, 2016, the Treasury Department and the IRS released Notice 2016-42, containing the Proposed QI Agreement that describes requirements and obligations that were proposed to be applicable to QDDs and that requested comments. On December 2, 2016, the Treasury Department and the IRS released Notice 2016-76, 2016-51 I.R.B. 834, providing guidance for complying with the section 871(m) regulations in 2017 and 2018 and explaining how the IRS intends to administer those regulations in 2017 and 2018. The QDD provisions of the 2017 QI Agreement reflect anticipated changes to the 871(m) regulations, which are discussed below.

(1) *Updates to reflect Notice 2016-76*. The Proposed QI Agreement provided rules for how a QDD calculates its section 871(m) amount and determines its QDD tax liability. Based on comments received on the Proposed QI Agreement, Notice 2016-76 revised the methodology for determining the section 871(m) amount to use a net delta approach and announced that the regulations under §1.871–15(q)(1) would be revised to provide that a QDD will remain liable for tax under section 881(a)(1) and subject to withholding under chapters 3 and 4 on dividends on physical shares and deemed dividends received. Notice 2016-76 also makes calendar year 2017 a phase-in year for QDDs, as it provides that, in enforcing and administering the QDD rules in the section 871(m) regulations and the relevant provisions of the QI agreement for 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement.

The 2017 QI Agreement further modifies the computation of a QDD's section 871(m) amount for 2017 and describes certain anticipated changes to the 871(m) regulations, which are expected to be released in January 2017. To provide QDDs with the time necessary to implement the computation of the section 871(m) amount announced in Notice 2016-76, a QDD will not be liable for tax under section 881(a)(1) on dividends on physical shares (including deemed dividends) or on dividend equivalents that the QDD receives in its capacity as an equity derivatives dealer in calendar year 2017. Both the Proposed QI Agreement and Notice 2016-76 provided that a QDD will remain liable for tax under section 881(a)(1) on dividends and dividend equivalents that a QDD receives in any capacity other than as an equity derivatives dealer. The 2017 QI Agreement does not change this result. In addition, a QDD is responsible for withholding on dividend equivalents it pays to a foreign person on a section 871(m) transaction, whether in its capacity as an equity derivatives dealer or otherwise.

The 2017 QI Agreement provides that a QDD will be required to compute its section 871(m) amount using the net delta approach (as defined in section 2.47 of the 2017 QI Agreement) beginning in 2018, and will be subject to withholding on dividends (including deemed dividends) received on or after January 1, 2018. The Treasury Department and the IRS will consider comments recommending approaches for alleviating any overwithholding (and preventing any underwithholding) that might occur on dealer transactions with customers and on positions that hedge customer transactions when withholding on dividends (including deemed dividends) begins in 2018.

(2) *Eligible entity*. The Proposed QI Agreement provided that an entity must enter into a QI agreement and be an eligible entity to be a QDD. Comments to the Proposed QI Agreement requested that the definition of an eligible entity be expanded.

In response to comments regarding the application of the QDD rules to branches, the 2017 QI Agreement clarifies the treatment of branches. The 2017 QI Agreement provides that the home office (as defined in section 2.43 of the 2017 QI Agreement) and each branch of the person that is applying for the QI agreement must separately qualify and be approved for QDD status. The home office and any branch that wants to be a QDD must each separately meet the eligible entity requirements as if it were a separate entity. When approved as a QDD, the home office and each branch are treated as a separate QDD and must apply the QDD provisions as if each home office and branch were separate entities. If a foreign person has one or more branches, the home office is the foreign person, excluding any branches of the foreign person.

As provided in section 1.02 of the 2017 QI Agreement, if a QI is an FFI, it can only have a branch also act as a QI if that branch is located in a jurisdiction identified on the IRS's Approved KYC List. This rule applies to QIs that are FFIs and are applying for QDD status on behalf of the home office or any branch. The QI agreement does not require NFFEs applying for QI status to be located or operating in an approved KYC jurisdiction (because NFFEs under the QI agreement are required to document their account holders by collecting withholding certificates and are not allowed to document their account holders solely with documentary evidence). Similarly, a branch of a NFFE is not required to be located in a jurisdiction identified on the IRS's Approved KYC List (and must document its account holders with withholding certificates) to be able to act as a QI, including a branch acting as a QDD.

Comments also requested that the definition of an eligible entity be expanded to include bank holding companies and their subsidiaries. The comments noted that bank holding companies are subject to extensive regulation, including compliance with risk management standards. In response to comments, the 2017 QI Agreement expands the eligible entity definition to include a bank holding company that is subject to regulatory supervision as a bank holding company by the governmental authority in the jurisdiction in which it is organized or operates. The eligible entity definitions is also expanded in the 2017 QI Agreement to include an entity that is wholly-owned (directly or indirectly) by a bank holding company subject to regulatory supervision as a bank holding company by a governmental authority in the jurisdiction in which the bank holding company is organized or operates. To qualify as a QDD, any bank holding company or wholly-owned subsidiary of a bank holding company must satisfy the other requirements of the eligible entity definition. Finally, to provide the IRS with flexibility to administer the QDD regime, an eligible entity will be defined to include any other person acceptable to the IRS, which is similar to the allowance provided to the IRS in defining persons eligible to enter into QI agreement as provided in §1.1441–1(e)(5)(ii)(D).

(3) *Section 871(m) amount*. The Proposed QI Agreement described the section 871(m) amount as the sum of the amounts by which, for each dividend on each underlying security, (A) the dividends on underlying securities associated with potential section 871(m) transactions and dividend equivalent payments that a QDD receives in its dealer capacity exceed (B) the dividend equivalent payments and the qualifying dividend equivalent offsetting payments that a QDD makes with respect to the same dividend in its dealer capacity. Comments requested that a QDD calculate its section 871(m) amount based on its net delta exposure to an underlying security. Comments noted that the net delta exposure is used for business or non-tax regulatory purposes. The net delta exposure is calculated by multiplying the relevant dividend amount per share by the net delta exposure (measured in number of shares) of the QDD in its dealer capacity generally as of the close of the day before the ex-dividend date for the underlying security.

In response to comments, the 2017 QI Agreement provides that the section 871(m) amount is determined for each dividend on each underlying security by multiplying (A) the QDD's net delta exposure to the underlying security for the applicable dividend by (B) the applicable dividend amount per share. The net delta exposure to an underlying security for an applicable dividend is the amount (measured in number of shares) by which (A) the aggregate number of shares in the underlying security that the QDD has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the value of the underlying security (the long positions) exceeds (B) the aggregate number of shares of in the underlying security that the QDD has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the value of the underlying security (the short positions). The net delta exposure calculation only includes long positions and short positions that the QDD holds in its equity derivatives dealer business. Any long positions or short positions that are treated as effectively connected with the QDD's conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in §1.871–15(j)(2) for the applicable dividend. If a QDD calculates net delta for non-tax business purposes, that net delta ordinarily will be used for this purpose, subject to the modifications required by the net delta exposure definition. Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for federal income tax purposes.

(4) *QDD tax liability*. Under the Proposed QI Agreement, the QDD tax liability was the sum of a QDD's section 881 tax liability for (A) its section 871(m) amount, (B) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity, and (C) any payments, such as interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments.

As a result of the changes announced in Notice 2016-76 to modify the section 871(m) amount and to require withholding on dividends paid to a QDD, the 2017 QI Agreement makes corresponding changes to the QDD tax liability. The 2017 QI Agreement revises the section 871(m) amount to reflect the net delta exposure computation and permit a QDD to reduce the tax liability on its section 871(m) amount by taking into account withholding taxes paid on that same dividend. While the section 871(m) amount computation was expanded to permit offsets for amounts that do not give rise to withholding tax payments under the 2017 QI Agreement, the QDD is liable for tax on any dividends received, without offset or credit forward to address concerns raised by the expansion of offsets in the section 871(m) amount computation. The 2017 QI Agreement is also revised to reflect that QDDs are subject to withholding on all U.S. source FDAP payments made to a QDD on underlying securities, other than dividend equivalents.

Under the 2017 QI Agreement, a QDD's QDD tax liability is the sum of (A) for each dividend on each underlying security, the amount by which its tax liability under section 881 for its section 871(m) amount exceeds the amount of tax paid by the QDD in its capacity as an equity derivatives dealer under section 881(a)(1) on that dividend, (B) its tax liability under section 881 for dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity, and (C) its tax liability under section 881 for any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions that are not dividend or dividend equivalent payments to the extent the full liability was not satisfied by withholding.

Under the Proposed QI Agreement, a QDD was required to pay its QDD tax liability based on the withholding timing and deposit rules for those payments. Comments requested that the timing for QDD tax liability payments be changed. After considering the comments, the 2017 QI Agreement removes the requirement that the QDD tax liability be paid in the same time and manner as would have been required for withholding on the applicable payments. Instead, the general rules regarding the time for a taxpayer to pay its tax liability will apply, which will typically require a QDD to make quarterly estimates of its QDD tax liability that will be added to the QI's tax liability and filing an appropriate U.S. tax return.

(5) *QDD withholding and reporting of payments*. A QDD must assume primary withholding responsibility for purposes of chapters 3 and 4 for all payments it makes as a QDD. The amount subject to withholding is determined under the Internal Revenue Code and the regulations promulgated thereunder and is not reduced by any taxes paid by the QDD, including any tax paid as part of its QDD tax liability. A QI can elect whether or not to assume primary withholding responsibility for

purposes of chapters 3 and 4 for payments for which it is not required to act as a QDD. Comments requested that the Proposed QI Agreement be revised to clarify that a QI that is not acting as a QDD may elect whether to assume primary withholding responsibility for payments that are not related to its QDD activities. While the Proposed QI Agreement already contained a rule that allowed a QI to elect whether or not to assume primary withholding responsibility for payments for which it was not required to act as a QDD, the 2017 QI Agreement further clarifies this rule.

The Proposed QI Agreement provided that there would be no withholding or reporting on payments made to a QDD with respect to potential section 871(m) transactions and underlying securities, other than reporting for dividends and substitute dividends. A comment requested that the exclusion be limited to dividends and dividend equivalents. As a result of changes to the section 871(m) amount in the 2017 QI Agreement, all payments (other than dividend equivalent payments) made to a QDD with respect to underlying securities will be subject to withholding and reporting if the payments would be subject to withholding and reporting to a non-QDD. As described in section 4.01(1) of the preamble to the 2017 QI Agreement, however, a QDD will be subject to withholding on dividends (including deemed dividends) beginning with those payments received on or after January 1, 2018. The 2017 QI Agreement retains the same withholding and reporting rules for payments made to a QDD with respect to potential section 871(m) transactions as in the Proposed QI Agreement.

The Proposed QI Agreement expanded the scope of payments that QDDs would receive without withholding to include any payments on underlying securities or potential section 871(m) transactions. A comment requested that the withholding exclusion be limited to dividends and dividend equivalents. The 2017 QI Agreement provides that a QDD will be subject to withholding on all payments, other than dividend equivalents, received by the QDD with respect to underlying securities. In addition, the 2017 QI Agreement removes the withholding timing and deposit rules for these payments.

(6) *Securities lending and sale-repurchase transactions*. The Proposed QI Agreement provided that a QI must act as a QDD for any securities lending or sale-repurchase transaction it enters into that is a section 871(m) transaction, and that for purposes of the agreement, a QDD is deemed to make and receive payments pursuant to those securities lending and sale-repurchase transactions as a principal. Comments requested that this provision be revised to permit entities acting as agents of lenders in securities lending or sale-repurchase transactions to act as intermediaries and not be required to obtain QDD status. In response to that comment, the 2017 QI Agreement provides that to the extent a QI determines that it is acting as an intermediary with respect to a securities lending or sale-repurchase transaction that is a section 871(m) transaction, it will not be treated as entered into by the QI as a principal; therefore, those transactions will not be treated as entered into by the QI in its QDD capacity.

Pursuant to Notice 2016-76, taxpayers may continue to rely on Notice 2010-46, 2010-24 I.R.B. 757, during calendar year 2017. As a result, the 2017 QI Agreement addresses QIs who are qualified securities lenders (QSLs) during 2017. If a QI is acting as a QDD, the QI must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities. Therefore, a QI cannot be both a QSL and a QDD, except with respect to a securities lending or sale-repurchase transaction for which the QI has determined that it is acting as an intermediary.

(7) *Form 1042-S reporting*. Comments to the Proposed QI Agreement requested that a QI that is also acting as a QDD be allowed to separate its Form 1042-S reporting and report payments separately when acting as a QI and when acting as a QDD. Consistent with the 2017 Form 1042-S and the box 12b requirement on Form 1042-S that a withholding agent provide its chapter 3 status code, a QI that is also acting as a QDD is required to file separate Forms 1042-S to report payments made in each capacity by identifying its specific chapter 3 status code as a QI or QDD. Section 8.01 of the 2017 QI Agreement has been updated to reflect this requirement. In addition, when a withholding agent makes a payment to a QDD that is subject to reporting under chapter 3 or 4, a separate Form 1042-S is required for each QDD, identifying the QDD by its home office or branch, if applicable.

(8) *Responsible officer and scope of certification*. A comment to the Proposed QI Agreement requested that QIs that also act as QDDs be able to designate different responsible officers for purposes of their QDD compliance. Because there is already flexibility for a QI's responsible officer to rely on any process, procedure, review, or certification in making its certification and for a QI's responsible officer to delegate its responsibilities as appropriate, this request was not adopted. A QI's responsible officer may designate a specific person to be responsible for QDD compliance, but only the responsible officer may make the certification to the IRS.

.02 Periodic Review and Certifications of Compliance. The 2014 QI Agreement replaced the previous external audit requirement applicable to a QI with an internal compliance and review program. As part of this compliance program, the responsible officer is required to make periodic compliance certifications and provide, with the certifications, certain factual information to the IRS based, in part, on the results of a periodic review. After the 2014 QI Agreement was published, comments raised concerns about the administration of the compliance procedures, including potential costs of implementing and conducting a compliance program, difficulties in allocating resources to conduct the periodic review in the last year of the certification period (as required by the 2014 QI Agreement), and the lack of detailed standards for performance of the QI's periodic review similar to those provided in Rev. Proc. 2002-55, 2002-2 C.B. 435. To address these comments, the Proposed QI Agreement modified and expanded upon the compliance provisions in section 10 and included, in Appendix I, the factual information to be provided by the QI, and, in Appendix II, a statistical sampling procedure that a QI's reviewer may use for conducting the periodic review.

(1) *Certification of internal controls*. The 2017 QI Agreement requires the QI's responsible officer to make a periodic certification of internal controls provided in Appendix I, as previewed in the Proposed QI Agreement. The Proposed QI Agreement also listed the elements of the certification both in section 10.03 and in Appendix I. The 2017 QI Agreement retains the specified list of elements but eliminates the duplication by only listing the elements of the certification in Appendix I.

In making the periodic certification of internal controls, the responsible officer may rely on, in addition to the results of the periodic review (if required), any other processes, procedures, reviews, or certifications made by other persons that the responsible officer has determined are necessary in order to make the certification. This flexibility allows the responsible officer to decide, for example, whether to hire an external reviewer (for example, a law firm or accounting firm) and what the scope of the engagement should be (for example, whether the external reviewer will conduct a review of the sufficiency of the QI's internal controls or whether the review will be limited to the periodic review, if required). A responsible officer may also rely on a review, report, or certification made by another officer or employee who may, for example, have greater subject matter expertise in a particular area (including a responsible officer for FATCA purposes). The responsible officer must, however, document what he or she has relied on in making the certification and retain such documentation for the same period of time for which the compliance review report and certifications are required to be retained pursuant to section 10.06(D) of the 2017 QI Agreement. For example, if the responsible officer relies on an internal or external reviewer to conduct a review of the QI's internal controls, the responsible officer must retain any report delivered by the reviewer.

Comments to the Proposed QI Agreement requested further clarification regarding the certification of internal controls, including what a responsible officer should rely on if the QI requests and obtains a waiver of the periodic review requirement. When a QI does not request, or does not obtain, a waiver, the responsible officer must take into account the results of the periodic review in making the certification of internal controls and must also use any other process, certification, or review necessary in order to be able to certify to the QI's internal controls. When a QI does request and obtain a waiver and does not conduct a periodic review, the responsible officer must use the other processes, certifications, or reviews that he or she determines are necessary in order to be able to make the required certification.

Generally, regardless of whether a waiver is applied for and obtained, the 2017 QI Agreement does not provide further prescriptive requirements about what process or documentation the responsible officer must rely on to make the certification of internal controls because such prescriptive guidance may unnecessarily limit a responsible officer's discretion to structure a compliance program that, in his or her judgment, is necessary for the responsible officer to make the certification of internal controls.

A comment to the Proposed QI Agreement also requested that a QI be able to designate different responsible officers based on lines of business (such as for making the certification when the QI acts as a nonqualified intermediary for payments). Because there is already flexibility allowing a responsible officer to rely on others in making his or her certification of internal controls to the IRS, as noted above with respect to requests for separate responsible officers for QDD purposes, this comment was not adopted.

(2) *Certification period*. Under the 2014 QI Agreement and the Proposed QI Agreement, the initial certification period ends at the end of the third full calendar year that the agreement is in effect. Each subsequent certification period is three full calendar years thereafter. A comment to the Proposed QI Agreement requested that the initial certification period be shortened and/or the second certification period be extended, so that the initial certification period would end on December 31, 2016, the termination date of the 2014 QI Agreement. Because the certification periods include any renewals of the QI agreement, it is not necessary that the certification period and an interim termination date be the same. In addition, the proposed solution fails to address cases of those QIs that had QI agreements with effective dates in 2015 and 2016. As a result, the 2017 QI Agreement does not incorporate this change.

Another comment to the Proposed QI Agreement requested that a QI be allowed to apply the provisions of the 2014 QI Agreement to its initial certification period for purposes of making the initial periodic certification of compliance and providing the factual information required. This comment was not adopted because the 2014 QI Agreement, unlike the 2017 QI Agreement, does not contain compliance provisions and requirements specific enough for a QI to apply that agreement to its initial compliance period and provide the factual information required with the periodic certification.

With respect to the requirement in Part II.F of Appendix I of the Proposed QI Agreement that a QI certify to its FATCA status, a comment requested clarification whether the requirement that the QI certify to its FATCA status over the certification period meant certification period or calendar year. As having an appropriate FATCA status is a prerequisite to enter into a QI agreement and to maintain the agreement, a QI is required to certify to its FATCA status for the entire certification period and not just the calendar year selected for the periodic review.

(3) *Periodic review*. In addition to making the periodic certification of internal controls, a QI is required to report certain factual information regarding its documentation, withholding, reporting, and other obligations under the QI agreement. This factual information will be gathered, in part, through the testing of accounts and transactions required as part of the periodic review, as described in sections 10.04 and 10.05 of the 2017 QI Agreement. This review is focused on the testing of accounts and transactions rather than a substantive evaluation of the sufficiency of a QI's policies and procedures. Section 10.05(A) through (E) of the 2017 QI Agreement provides the objectives for performing the review, and Appendix I to the 2017 QI Agreement describes the factual information that will be required to be reported to the IRS following the review when making the periodic certification.

The 2014 QI Agreement required that the periodic review be conducted for the last year of the certification period. In response to comments regarding potential difficulties with this requirement, including resource constraints, the Proposed QI Agreement allowed a QI to choose any year within the certification period to select for its periodic review. The 2017 QI Agreement retains this allowance.

Comments to the Proposed QI Agreement requested that QIs that are also acting as QDDs be allowed to select different years within the certification period for the QI and QDD portions of their periodic reviews. Requiring a QI to use the same year for both the QI and QDD portions of the periodic review (when required) improves the efficiency of the IRS review process and assists the IRS with its compliance and administration of the QI program. As a result, the request was not adopted.

(4) *Certification date*. The 2014 QI Agreement provides that the initial certification period ends at the end of the third full calendar year that the 2014 QI Agreement (and any superseding agreement) is in effect. Therefore, for a QI with a 2014 QI Agreement with an effective date of June 30, 2014 through December 31, 2016, the initial certification period would end December 31, 2017, and the certification would be required to be provided to the IRS on or before July 1, 2018. The Proposed QI Agreement included these provisions without modification. Comments to the Proposed QI Agreement requested a six-month extension of the July 1 certification due date, and some comments also requested an additional, automatic six-month extension. Because it would be difficult for QIs that choose the last year of the certification period for their periodic reviews to make the certification on July 1 of the following year, the 2017 QI Agreement provides QIs using the third year of the certification period for their periodic review an additional six months to make the certification. In such cases, the certification will be due December 31 of the year following the end of the certification period (for example, December 31, 2018 for a certification period ending December 31, 2017). For QIs that choose either the first or second year for their periodic review, the same concerns are not present, and the certification will continue to be due on July 1 following the end of the certification period.

(5) *Consolidated Compliance Program*. Comments raised questions regarding the consolidated compliance program, specifically what is required to apply for a consolidated compliance program and whether NFFEs are allowed to be in consolidated compliance programs. There is no restriction against NFFEs participating in consolidated compliance programs. For more information about consolidated compliance programs or to apply to operate a consolidated compliance program, contact the Foreign Intermediaries Program by e-mail at: lbi.fi.qiwpissues@irs.gov.

A comment also requested that, in a consolidated compliance program, the responsible officer of the compliance QI be allowed to rely on certifications by other responsible officers of the other QIs in the group. A responsible officer (of a QI or a compliance QI) may rely on any process, procedure, review, or certification that he or she determines is appropriate in making the periodic certification of compliance. Therefore, the responsible officer of a compliance QI may rely on certifications made by other officers or individuals in the QI compliance group. Notwithstanding that the responsible officer may rely on certifications made by other officers or individuals within the group, the periodic certification of compliance for the group may only be made by the responsible officer of the compliance QI.

(6) *FATCA requirements*. A QI that is an FFI is required to comply with the FATCA requirements applicable to its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. In response to concerns raised following the 2014 QI Agreement, the Proposed QI Agreement clarified that a QI's responsible officer may rely on other personnel with oversight or responsibility for the QI's FATCA compliance in making its certifications relating the QI's compliance with its FATCA obligations. The Proposed QI Agreement also clarified that in conducting the periodic review relating to its FATCA compliance, a QI is only required to review those accounts for which it is acting as a QI. Comments to the Proposed QI Agreement raised this question again, so further revisions were made to the 2017 QI Agreement to clarify the scope of QI's FATCA requirements (and related certifications).

(7) *Standards for internal and external reviewers*. A QI may use either an internal or an external reviewer to conduct the periodic review required by section 10.04 of the 2017 QI Agreement. In response to comments to the 2014 QI Agreement and as previewed in the Proposed QI Agreement, section 10 of 2017 QI Agreement has been clarified to prevent unintended inferences in the 2014 QI Agreement that the periodic review must satisfy the standards of a financial audit or other attestation engagement of a certified public accountant. References to an "auditor" (whether internal or external) in the 2014 QI Agreement have been replaced with "reviewer" in the Proposed QI Agreement and the 2017 QI Agreement.

The Proposed QI Agreement also clarified the description of the standard of independence required of a reviewer. Whether the reviewer is an internal or external reviewer, the reviewer must have sufficient independence to objectively conduct the review and cannot review his or her own work (for example, systems that the reviewer designed, or documentation that the reviewer validated in assisting a QI in its account opening processes).

Comments to the Proposed QI Agreement have requested further clarification of the independence standard, particularly as applicable to external reviewers. Many of these comments requested that this standard, which is described differently for internal and external reviewers, be relaxed to allow a wider range of external reviewers who have connections to, or experience with, the QI's systems or compliance. For example, comments requested that independence for external reviewers be determined based on an individual or team basis (that is, even if an individual or team had established a QI's compliance program, another individual or team in the same company or firm could review the first individual's or team's work). One comment suggested that the independence standard be clarified so that any individual with management responsibility for implementation of the QI agreement would not be allowed to have significant involvement with the review. The comment also proposed that people who review client tax forms, perform withholding for clients, and calculate amounts required to be reported be disqualified from performing the review. Under this proposal, people who advise on what the FATCA and QI rules are and how they are applied to a particular situation, provide advice on how the withholding rules apply to a particular fact pattern, assist in reporting by physical submission of data to a tax authority (without responsibility for the underlying data), or provide quality assurance review services would be permitted to conduct the review.

The provisions of the 2017 QI Agreement regarding the independence of the reviewer are unchanged from the Proposed QI Agreement. The independence of a reviewer necessarily depends on specific facts and circumstances, and, as a result, providing more prescriptive rules than what is in the 2017 QI Agreement would likely be both over and under-inclusive. Even though the 2017 QI Agreement does not contain comprehensive rules regarding what constitutes independence, the independence standard, as applied to external reviewers, should not be applied on an individual or team basis but should be applied on a company or firm-wide basis when the firm has developed or assisted in the development of policies and procedures relevant to a QI's compliance with the agreement. To maintain an appropriate level of independence and integrity in the review process, reviewers should not be reviewing their own work and should be in a position where they would be able to make a negative assessment of the QI's practices and procedures without concern about any negative impact for themselves or their employers. With respect to the comment that requested a specific allowance for a reviewer that also assisted with physical submission of client data, it is unclear why that activity would raise questions about independence with respect to a QI's compliance with the QI Agreement.

A comment also requested the QI agreement not reference a reviewer's "independence" because that term might have a particular meaning for public accounting firms that may not be relevant for this purpose, however, no suggestions for alternative language were offered. This comment was not accepted as the term "independent" or "independence" is appropriate in this context, and it is appropriate for a reviewer to consider the standards of independence applicable to a public accounting firm to the extent they apply to a review it is engaged to conduct for a QI.

The terms of the Proposed QI Agreement also required that an internal reviewer be "competent" to perform the review. A comment requested that the definition of "competence" in this context be clarified, particularly with respect to an internal reviewer. A reviewer must have enough knowledge and experience (including that received by training) to conduct the required review in order to provide the necessary information to the IRS, as required by Appendix I to the 2017 QI Agreement, and to enable the responsible officer to make the required certification.

(8) *Waiver*. Section 10.07 of the Proposed QI Agreement allowed, under certain circumstances, a QI that is an FFI that is not acting as a QDD and that is not part of a consolidated compliance group to apply for a waiver of the requirement to conduct the periodic review. In cases where a QI applies for a waiver, it is required to provide certain factual information along with its periodic certification, as specified in Parts I and III of Appendix I. Comments to the Proposed QI Agreement requested that the information required to be provided with a waiver request be reduced. In order to obtain the necessary information to approve a waiver request, it is important for the IRS to receive information regarding the QI's account population that is specified in Part III of Appendix I (information that is generally consistent with the information that was required for a waiver of a QI audit under the QI agreement that was in effect prior to the 2014 QI Agreement). As a result, this request was not adopted, and the information required to be provided with a waiver request remains unchanged from the Proposed QI Agreement. However, in response to comments, Part III of Appendix I of the 2017 QI Agreement clarifies that a QI is not required to conduct a periodic review in order to provide the factual information required for the waiver request.

In addition, a comment to the Proposed QI Agreement requested that QIs in a consolidated compliance group also be allowed to apply for a waiver of the periodic review. This request was not adopted due to concerns that allowing a waiver for QIs that participate in a consolidated compliance program would reduce the effectiveness of the consolidated compliance program. Thus, the 2017 QI Agreement retains this prohibition, consistent with the terms of the QI agreements prior to the 2014 QI Agreement.

(9) *Statistical sampling for periodic review*. The Proposed QI Agreement allowed for the use of statistical sampling of a QI's accounts for purposes of the periodic review (rather than requiring a review of all accounts) provided that the QI has 50 or more accounts to review. The Proposed QI Agreement also included, in Appendix II, a safe harbor method for determining a statistical sample of accounts for the periodic review.

Comments were received on Appendix II to the Proposed QI Agreement, and changes in response to certain of those comments are reflected in Appendix II to the 2017 QI Agreement. One comment requested that a QI's reviewer be permitted to perform a "spot check" (rather than take a statistical sample) for certain parts of the review to the extent that spot check procedures were permitted for a QI's audit under the former QI agreement audit guidelines in Rev. Proc. 2002-55. In response to this comment, Appendix II has been revised to permit the use of spot check procedures with respect to the review procedures performed pursuant to sections 10.05(B) through (D) of the 2017 QI Agreement and to specify the requirements for these procedures.

Other comments requested that a QI's reviewer not be required to project an amount of underwithholding determined as a result of a sample tested for the periodic review unless specifically requested to do so by the IRS during its review of a QI's compliance. One comment also requested that projection not be required as a result of a single error. In response to these comments, Appendix II to the 2017 QI Agreement provides that a QI will pay any underwithheld tax without regard to projection and that the IRS will determine if a projection of any underwithholding from a sample is required at the time of the IRS's review of the QI's periodic certification (and, if so, will direct the reviewer in performing the projection). Appendix II to the 2017 QI Agreement was also revised to indicate that when a reviewer determines an amount of underwithholding, the QI should pay the amount determined and report both the underwithholding determined by the review and any amount of underwithholding that was cured (that is, for which valid documentation to support a reduced rate of withholding applied by the QI was obtained after the selection of the sample) following the review.

Another comment requested that the U.S. account population used for the sample be limited to accounts that received a reportable amount (rather than a reportable payment, as required by the Proposed QI Agreement) given the additional requirements for a QI that is a non-U.S. payor to determine reportable payments made to an account that are not reportable amounts. The comment was not accepted because sampling of U.S. accounts receiving reportable payments (not just reportable amounts) is useful for determining whether such payments have been properly reflected on Forms 1099 or identified on Forms 8966 for purposes of the review steps under section 10.05(D) of the 2017 QI Agreement. Additionally, this requirement imposes minimal additional burden on a QI's review as the reviewer may determine such payments based on the determinations made by the QI for purposes of identifying the population of U.S. accounts for the sample.

Other changes were made to Appendix II to the 2017 QI Agreement upon further consideration by the IRS. Appendix II to the 2017 QI Agreement does not include a sample of QDD accounts, which will be added in 2017 for use by QIs that act as QDDs to conduct a periodic review when the QI's certification period ends after December 31, 2017. Appendix II to the 2017 QI Agreement specifies that a reviewer, when applying statistical sampling based on the Appendix, is required to take into account the principles of Notice 2011-42, 2011 I.R.B. 318 (providing guidance on taxpayers applying statistical sampling). To better target circumstances where the statistical sampling approach is appropriate, the 2017 QI Agreement has been revised to permit statistical sampling to be used for purposes of the periodic review only when there are 60 or more accounts to review (rather than 50, as in the Proposed QI Agreement). This requirement applies regardless of whether the QI's reviewer applies the provisions of Appendix II in determining a statistical sample.

The strata required for determining the sample have been consolidated in Appendix II to the 2017 QI Agreement, and the separate stratum for those accounts for which the QI has assumed primary withholding responsibilities for substitute interest has been removed (that is, such accounts are now included in the population of QI accounts). This consolidation will reduce the number of transactions required to be reviewed for purposes of the spot check procedures.

Appendix II to the 2017 QI Agreement has also been revised to address how accounts of those partnerships and trusts to which a QI applies the agency option are to be included in the sample for cases in which the partnership or trust did not arrange for the performance of its own periodic review. These accounts, similar to accounts held by private arrangement intermediaries (PAIs), are to be included in separate strata in addition to the strata already applicable to the sample of QI accounts, and the number of sample units required has been specified.

(10) *Information and certifications in Appendix I*. The Proposed QI Agreement required a QDD to report certain factual information (described in Appendix I) related to the determination of its QDD tax liability (as described in section 3.09 of the Proposed QI Agreement). The factual information relating to a QDD's tax liability in Appendix I of the 2017 QI Agreement is reserved and will be added in 2017. In addition, Appendix I to the 2017 QI Agreement was also revised to include a limited number of changes and minor corrections to conform to the changes to Appendix II and in response to comments.

(11) *Form 8966 XML schema*. Comments to the Proposed QI Agreement noted that section 10.05(D)(3) requires review of Form 8966 reporting and requested clarification of whether review of the Form 8966 XML schema rather than paper forms would be sufficient. Although no change is being made to the 2017 QI Agreement, in this context an "original" Form 8966 does not refer exclusively to a paper form, and review of the Form 8966 XML schema would be appropriate. In addition, for purposes of the review, a QI that is a reporting Model 1 FFI should include in its review any analogous forms used for reporting account information pursuant to the applicable Model 1 IGA.

.03 Limited FFIs and Limited Branches. As noted in the preamble to the Proposed QI Agreement, because limited FFI (and limited branch) status will no longer be available as of January 1, 2017 (pursuant to the regulations under chapter 4), and, as previewed in the Proposed QI Agreement, the 2017 QI Agreement removes limited FFI as a category of entity eligible to enter into a QI agreement.

.04 Entities Eligible for QI Agreements. Pursuant to §1.1441–1(e)(5)(ii) and the 2014 QI Agreement, the QI Agreement may be entered into by (1) FFIs that are participating FFIs, registered deemed-compliant FFIs, or registered deemed-compliant Model 1 IGA FFIs, (2) foreign branches of U.S. financial institutions or clearing organizations that are either reporting Model 1 FFIs or agree to the reporting requirements of a PFFI; (3) foreign corporations (that is, NFFEs) for purposes of presenting claims of benefits under an income tax treaty on behalf of their shareholders, and (4) any other persons acceptable to the IRS. In the preamble to the Proposed QI Agreement, the Treasury Department and the IRS requested comments on the types of entities where an NFFE would be acting as a QI on behalf of its shareholders rather than entering into a withholding foreign partnership agreement as a reverse hybrid. No comments were received. As a result, and consistent with revisions to the chapter 3 regulations, this category of NFFE is removed from the 2017 QI Agreement as an entity eligible to enter into the QI agreement, together with the related requirement for such QIs to also act as direct reporting NFFEs for purposes of chapter 4.

.05 Assumption of Withholding on Substitute Interest. As noted in the preamble to the Proposed QI Agreement, comments requested that, as the QSL regime is incorporated into the QDD regime, consideration be given to covering payments of substitute interest on debt securities under the QI agreement in addition to substitute dividend payments. The Proposed QI Agreement previewed this allowance for a QI to assume primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and section 3406 backup withholding responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a securities dealer. The 2017 QI Agreement retains this allowance.

Enabling a QI to assume primary withholding responsibility for payments of interest and substitute interest will allow a QI to provide a Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, to a withholding agent to certify that the QI is a QI assuming primary withholding responsibility without requiring the QI to distinguish between payments of interest and substitute interest the QI receives as a principal and those that it receives as an intermediary. QIs that assume primary withholding responsibility for payments of interest and substitute interest as described in this paragraph will be required to assume primary withholding responsibility for all such payments.

Some comments to the Proposed QI Agreement asked for more clarity as to whether the allowance for a QI to assume primary withholding responsibility for payments of interest and substitute interest required a QI to be a QDD. A QI's assumption of primary withholding responsibility for payments of interest and substitute interest is independent from responsibilities the QI has when it acts as QDD or whether a QI is eligible to act as a QDD, and thus a QI is permitted to assume primary withholding responsibility for such payments without having to act as a QDD and without regard to whether the QI is eligible to act as a QDD.

.06 Partnerships or Trusts Applying the Joint Account or Agency Options. The Proposed QI Agreement previewed two changes to the application of the joint account and agency options. Comments were received on the 2014 QI Agreement regarding the chapter 4 statuses required of a partnership or trust to which a QI may apply these options. As previewed in the Proposed QI Agreement, sections 4.05(A)(1) and 4.06(A)(2) of the 2017 QI Agreement have been modified to allow a QI to apply the joint account or agency option to partnerships or trusts that are covered as accounts that are excluded from the definition of financial accounts under Annex II of an applicable IGA or under §1.1471–5(a). In addition, consistent with the withholding foreign partnership and withholding foreign trust agreements, a QI can apply the joint account or agency option to partnerships or trusts that are owner-documented FFIs with respect to the QI.

Comments to the Proposed QI Agreement noted an inconsistency between section 4.05(B)(3) of the Proposed QI Agreement and section 8.02(E) and Appendix I to the Proposed QI Agreement with respect to whether a QI would be required to specifically report and provide the names of partnerships or trusts to which it applies the joint account option. Consistent with the obligations described in section 4.05(B)(3) that do not require specific reporting for a partnership or trust to which a QI applies the joint account option, the 2017 QI Agreement does not require that the partnership or trust be identified on a Form 1042-S; accordingly, section 8.02(E) was removed, and Appendix I was modified to remove the requirement that a QI disclose to the IRS the names of these partnerships and trusts.

Similarly, comments requested that Appendix I be modified to remove the requirement that QIs provide the names of partnerships or trusts to which they apply the agency option. This requirement has been removed from Appendix I to the 2017 QI Agreement, except for cases in which the QI reports a material failure with respect to the partnership or trust.

A comment to the Proposed QI Agreement requested clarification regarding the requirement in section 4.05(A)(1) that a partnership or trust to which a QI applies the joint account option is required to provide the QI with a certification regarding its chapter 4 status. This certification requirement was a new requirement in the Proposed QI Agreement and is maintained in the 2017 QI Agreement, although the partnership or trust to which a QI applies the joint account or agency option, even prior to this change, was required to maintain a certain chapter 4 status and to certify to that status on the Form W-8IMY it provided to the QI.

The Proposed QI Agreement did not allow QIs that are QDDs to enter into a private arrangement intermediary (PAI) agreement or to apply the joint account or agency options with respect to accounts or transactions in their QDD capacities. Comments requested that QIs acting as QDDs be allowed to use the joint account option. This request was adopted, and accordingly the 2017 QI Agreement allows QIs to use the joint account option when making payments in its capacity as a QDD. The 2017 QI Agreement does not allow a QDD to apply the agency option with respect to an account or transaction in its QDD capacity due to concerns about the administration of the QDD rules and the calculation of the QDD tax liability.

.07 Limitation on Benefits for Treaty Claims. Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*, was revised in April 2016 to include checkboxes for a beneficial owner to provide information regarding the limitation on benefits provision of an applicable treaty that it satisfies, and Form 1042-S was revised in 2016 to include a line for a withholding agent to report the corresponding limitation on benefits provision code, when required. The Proposed QI Agreement previewed the standard of knowledge required by a withholding agent with respect to an applicable limitation on benefits claim associated with a claim for treaty benefits. Consistent with revisions to the chapter 3 regulations, the Proposed QI Agreement modified the requirements for a QI using documentary evidence to document an entity account holder claiming a reduced rate of withholding under an income tax treaty to require the collection of information regarding limitation on benefits on the treaty statement provided by the account holder, and the 2017 QI Agreement includes this revision. A QI opening an account for an entity account holder on or after January 1, 2017, will be required to collect this limitation on benefits information. For QIs with pre-existing entity accounts (as described in section 5.10(A) of the 2017

QI Agreement) that were documented with documentary evidence, there will be a two-year transition period provided for the collection of the appropriate limitation on benefits information (unless there is a change in circumstances that requires the QI to obtain corrected information sooner than the two-year period). For QIs that documented entity accounts with Forms W-8, those forms may be relied up on until their normal expiration period (unless there is a change in circumstances that requires a QI to obtain corrected information sooner than the expiration period). Comments to the Proposed QI Agreement requested a three-year transition period for accounts documented with documentary evidence, consistent with the validity period for a Form W-8 with respect to a claim for reduced withholding under an income tax treaty. This request was not adopted because a QI that documents account holders making a treaty claim on a withholding certificate would not in all cases have a full three-year period starting in 2017 to obtain a new withholding certificate containing the limitation on benefits information. Additionally, the Treasury Department and the IRS believe that two years is a reasonable period for a QI to obtain the limitation on benefits information from these account holders, especially considering that the requirement is intended to enhance compliance of persons claiming treaty benefits.

The standard of knowledge for the limitation on benefits claims under the Proposed QI Agreement was actual knowledge. The chapter 3 regulations are also amended to apply an actual knowledge standard for limitation on benefits claims. The 2017 QI Agreement removes the discussion of the actual knowledge standard from section 5.10(A) and replaces it with a citation to the chapter 3 regulations in §1.1441–6(b)(1) that include this standard.

.08 Validity Period for Documentary Evidence and Treaty Statements. In connection with the revisions to the chapter 3 regulations requiring limitation on benefits information, the chapter 3 regulations are also amended to provide that treaty statements associated with documentary evidence for establishing residence in a treaty country have a three-year validity period, consistent with the validity period for withholding certificates that contain a claim for treaty benefits. Section 5.11(A) of the 2017 QI Agreement provides that a treaty statement (including a statement provided in section 5.03 of the 2017 QI Agreement) will be subject to the same validity period as prescribed in the chapter 3 regulations. The 2017 QI Agreement does not, however, change the existing rule for the validity period of documentary evidence that was included in prior versions of the QI agreement, including documentary evidence supporting a claim for treaty benefits. The Treasury Department and the IRS are considering applying the same three-year validity period to documentary evidence obtained QIs supporting an account holder's claim for treaty benefits to align with the validity period of the treaty statement.

.09 Validation of Treaty Claims. In addition to the standard of knowledge for limitation on benefits claims, the Proposed QI Agreement provided that a QI will be considered to have reason to know that a claim for treaty benefits is unreliable or incorrect if, among other requirements, the account holder claims benefits under a treaty that does not exist or is not in force. QIs may determine this, for example, by checking whether a jurisdiction is included on the list maintained at *https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z*. This reason to know rule will generally apply to pre-existing accounts for which the QI already holds valid documentation only upon a change in circumstances. For a pre-existing entity account, this reason to know rule will also apply when the QI obtains a written limitation on benefits statement. For purposes of applying this rule, a "pre-existing account" or "pre-existing entity account" is an account for which QI holds valid documentation prior to January 1, 2017, for a QI with a QI agreement in effect prior to that date. For a QI that did not have a QI agreement in effect prior to January 1, 2017, a pre-existing account means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI agreement. For all new accounts, the reason-to-know rule will apply upon account opening. The chapter 3 regulations are also revised to include this reason to know rule for all withholding agents, and the 2017 QI Agreement removes the reference to this standard from section 5.10(A) of the Proposed QI Agreement and replaces it with a citation to this same general rule in the chapter 3 regulations.

.10 Term of Agreement. The Proposed QI Agreement specified a term of three full calendar years following the effective date of the QI agreement. Comments requested that the three year term be extended, with suggestions of a six year agreement or an agreement that was valid indefinitely. The 2017 QI Agreement has been revised to include a six-year term.

.11 Effective Date. Notice 2016-42 and the Proposed QI Agreement included application procedures that provided that if a prospective QI applies prior to March 31 of a given calendar year and its application is approved, its QI agreement will have an effective date as of January 1 of that year. Similarly, if an existing QI renews its 2014 QI Agreement prior to March 31, 2017, it will be considered to have a January 1 effective date for its 2017 QI Agreement with no change in its QI status. If a prospective QI applies after March 31 of a calendar year but has not received any reportable payments prior to submitting its application and its application is approved, its QI agreement will have an effective date of January 1 of that year. However, if a prospective QI applies after March 31 of a calendar year and has received a reportable payment prior to submitting its application and its application is approved, its QI agreement will have an effective date of the first of the month in which both its application is approved and its QI-EIN is issued.

Comments to the Proposed QI Agreement requested that prospective QIs be allowed to apply for QI status at any point during the calendar year and, if their applications are approved, have effective dates retroactive to January 1 of that year. This suggestion was not adopted. Although comments noted potential inconvenience with having two types of types of reporting (QI and NQI) in a single year, this inconvenience is outweighed by the potential for underwithholding and misreporting for the period during which the entity was not yet approved for QI status. A prospective QI could wait until the next year to apply for QI status (similar to the process for withholding foreign partnerships and withholding foreign trusts).

.12 Documentation of Account Holders and Presumption Rules.

(1) *Interaction with Intergovernmental Agreements (IGAs)*. Comments to the 2014 QI Agreement and the Proposed QI Agreement noted an inconsistency in the documentation requirements with an FFI's requirements under an applicable IGA. In response to these comments, section 5 of the 2017 QI Agreement has been modified to clarify that a QI that is an FFI may document account holders for chapter 4 purposes consistent with its applicable requirements under Annex I of the applicable IGA. In addition, section 5.10(B) was clarified and simplified by replacing the parts of the text of the Proposed QI Agreement that were identical to the provisions of the chapter 3 regulations with a cross-reference to the chapter 3 regulations.

In addition, a comment to the 2014 QI Agreement raised the question of whether the presumption rules under an applicable IGA apply rather than the presumption rules in the QI agreement or in the regulations. A QI that is also a reporting Model 1 or 2 FFI may apply the due diligence procedures described in Annex I to document the status of its account holders under the IGA as U.S. accounts, nonparticipating FFIs, in the case of a reporting Model 2 FFI, non-consenting U.S. accounts, or, in the case of a Model 1 FFI, U.S. reportable accounts, and if such procedures are applied, cases in which an entity account holder is undocumented should not arise. If a QI that is a reporting Model 1 FFI or reporting Model 2 FFI does not have information in its possession or that is publicly available based on which it can reasonably determine the chapter 4 status of an entity account holder, the FFI must obtain a self-certification to establish the status of such entity (or in some cases, a self-certification to establish the status of the controlling persons of a passive NFFE) consistent with Annex I of the applicable IGA. When the QI acts as an intermediary for a withholdable payment made to an entity account and is unable to document the account by obtaining information or a self-certification consistent with the procedures described in Annex I of the applicable IGA, the chapter 4 regulations and the 2017 QI Agreement provide that the QI must apply the presumption rules in §1.1471–3(f) to treat such entity account as a nonparticipating FFI. Additionally, because there typically should not be undocumented accounts pursuant to the IGA, if an FFI has many such undocumented accounts, the U.S. Competent Authority may determine that there is significant noncompliance with respect to the FFI.

(2) *FFIs not using documentary evidence*. A comment to the Proposed QI Agreement requested that QIs that are FFIs and that document their account holders using withholding certificates rather than documentary evidence be allowed to operate as QIs in jurisdictions without KYC rules approved by the IRS. This request was not adopted because after a QI enters into the agreement, there is no further distinction between whether an FFI documents with withholding certificates or documentary evidence (that is, nothing in the agreement prevents an FFI from documenting with documentary evidence, notwithstanding an intent not to do so). Allowing this could also create administration and compliance issues for the IRS.

.13 Collective Refunds. Section 9.04 of the Proposed QI Agreement provided that if there has been overwithholding and a QI does not apply for a collective refund, it must provide a specific Form 1042-S for the payment subject to the overwithholding if requested by an account holder. Comments to the Proposed QI Agreement asked that this provision be removed because of potential administrative difficulties. This request was not adopted because an account holder can only get a refund for overwithholding through a QI's collective refund or by having a Form 1042-S to substantiate the withholding (see §301.6402–3(e)), and a QI should not prevent its account holders from obtaining refunds by declining to apply the collective refund procedures or by refusing to issue a specific Form 1042-S if it declines to apply the collective refund procedures.

.14 Correction of Errors. In addition to the minor changes and corrections that were previewed in the Proposed QI Agreement, the 2017 QI Agreement includes additional minor changes and corrections. For example, references to the "KYC attachment" or other attachments were deleted because printed and signed agreements are no longer used. In addition, in response to comments regarding the length and complexity of the agreement, certain nonsubstantive clarifications and deletions were made to remove repetitive references and generally simplify the agreement (including with respect to the standard of knowledge for limitation on benefits claims and reason to know for treaty claims, as discussed previously in this section).

.15 Revised Chapter 3 and 61 Regulations and Revised Chapter 4 Regulations. The 2017 QI agreement also incorporates and references certain provisions in final and temporary regulations issued under chapters 3 and 61 of the Code (T.D. 9808) and under chapter 4 of the Code (T.D. 9809), both of which are to be published shortly after the publication date of the 2017 QI Agreement.

SECTION 5. APPLICATION FOR QI STATUS

.01 Prospective QI (Including a QI Acting as a QDD). Prior to submitting the information specified in Form 14345, *Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust Status*, a prospective QI (other than an NFFE that is acting as an intermediary on behalf of persons other than its shareholders and certain foreign central banks of issue) must have submitted the information specified in Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, through the FATCA registration website available at *www.irs.gov/FATCA*, and obtained its chapter 4 status as 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), registered deemed-compliant Model 1 IGA FFI, or sponsoring entity of a direct reporting NFFE, as applicable, along with a global intermediary identification number (GIIN) to be used to identify itself to withholding agents and to tax administrators for FATCA reporting (the GIIN is separate from the QI-EIN).

The IRS will not enter into a QI agreement with an FFI if the IRS has not approved the know-your-customer practices and procedures for opening accounts of the jurisdiction where the FFI is located because the QI agreement as applicable to an FFI allows for the use of documentary evidence obtained under a jurisdiction's know-your-customer practices. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules have been approved 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 lbi.fi.qiwpissues@irs.gov.

A QI that is an NFFE generally is not required to be located in an approved KYC jurisdiction because an NFFE is required to collect Forms W-8 and W-9 and may not use KYC documentation. See section 5.01(B)(2) of the 2017 QI Agreement for the documentation requirements applicable to a QI that is an NFFE.

To become a QI, a prospective QI must submit the information specified in Form 14345 through the QI/WP/WT Application and Accounts Management System accessible through the QI landing page available at: *https://www.irs.gov/businesses/corporations/qualified-intermediary-system*. An application must also include any additional information and documentation requested by the IRS. The application must establish to the satisfaction of the IRS that the applicant has adequate resources and procedures to comply with the terms of the agreement. An entity that would like to become a QI to act as a QDD must apply to enter into a QI agreement and include the information on the application relating to QDDs.

If the IRS approves the QI application, it will notify the QI of its approval. The approval notice will include a QI-EIN for fulfilling the requirements of a QI (including a QI acting as a QDD if approved for such purpose) under the QI Agreement.

.02 *Existing QI*. An FFI that seeks to renew its QI agreement must do so through the QI/WP/WT Application and Accounts Management System. The QI will retain its QI-EIN to fulfill the requirements of a QI under chapters 3, 4, and 61 and sections 871, 881, and 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

A QI that seeks to renew its QI agreement and also seeks to act as a QDD must supplement the renewal request by providing all of the information required by the application relating to a QDD.

.03 *Effective Date*. The QI agreement provided in section 6 of this Revenue Procedure is effective on or after January 1, 2017. The effective date of the QI agreement for a new QI applicant will depend on when the QI submits its application and whether the QI has received any reportable payments prior to when it submits its application. Beginning on January 1, 2017, a prospective QI that applies for QI status on or before March 31 of a calendar year and is approved will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 of a calendar year and has not received a reportable payment prior to the date it applies for QI status and is approved, it will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 and has received a reportable payment prior to the date it applies and is approved, it will have a QI agreement with an effective date of the first of the month in which its QI application is approved and the prospective QI is issued a QI-EIN. A QI that seeks to renew its QI agreement must renew prior to March 31, 2017 for its renewed QI agreement to have an effective date of January 1, 2017.

.04 *Contact Information*. For questions regarding the QI application process, contact the Foreign Intermediaries Program at lbi.fi.qiwpissues@irs.gov.

SECTION 6. QUALIFIED INTERMEDIARY AGREEMENT

The text of the QI agreement is set forth below. The IRS will not 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 §§1.1441–1(e)(5) and 1.1441–1(e)(6):

WHEREAS, QI has submitted an application in accordance with Revenue Procedure 2017-15 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, deposit, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474, 3406, 6041, 6042, 6045, 6049, 6050N, 6302, 6402, and 6414, and tax liability under sections 871(a) and 881 for a QI that is acting as a qualified derivatives dealer (QDD), 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; and

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 (including a reporting Model 2 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 Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI;

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 or a foreign branch of a

U.S. person, that foreign person (or foreign branch) 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, or registered deemed-compliant Model 1 IGA FFI 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 the QI's obligations under chapters 3, 4, and 61 and section 3406 with respect to such account holders. A participating FFI's (including a reporting Model 2 FFI) obligations are provided in the FFI agreement, a registered deemed-compliant FFI's (other than a reporting Model 1 FFI) obligations are provided in §1.1471–5(f)(1) or the applicable Model 2 IGA, 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, or registered deemed-compliant Model 1 IGA FFI (as applicable) in order to maintain its required chapter 4 status, 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 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.

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.

For purposes of chapters 3 and 61 and section 3406, QI must act in its capacity as a QI pursuant to this Agreement for those accounts that QI holds with a withholding agent and that QI has identified 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 intermediary (NQI) 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 identifies 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 QI with respect to payments of substitute interest, as described in section 3.03(A) of this Agreement, it must act as a QI and assume primary withholding responsibility for all such payments of substitute interest.

If QI acts as a qualified securities lender (QSL) with respect to substitute dividend payments (as defined in §1.861–3(a)(6)), 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. A QI that acts as a QDD may not act as a QSL, except with respect to a payment on a securities lending or sale-repurchase transaction for which the QI has determined that it is acting as an intermediary for the payment.

The home office (as defined in section 2.43 of this Agreement) and each branch of a foreign person that intends to act as a QDD must each separately qualify and be approved for QDD status, as provided in section 1.02 of this Agreement. A foreign branch of a U.S. financial institution may also apply for QI and QDD status provided it separately qualifies as an eligible entity. If QI acts as a QDD with respect to the home office or branch, the home office or branch, as applicable, must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments made or received by the QDD to the extent the payment is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864. For purposes of this Agreement, any securities lending or sale-repurchase transaction (as defined in §1.871–15(a)(13)) QI enters into that is a section 871(m) transaction is treated as entered into by QI as a principal unless QI determines that it is acting as an intermediary with respect to that transaction. A QI may not act as a QDD when it receives or makes payments as an intermediary and must act as either a QI or NQI for the payment. A QI acting as a QDD must assume primary chapter 3 and chapter 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility under section 3406 for payments made as a QDD with respect to any potential section 871(m) transaction provided the amount paid is an amount subject to chapter 3 or 4 withholding or a reportable payment under chapter 61. A QI acting as a QDD (other than a QDD that is a foreign branch of a U.S. financial institution) also must satisfy its QDD tax liability as determined under section 3.09 of this Agreement. The QDD (other than a QDD that is a foreign branch of a U.S. financial institution) must report its withholding tax liability under chapters 3 and 4 on Form 1042 and must report its QDD tax liability on the appropriate U.S. tax return (as prescribed by the IRS). A U.S. financial institution with a foreign branch that acts as a QDD must file the appropriate U.S. income tax return (*e.g.*, Form 1120, *U.S. Corporation Income Tax Return*) for the tax year covered by this Agreement to report and pay its tax liability under chapter 1 and would not have a separate QDD tax liability.

A dividend or dividend equivalent is treated as received by a QDD acting in its non-equity derivatives dealer capacity if the dividend or dividend equivalent is received by a QDD acting as a proprietary trader. Transactions properly reflected in a QDD's equity derivatives dealer book are presumed to be held by a dealer in its equity derivatives dealer capacity for purposes of determining the QDD tax liability. In addition, for purposes of determining whether a dealer is acting in its equity derivatives dealer capacity, only the dealer's activities as an equity derivatives dealer are taken into account.

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 act as a QI for an account if the branch of QI that holds the account operates in a KYC jurisdiction identified on the IRS's Approved KYC List. 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 identified on the IRS's Approved KYC List and QI updates its information on the QI/WP/WT Application and Accounts Management System with respect to such branch prior to treating such branch as a QI. Notwithstanding the preceding sentence, a QI may not add a branch that will act as a QDD through the QI/WP/WT Application and Accounts Management System. Instead, the branch must separately qualify and be approved for QDD status in accordance with the procedures to be prescribed by the IRS. 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, except as otherwise provided in 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. For other purposes under this Agreement, "account" or "financial account" means any account for which QI acts as a QI. With respect to a QI acting as a QDD, "account" means any potential section 871(m) transaction or underlying security where QDD receives payments as a principal and any potential section 871(m) transaction where QDD makes payments as a principal.

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 identified to a withholding agent as an account for which it is acting as a QI and also includes any person that receives a U.S. source substitute dividend payment from a QI that is a QSL for the payment. "Account holder" also means any person that enters into or holds a potential section 871(m) transaction with a QI acting as a QDD. If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, an "account holder" means any person for whom QI is acting as an intermediary with respect to a reportable payment or withholdable payment. With respect to a QI that assumes primary withholding responsibility for a substitute interest payment as described in section 3.03(A) of this Agreement, an "account holder" includes any person that receives such a payment from the QI.

(A) Direct Account Holder. A direct account holder is any account holder who has a direct relationship with QI. In the case of an NFFE acting as a QI on behalf of persons other than its shareholders, a direct account holder is 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 account holder 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 foreign flow-through entity which, in turn, has a direct relationship with QI is an indirect account holder of QI. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and QI.

Sec. 2.03. Agreement. "Agreement" means this Agreement, the Appendices to this Agreement, and QI's application to become a QI. The Appendices 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.

Sec. 2.05. Amount Subject to Chapter 4 Withholding. An "amount subject to chapter 4 withholding" is a withhholdable payment (as defined in §1.1473–1(a)) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4.

Sec. 2.06. Assuming Primary Withholding Responsibility. "Assuming primary withholding responsibility" refers to when a QI 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. A QI that assumes primary withholding responsibility assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, a QI assuming primary chapters 3 and 4 withholding responsibility or assuming primary backup withholding responsibility relieves the person who makes a payment to the QI from the responsibility to withhold. Notwithstanding the preceding sentence, a QI acting as a QDD (that assumes primary withholding responsibility as required by section 3 of this Agreement) remains liable for the tax under section 881 and therefore remains subject to withholding on all U.S. source FDAP payments with respect to underlying securities, other than dividend equivalents; however, with respect to dividends (including deemed dividends), a QDD will not be subject to withholding on those payments until January 1, 2018.

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 61. Any reference to "chapter 61" means sections 6041, 6042, 6045, 6049, and 6050N.

Sec. 2.16. Dealer. A "dealer" has the meaning given to the term dealer in §1.871–15(a)(2) (*i.e.*, a dealer in securities within the meaning of section 475(c)(1)).

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 a registered deemed-compliant FFI.

(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 FFI. 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), including the requirement to register with the IRS.

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

Sec. 2.19. Dividend Equivalent. A "dividend equivalent" has the meaning given to that term in §1.871–15(c).

Sec. 2.20. Documentary Evidence. "Documentary evidence" means any documentation obtained under the appropriate know-your-customer rules, 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. 2.21. 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 2.20 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

Sec. 2.22. Effective Date. For a prospective QI that applies to be a QI on or before to March 31 of a given calendar year, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has not received any reportable payments prior to the date the application is submitted, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has received a reportable payment in the calendar year prior to the date the application is submitted, the effective date of this Agreement will be the first of the month in which the QI application is complete and the QI has received its QI-EIN.

Sec. 2.23. Eligible Entity. "Eligible entity" for QDD status means a home office or branch that is a QI and that is—

(A) An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;

(B) A bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which it was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;

(C) An entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which the bank or bank holding company was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued; or

(D) A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A), (B), or (C), if it were a separate entity.

The home office or any branch that wants to be a QDD must separately meet the requirements of paragraph (A), (B), or (C) as if it were a separate entity.

Sec. 2.24. Excepted NFFE. "Excepted NFFE" means a person described in §1.1471–1(b)(41).

Sec. 2.25. 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. 2.26. 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), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

Sec. 2.27. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI. "FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA 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 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

(C) 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. 2.28. Financial Institution (FI). "Financial institution" or "FI" is defined in §1.1471–5(d) and includes a financial institution as defined under an applicable Model 1 or Model 2 IGA.

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 Agreement. "FFI Agreement" means an agreement described in §1.1471–4(a) and provided in Rev. Proc. 2014-3, 2014-3 I.R.B. 419, as revised by Rev. Proc. 2014-38, 2014-29 I.R.B. 131 (and any superseding revenue procedure).

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, 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 QI. A foreign branch of a U.S. person that is a QI 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 W-8.

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 Form W-9.

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, *Foreign Person's U.S. Source Income Subject to Withholding*.

Sec. 2.39. 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. 2.40. Form 8966. "Form 8966" means IRS Form 8966, *FATCA Report*.

Sec. 2.41. Form 1099 Reporting. "Form 1099 reporting" means the reporting required on Form 1099.

Sec. 2.42. 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. 2.43. Home Office. "Home office" means a foreign person, excluding any branches of the foreign person, that applies for QDD status.

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 QSL with respect to a substitute dividend payment.

Sec. 2.45. Know-Your-Customer Rules. "Know-your-customer rules" refers to the applicable laws, regulations, rules, and administrative practices and procedures governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.

Sec. 2.46. 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. 2.47. Net Delta Exposure. Net delta exposure to an underlying security is the amount (measured in number of shares) by which (A) the aggregate number of shares in an underlying security that the QDD has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the underlying security (the "long positions") exceeds (B) the aggregate number of shares of in an underlying security that the QDD has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the underlying security (the "short positions"). The net delta exposure calculation only includes long positions and short positions that the QDD holds in its equity derivatives dealer business. Any long positions or short positions that are treated as effectively connected with the QDD's conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in §1.871–15(j)(2) for the applicable dividend. For purposes of this calculation, net delta must be determined in a commercially reasonable manner. If a QDD calculates net delta for non-tax business purposes, the net delta ordinary will be the delta used for this purpose, subject to the modifications required by this definition. Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for U.S. federal income tax purposes.

Sec. 2.48. 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.

Sec. 2.49. Non-Exempt Recipient. A "non-exempt recipient" means a person that is not an exempt recipient under the definition in section 2.26 of this Agreement.

Sec. 2.50. 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. 2.51. Nonparticipating FFI. A "nonparticipating FFI" means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

Sec. 2.52. Nonqualified Intermediary (NQI). A "nonqualified intermediary" or "NQI" is any intermediary that is not a qualified intermediary. An NQI includes any intermediary that is a foreign person unless such person enters an agreement to be a QI and acts in such capacity. An NQI also includes an intermediary that is a territory FI unless such institution agrees to be treated as a U.S. person.

Sec. 2.53. Non-U.S. Payor. A "non-U.S. payor" means a payor other than a U.S. payor as defined in this section 2.81 of this Agreement.

Sec. 2.54. 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. 2.55. 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. 2.56. 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:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and,

(B) 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. 2.57. Participating FFI. A "participating FFI" means an FFI described in §1.1471–1(b)(91). 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. 2.58. 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. 2.59. 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. For any payment of a dividend equivalent, a "payment" has the meaning provided in §1.871–15(i).

Sec. 2.60. 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 also sections 2.81 and 2.53 of this Agreement for the definition of U.S. payor and non-U.S. payor.

Sec. 2.61. Potential Section 871(m) Transaction. A "potential section 871(m) transaction" is any securities lending or sale-repurchase transaction, notional principal contract (NPC), or equity linked instrument (ELI) that references one or more underlying securities. For purposes of this definition, securities lending or sale-repurchase transaction, NPC, ELI, reference, and underlying security have the meaning given to the terms in

§§1.871–15(a)(13), (7), (4), (11), and (15), respectively.

Sec. 2.62. Private Arrangement Intermediary (PAI). A "private arrangement intermediary" or "PAI" is an intermediary described in section 4 of this Agreement.

Sec. 2.63. Qualified Derivatives Dealer (QDD). A "qualified derivatives dealer" or "QDD" is an eligible entity that agrees to meet the requirements of §1.1441–1(e)(6)(i) and of this Agreement with respect to payments on potential section 871(m) transactions and underlying securities that it receives or makes as a principal. In order to act as a QDD, the home office or branch, as applicable, must qualify and be approved for QDD status and must represent itself as a QDD on its Form W-8IMY and separately identify the home office or branch as the recipient on a withholding statement (if necessary). Each home office or branch that obtains QDD status is treated as a separate QDD.

Sec. 2.64. QDD Tax Liability. A "QDD tax liability" is the amount described in section 3.09 of this Agreement.

Sec. 2.65. Qualified Intermediary (QI). A "qualified intermediary" or "QI" is a person (or branch) described in §1.1441–1(e)(5)(ii) that has in effect an agreement with the IRS to be treated as a QI and acts as a QI.

Sec. 2.66. QI-EIN. A "QI-EIN" means the employer identification number assigned by the IRS to a QI. QI's QI-EIN is only to be used when QI is acting as a QI. For example, QI must give a withholding agent its EIN (other than its QI-EIN), if any, if it is receiving income as a beneficial owner (excluding when it receives income as a principal when acting as a QDD or as a QI assuming primary withholding responsibility for a substitute interest payment). QI must also use its non-QI EIN, if any, when acting as an NQI. Each signatory to this Agreement must have its own QI-EIN.

Sec. 2.67. Qualified Securities Lender (QSL). A "qualified securities lender" or "QSL" is a person described as a qualified securities lender in Notice 2010-46, 2010-24 I.R.B. 757. A QI that acts as a QSL with respect to a substitute dividend payment (as defined in §1.861–3(a)(6)) 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. A QI is only permitted to act as a QSL until December 31, 2017.

Sec. 2.68. Reportable Amount. A "reportable amount" means U.S. source FDAP income that is an amount subject to chapter 3 withholding, U.S. source deposit interest, and U.S. source interest or original issue discount paid on the redemption of short-term obligations. 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. 2.69. Reportable Payment. For purposes of this Agreement, a "reportable payment" means an amount described in section 2.69(A) of this Agreement, in the case of a U.S. payor, and an amount described in section 2.69(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. 2.70. 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 Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or a nonparticipating FFI under an applicable Model 1 IGA.

Sec. 2.71. Reporting Pool. A "reporting pool" is defined in section 8 of this Agreement.

Sec. 2.72. 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.

Sec. 2.73. Section 871(m) Amount. For each dividend on each underlying security, the "section 871(m) amount" is (A) the QDD's net delta exposure to the underlying security for the applicable dividend multiplied by (B) the applicable dividend amount per share.

Sec. 2.74. Section 871(m) Transaction. A "section 871(m) transaction" is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI described in §1.871–15(a)(13), (d), and (e), respectively.

Sec. 2.75. Short-Term Obligation. A "short-term obligation" is any obligation described in section 871(g)(1)(B)(i).

Sec. 2.76. Substitute Interest. "Substitute interest" means a substitute interest payment described in §1.861–2(a)(7).

Sec. 2.77. Underlying Security. For purposes of a QI acting as a QDD or any determination relating to section 871(m), "underlying security" has the meaning provided in §1.871–15(a)(15).

Sec. 2.78. 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. 2.79. Undocumented Account Holder. An "undocumented account holder" is an account holder for whom QI does not hold valid documentation.

Sec. 2.80. 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. 2.81. U.S. Payor. The term "U.S. payor" has the same meaning as in §1.6049–5(c)(5).

Sec. 2.82. 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). An individual will not be treated as a U.S. person for purposes of this section for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of §301.7701(b)–7(a)(1)) who is treated as a nonresident alien pursuant to §301.7701(b)–7 for purposes of computing his or her U.S. tax liability. The term "U.S. person" or "United States person" also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in §1.1471–5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

Sec. 2.83. 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. 2.84. 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. 2.85. U.S. TIN. A "U.S. TIN" means a U.S. taxpayer identification number assigned under section 6109.

Sec. 2.86. 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 2.60 of this Agreement).

Sec. 2.87. Withholding Foreign Partnership (WP). 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. 2.88. Withholding Foreign Trust (WT). 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. 2.89. Withholdable Payment. A "withholdable payment" means an amount described in §1.1473–1(a).

Sec. 2.90. 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. 2.91. 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, or registered deemed-compliant Model 1 IGA FFI. Except as expressly provided in this Agreement, any term relating to a QDD or section 871(m) has the same meaning given to the term in §1.871–15.

SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

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 §1.1471–2(b)(2)(i)(A)(*2*) for the definition of grandfathered obligation with respect to an obligation giving rise to a dividend equivalent. 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 withholding requirements that apply to withholdable payments made to account holders of the FFI that are individuals treated as recalcitrant account holders or non-consenting U.S. accounts. 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 section 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.

(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 the gross amount 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 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 is not be required to withhold with respect to a payment of U.S. source FDAP income if it (a) does not assume 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, (b) provides 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 (c) provides 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, WP, or WT) as described in section 6.02 of this Agreement. 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.

Sec. 3.03. Primary Chapters 3 and 4 Withholding Responsibility Assumed.

(A) In General. QI 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 QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility (if required). QI is not required to assume primary withholding responsibility for all accounts it holds with a withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account.

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.

QI may assume primary withholding responsibility for U.S. source FDAP payments of substitute interest as described in §1.861–2(a)(7). If QI assumes primary withholding responsibility for payments of substitute interest (as described in this paragraph), it must assume primary withholding responsibility with respect to all such payments. QI assumes primary withholding responsibility for payments of substitute interest for purposes of this Agreement when it assumes such responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a dealer in securities. As a result, QI may represent its status as a QI on the withholding certificate described in section 6.01 of this Agreement with respect to payments it receives of interest and substitute interest described in the preceding sentence regardless of whether it acts as an intermediary or as a principal with respect to these payments.

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 QI that has assumed primary withholding responsibility with respect to the payment (including a QI acting as a QDD except for all payments with respect to underlying securities, other than dividend equivalents, paid to a QDD for which withholding is required) or to a WP or a WT.

(B) Assumption of Withholding Responsibility by a QDD. If QI is acting as a QDD, it must assume primary chapters 3 and 4 withholding responsibility for any dividend equivalent payment that it makes and must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend (as determined in §1.1441–2(e)(4)). Notwithstanding the preceding sentence, a QDD remains liable for tax under section 881 and subject to withholding on all U.S. source FDAP payments with respect to underlying securities, other than dividend equivalents; however, with respect to dividends (including deemed dividends), a QDD will not be subject to withholding on those payments until January 1, 2018. A QDD must treat any dividend equivalent as a dividend from sources within the United States for purposes of section 881 and chapter 3 and chapter 4 consistent with section 871(m) and the regulations thereunder. A QDD may reduce the rate of withholding under chapter 3 only based on a beneficial owner's claim of treaty-reduced withholding for portfolio dividends under the dividends article of an applicable income tax treaty. A QDD must also assume primary chapter 3 and chapter 4 withholding responsibility for payments made with respect to a potential section 871(m) transaction even if the payment is not a dividend equivalent if the amount paid is an amount subject to chapter 3 or 4 withholding. A QDD is not required to withhold under chapter 3 or 4 on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment or to a WP or a WT. In addition, the QDD must notify each payee in writing that it will withhold on the dividend payment date before the time for determining the payee's first dividend equivalent payment (as determined under §1.871–15(j)(2)).

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[5] 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.

(C) Form 1099 Reporting. If QI applies backup withholding (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099 and not on Form 1042-S.

Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts. QI is responsible for Form 1099 reporting and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.05 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. See, however, §31.3406(g)–1(e) providing that a payor (irrespective of whether the payor is a U.S. or non-U.S. 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.

(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.

(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 2.69(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 2.69(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) and section 8.05 of this Agreement, provided the other payor actually receives the broker proceeds. In such a case, QI will not be responsible for primary 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 responsible for primary 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 backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides

[5]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).

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 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. 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).

Sec. 3.07. Primary Form 1099 Reporting and Backup Withholding Responsibility Assumed. QI may assume primary Form 1099 reporting backup withholding responsibility with respect to reportable amounts without obtaining approval from the IRS. 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 identifying on the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility (if required).

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it holds 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.

If QI is acting as a QDD, it must assume primary Form 1099 reporting and backup withholding responsibility for any reportable payments that are made with respect to a potential section 871(m) transaction. Thus, for example, if QI acts as a QDD with respect to an NPC that is a potential section 871(m) transaction and makes a payment pursuant to the NPC to a U.S. person that is a U.S. non-exempt recipient, QI must backup withhold and report any amount paid to the U.S. person to the extent required under section 3406 and §1.6041–1(d)(5).

In addition, if QI is assuming primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of this Agreement), it must assume primary Form 1099 reporting and backup withholding responsibility with respect to all such payments.

QI is not required to backup withhold on a reportable amount it makes to a WP, WT, or another QI 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 QI 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.

Sec. 3.08. Deposit Requirements. If QI assumes primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting 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) by electronic funds transfer as provided under §31.6302–1(h). If QI is a non-U.S. payor that does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, QI must deposit amounts withheld by the 15th day following the month in which the withholding occurred.

Sec. 3.09. QDD Tax Liability. In addition to satisfying its withholding tax liability as described in this Agreement and its section 881 tax on dividends received as a QDD, a QDD must satisfy its QDD tax liability. The QDD's QDD tax liability is the sum of:

(A) its tax liability under section 881 for its section 871(m) amount (as defined in section 2.73 of this Agreement) for each dividend on each underlying security reduced (but not below zero) by the amount of tax paid by the QDD under section 881(a)(1) on dividends received with respect to that underlying security on that same dividend in its capacity as an equity derivatives dealer;

(B) its tax liability under section 881 for dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity; and

(C) its tax liability under section 881 for any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend equivalent payments, to the extent the full liability was not satisfied by withholding.

A QDD that is a foreign branch of a U.S. financial institution does not have a QDD tax liability. Instead, such a QDD must determine and report its tax liability in accordance with chapter 1 and the appropriate U.S. tax return for the U.S. corporation.

For calendar year 2017, the QDD will not be liable for tax under section 881(a)(1) on actual dividends on physical shares or deemed dividends or dividend equivalents that the QDD receives in its equity derivatives dealer capacity. The QDD is liable for tax on actual dividends on physical shares or deemed dividends or dividend equivalents received in its non-equity derivatives dealer capacity and on any other U.S. source FDAP payments received by the QDD.

(D) Timing for Determining QDD Tax Liability. A QDD must determine its QDD tax liability due under sections 3.09(A) and (B) on the date provided in §1.871–15(j)(2) for the applicable dividend. A QDD must determine its QDD tax liability due under section 3.09(C) at the time the payments are treated as received under the Code and the regulations promulgated thereunder.

See section 7.01(C) of this Agreement regarding a QI that is acting as a QDD's responsibility to report QDD tax liability on the appropriate U.S. tax return and to maintain a reconciliation schedule for its section 871(m) amount and other amounts related to its QDD tax liability.

SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 4.01. Private Arrangement Intermediaries–In General. If QI is an 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 4.02 of this Agreement. QI, however, may not enter into a private arrangement under this section 4.01 with any account holder for which it acts as a QDD. The agreement between QI and the other intermediary shall be between QI and all the offices of the other intermediary located in a particular jurisdiction, which must be one for which the IRS has approved the know-your-customer rules. 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, as described in section 10.08 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. QI may, however, appeal the IRS's determination by following the notice and cure provisions in section 11.06 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 and has provided QI with a certification that it has maintained such certified deemed-compliant FFI status during each certification period;

(B) The PAI does not act as an intermediary for a direct account holder that is a QI, WP, WT, 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, the 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 QI/WP/WT Application and Accounts Management System before the first payment for which the PAI is operating under the PAI agreement;

(F) The PAI agrees, to the extent necessary for QI to satisfy its compliance obligations (*i.e.*, if QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement and provide QI with the same certification as is required for QI's responsible officer 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. The PAI agrees to respond (either directly or through QI) to IRS inquiries regarding its periodic review and agrees to provide QI (and the IRS, upon request) with a periodic review report (as 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(D) 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 in 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. Except to the extent the PAI provides its information to QI for purposes of performing the periodic review, 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 will terminate.

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 on 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 on 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 Agreements. 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 agreement 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 QI/WP/WT Application and Accounts Management System.

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

(A) In General. If QI is an 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 reviewer 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 QI. 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 has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471–5(a) and has provided QI with a certification that it has maintained such chapter 4 status at all times during each certification period;

(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 (*e.g.*, a nonparticipating FFI and certain passive NFFEs); and

(5) The partnership or trust agrees to make available upon request to QI or QI's reviewer for purposes of QI's periodic 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 permitted under the applicable know-your-customer rules 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 pool report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in chapter 3 reporting pools on Form 1042-S as described in 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 its 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 to make available to QI or QI's reviewer 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.

(A) In General. 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. QI, however, may not enter an agreement under this section 4.06 with any account holder for which it acts as a QDD. 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 this Agreement. QI and the partnership or trust to which QI applies the rules of this section 4.06 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 applies 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 applies 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 reviewer 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 QI. 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 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 has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI, an NFFE, an exempt beneficial owner, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471–5(a) and has provided QI with a certification that it has maintained such chapter 4 status during each certification period;

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a WP, WT, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or another QI 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 the extent necessary for QI to satisfy its compliance obligations (*e.g.*, if the QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the 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, as described in section 10.08 of this Agreement, including providing the QI and the IRS with the results of the reviewer's testing of transactions and accounts 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 for partners, 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 FFIs described in section 6.03 of this Agreement for payments of amounts subject to chapter 4 withholding. Notwithstanding the preceding sentences of this section 4.06(B)(1), 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. non-exempt recipient, 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's, beneficiary's, 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's, beneficiary's, or owner's actual distributive share and must provide this corrected information to QI on the earlier of the date that the statement required under section 6031(b) (*i.e.*, Schedule K-1) or the Beneficiary Statement or Owner Statement is mailed or otherwise provided to the partner, beneficiary, or owner, or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for QI's Forms 1042 and 1042-S for the calendar year, QI may withhold and report any adjustments required by the corrected information in the following calendar year.

(3) Payments Reportable Under Chapters 3 and 4. QI shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows:

(a) For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, QI shall report an amount subject to withholding using the chapter 4 reporting pool described in section 8.03(A) of this Agreement with the partnership or trust reported as a recipient.

(b) For a direct partner, beneficiary, or owner of the partnership or trust that is a foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools described in section 8.03(B) of this Agreement with the partnership or trust reported as a recipient.

(c) For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or foreign flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such partner, beneficiary, or owner with the nonqualified intermediary or foreign flow-through entity reported as the recipient, and QI shall report payments of amounts subject to chapter 3 withholding for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in section 8.02 of this Agreement.

(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, or 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 and 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 under-withholding, penalties, and interest have not been collected from QI and the under-withholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to the partnership's 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's or trust's requirements under chapter 4 as a certified deemed-compliant FFI, owner-documented 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) 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. Under section 11.06 of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of default. 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. If QI cannot reliably associate a reportable payment with valid documentation from the account holder, it must apply the applicable presumption rules to determine if withholding is required under chapter 3 or 4 or if backup withholding is required under section 3406. 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 applicable know-your-customer rules. QI also agrees, if the performance of an external review is requested by IRS (as described in section 10.08(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 reviewer. 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 reviewer.

If QI is acting as a QDD, QI is required to apply the rules of this section 5 to each account holder of an account for which it is acting as a QDD and to which it makes a reportable payment in accordance with the applicable requirements in section 5.01(A) and (B) of this Agreement.

(B) Coordination of Chapter 3 and Chapter 4 Documentation Requirements.

(1) QI that is an FFI. If QI is an FFI, for each account holder for whom QI is acting under this Agreement, QI is required to perform the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to determine if the account is a U.S. account (or U.S. reportable account) and to determine each account holder that is a nonparticipating FFI and, if applicable, recalcitrant account holder (or non-consenting U.S. account). If an account holder receiving the payment is not the payee, QI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding applies under chapter 4. For purposes of this section 5, with respect to documenting an account holder for chapter 4 purposes, documentary evidence also includes any documentary evidence allowed under an applicable IGA.

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 of this Agreement 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. See Notice 2014-33, 2014-21 I.R.B. 1033, modifying the time in which QI is required to implement the applicable due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI with respect to an obligation held by an entity that is opened, issued, or executed on or after July 1, 2014, and before January 1, 2015.

(2) QI that is an NFFE. If QI is an NFFE, QI is required to document 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 and backup withhold under section 3406. 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.

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 unless provided by a QI that is acting as a QDD or assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence 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 that is a foreign beneficial owner unless the certification provided by the direct account holder is a valid Form W-8IMY, and then only to the extent that QI can reliably associate the payment with valid documentation that establishes that withholding does not apply under chapter 4 in the case of a withholdable payment made to the account holder and establishes that the indirect account holder is entitled to a reduced rate of withholding under chapter 3.

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 addition, 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. For accounts held by an entity opened or documented on or after January 1, 2017, QI is required to obtain a Form W-8BEN-E with the appropriate limitation on benefits certification or, if QI is allowed to and obtains documentary evidence, the written certification included in the treaty statement as described in section 5.03(B) of this Agreement. For accounts maintained by QI prior to January 1, 2017, that were documented with documentary evidence and for which treaty benefits are being claimed, QI is required to obtain the appropriate limitation on benefits statement prior to January 1, 2019.

(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, for an entity, the appropriate limitation on benefits and section 894 certifications, as provided in §1.1441–6(b)(1). 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 a 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, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement; 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, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement.

(B) Treaty Statement. The treaty statement required by an entity account holder under this section 5.03(B) is as follows:

[Name of entity 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 only 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 government, or its political subdivisions, of a treaty country. QI is required to collect and report (as required on Form 1042-S) the specific category of limitation on benefits provision from all of its entity account holders, including a government (or its political subdivisions).

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 chapter 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 an income tax 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 income tax 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, 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. 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 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 Nonqualified Intermediaries and Flow-Through Entities. With respect to a reportable payment that is not 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 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 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 QIs, WPs, and WTs. With respect to a reportable payment made to a QI, WP, or WT, QI receives a valid Form W-8IMY provided by the QI, WP, or WT that includes the entity's chapter 4 status for a payment that is a withholdable payment and, for those payments for which a QI 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) Payments Made to QIs Acting as QDDs. For payments with respect to potential section 871(m) transactions or underlying securities made to a QI acting as a QDD, if QI receives a valid Form W-8IMY provided by the QI acting as a QDD that includes the QI's chapter 4 status and the required certification that the QI is acting as a QDD and assumes primary withholding responsibility for payments it makes when the QI is acting as a QDD, then QI can reliably associate the payments as made to the QI acting as a QDD.

(E) Private Arrangement Intermediaries. If QI has an agreement with a PAI, 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 if QI is a reporting Model 1 or reporting Model 2 FFI).

(F) Partnerships 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, QI obtains from the partnership or trust a Form W-8IMY completed as if the partnership or trust were a QI (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 if QI is a reporting Model 1 or reporting Model 2 FFI).

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 or other similar agreed form under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI 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 section 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 that the information or certifications contained in the documentation are unreliable or incorrect or 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 and a withholding agent's obligation with respect to a change in circumstances. See §31.3406(h)–3(e) for rules regarding when QI may rely on a Form W-9, §1.1441–7(b)(4) through (6) for rules regarding when QI may rely on a Form W-8, and §1.1441–7(b)(7) through (9) for rules regarding documentary evidence (including §1.1441–7(b)(8)(i) for rules regarding documentary evidence received prior to January 1, 2001). 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 to establish foreign status or residency for purposes of claiming benefits under an applicable income tax treaty, it can no longer reliably associate a payment with valid documentation unless QI obtains the additional documentation described in §1.1441–7(b)(5), (b)(6), (b)(8), or (b)(9) (as applicable). With respect to a withholding agent's reason to know that a claim for treaty benefits is unreliable or incorrect based on the existence of a tax treaty, the rule in §1.1441–6(b)(1)(ii) will apply to pre-existing accounts for which QI held valid documentation upon a change in circumstances or, with respect to a pre-existing entity account, when it provides a written limitation on benefits statement (as described in section 5.03(B) of this Agreement). For all new accounts, this rule will apply on account opening. For purposes of this section 5.10(A), a "pre-existing account" or "pre-existing entity account" is an account documented by QI prior to January 1, 2017, for a QI with a QI Agreement in effect prior to that date. For a QI that did not have a QI Agreement in effect prior to January 1, 2017, a "pre-existing account" or "pre-existing entity account" means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI Agreement.

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 or primary Form 1099 reporting and backup withholding responsibility, 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, or registered deemed-compliant Model 1 IGA 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 as prescribed in §1.1441–7(b)(3). If QI is an NFFE (other than a NFFE described in the first sentence of this paragraph), see §1.1441–7(b)(2) for when QI shall be considered to have reason to know that a withholding certificate provided by a direct account holder is unreliable or incorrect.

(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 are unreliable or incorrect if a reasonably prudent person in the position of a QI 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 know 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) and section 5.03 of this Agreement.

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. However, QI may only rely on statements regarding entitlement to treaty benefits described in §1.1441–6(c)(5)(i) or the representations described in section 5.03 of this Agreement until the validity expires under §1.1441–1(e)(4)(ii)(A)(*2*). 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) applies.

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.

(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 871, 881, 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. Failure to follow the presumption rules may result in liability for underwithholding, penalties, and interest. Notwithstanding the preceding sentences, QI must rely on its actual knowledge regarding an account holder rather than what is presumed 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.

(B) Reliably Associating a Payment with Documentation. Generally, QI can reliably associate a payment with documentation if, for that payment, it holds valid documentation 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 that any of the information, certifications, or statements in or associated with the documentation are incorrect. See §1.1441–1(b)(2)(vii) or, for a withholdable payment, §1.1471–3(c) for rules regarding when a payment can be reliably associated with documentation. See also §1.1471–3(e)(4)(vi)(B) for when a QI that is an FFI may rely on documentation and information permitted in an applicable IGA to document an account holder's chapter 4 status. 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 account holders for whom QI holds valid documentation (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 QI 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 QI 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 QI'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 permissible 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 QI 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 QI 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 QI 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 QI 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 QI 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 QI 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 QI and, if the form is associated with a withholdable payment, it includes the QI'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 QI 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 QI 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 QI 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 QI 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 QI 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 QI that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility. Generally, QI can reliably associate a payment with valid documentation provided by another QI 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 QI that, if the payment is a withholdable payment, includes the QI'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 QI 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 QI 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 QI that, if the payment is a withholdable payment, includes the QI's chapter 4 status. Additionally, the Form W-8IMY must also designate the accounts for which the other QI is acting as a QI and is assuming primary chapters 3 and 4 withholding and primary Form 1099 reporting and backup withholding responsibility. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also designate those accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not also underlying securities) for which withholding is not required, and (3) for which the QDD is receiving payments with respect to underlying securities for which withholding is required. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also identify the home office or branch acting as a QDD that is receiving the payment. If the QI receiving a payment assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for substitute interest payments as described in section 3.03(A), the Form W-8IMY must indicate that the QI is assuming primary withholding responsibility for all such payments.

(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.

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 §1.1441–7(b)(5). 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 and Bank Deposit Interest. An amount of U.S. source original issue discount on the redemption of a short-term obligation or U.S. source bank deposit interest not subject to chapter 4 withholding 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 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 and bank deposit interest 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 presumption 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 QI. The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a QI, contains QI's QI-EIN, and provides all other information required by the form. If QI receives a withholdable payment, QI must certify to its chapter 4 status and provide its GIIN (if applicable). QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when 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.

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 Form W-8IMY.

If QI is acting as a QDD for payments with respect to potential section 871(m) transactions or underlying securities, it must certify that it is acting as a QDD for those payments and assumes primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for any payments with respect to potential section 871(m) transactions that it makes as required by this Agreement, and it must provide all other information required by Form W-8IMY with respect to the certification.

If QI is acting with respect to payments of substitute interest as described in section 3.03(A) of this Agreement, it must certify that it is assuming primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all such payments, in addition to the other certifications it makes and information it provides as a QI as required by this Agreement.

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 or a holder of a U.S. account. To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility under section 3.04 of this Agreement or is not excepted from reporting under section 8.06 of this Agreement, for each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount, QI must provide to a withholding agent the Form W-9, or if any such account holder has not provided a Form W-9, the name, address, and U.S. TIN (if available).

Sec. 6.02. Withholding Statement.

(A) In General. QI agrees to provide to each withholding agent from which QI receives reportable amounts as a QI a withholding statement described in this section 6.02 and §1.1441–1(e)(3)(iv). A withholding statement shall not be provided to a withholding agent if QI assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all of its accounts, unless QI is acting as a QDD. The withholding statement forms an integral part of the Form W-8IMY. 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 QI;

(2) Designate those accounts for which QI assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility (including accounts for which QI is acting with respect to payments of U.S. source substitute interest (as described in section 3.03(A) of this Agreement));

(3) If QI is acting as a QDD, designate the accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not underlying securities) for which withholding is not required, and (3) for which QDD is receiving payments with respect to underlying securities for which withholding is required, and, if applicable, identifying the home office or branch that is treated as the owner for U.S. income tax purposes;

(4) 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

(5) 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 witholdable 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. Except as otherwise provided in this section 6.03(B), if QI receives a withholdable payment, QI must provide the information required under §1.1471–3(c)(3)(iii)(B)(2).

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 QI, NQI, or PAI) 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). If QI is an NFFE that has an account holder that is another intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI, QI may provide the account holder's chapter 4 withholding rate pools of recalcitrant account holders and U.S. payees to the extent applicable.

(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 QI, NQI, or PAI) 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 11.06 of this Agreement.

SECTION 7. TAX RETURN OBLIGATIONS

Sec. 7.01. Form 1042 (or Other Tax Return) Filing Requirement.

(A) In general. QI 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 QI and makes a payment of an amount subject to chapter 3 or 4 withholding. A separate Form 1042 must be filed by each legal entity that is a QI covered by this Agreement. Form 1042 shall be filed at the address indicated on the form, at the address at which the IRS notifies QI to file the return, or in accordance with the instructions to file Form 1042 electronically. 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 underwithholding.

(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.

(C) QDD Tax Liability Requirements for QDDs. In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD (other than a foreign branch of a U.S. financial institution) also must report its QDD tax liability on the appropriate U.S. tax return (to be prescribed by the IRS), including separately identifying each part of the QDD tax liability described in section 3.09(A) through (C) of this Agreement separately for the home office and each branch that is acting as a QDD (if applicable). A QDD must also report any other information required by the appropriate return with respect to its QDD tax liability (including any part thereof).

A QDD must also maintain, and make available to the IRS upon request, a reconciliation schedule that tracks across calendar years the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction separately for the home office and each branch that is a QDD (if applicable). The reconciliation schedule must separately state total amounts received as a QDD, as well as the dividends received in its equity derivatives dealer capacity and the section 881 tax paid on those amounts, the amount of dividends that were effectively connected with the conduct of a trade or business in the United States, the amount of stock owned in its equity derivatives dealer capacity that was not effectively connected with the conduct of a trade or business in the United States, the amount of dividend equivalent payments it received in its equity derivatives dealer capacity, its long positions, its short positions, its net delta for business purposes (if any), its adjustments to the net delta used for business purposes (if any, such as adjustments to exclude transactions that, for federal income tax purposes, are not treated as transactions of a QDD, do not exist, or that are effectively connected with the conduct of a trade or business in the United States), the dividend amount per share, its tax liability under section 881 for its section 871(m) amount, its net delta exposure, and the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction it received as a QDD, and any adjustments thereto, for transactions in its equity derivatives dealer capacity. The reconciliation schedule may be maintained in any manner or format that permits the IRS to reconcile the amount reported by the QDD for the calendar year.

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 QI 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 to file the return 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 (including, with respect to a QI acting as a QDD, its reconciliation schedule) 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. Separate Forms 1042-S must be filed by each legal entity that is a QI covered by this Agreement. A QI acting as a QDD that also has QI activities must file separate Forms 1042-S in its QDD capacity and its QI capacity (*i.e.*, other than when acting as a QDD). Each QI covered by this Agreement may also allow its individual branches not acting as QDDs 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. If QI is acting as a QDD, the home office and each branch acting as a QDD must file separate Forms 1042-S for payments made as a QDD. 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 (and to the extent permitted on) 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. In the case of a payment to a QDD, separate Forms 1042-S must be filed for each QDD, even if a single legal entity.

(A) QI must file a separate Form 1042-S for each account holder that is a QI (to the extent such payment is required to be reported under §1.1461–1) WP, WT, or QSL that receives from QI an amount subject to withholding under chapter 3 or 4 (or, in the case of a QSL, 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 QI 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 entity 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.

(H) QI must file a separate Form 1042-S for each direct account holder that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under §1.1471–3(d)(12)(iii) unless such information was reported by the withholding agent.

(I) If QI is acting as a QDD, QI must file a separate Form 1042-S for any amount subject to chapter 3 withholding with respect to a potential section 871(m) transaction made to another QDD.

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, 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. 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, 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 or payees that are nonparticipating FFIs. 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 section 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.

(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 Model 1 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, or registered deemed-compliant Model 1 IGA FFI. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI), QI must report its U.S. accounts on Form 8966 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) 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 QI on behalf of persons other than its shareholders, QI shall file Form 8966 to report withholdable payments made to an account holder that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by QI. See §1.1471–1(b)(8) for the definition of beneficial owner. QI must report on Form 8966 in accordance with the form and its accompanying instructions. 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. If QI is acting as a sponsoring entity on behalf of an NFFE for chapter 4 purposes, QI is not required to report as described in this paragraph if QI reports the NFFE as part of QI's requirements as a sponsoring entity. See §1.1472–1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

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 accompanying instructions. QI is not required to report, however, to the extent permitted under §1.1474–1(i)(2) on a payment made to a participating FFI or registered deemed-compliant FFI if such information is reported pursuant to section 8.04 of this Agreement or 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, *Annual Summary and Transmittal of U.S. Information Returns*, 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 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 (including 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 U.S. 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 QI) 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 QI that is a direct or indirect account holder of QI, the QI 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 (including 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 U.S. 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 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 With-

holding Responsibility. QI 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 section 9.01 or 9.02 of this Agreement, QI 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. If there has been an overwithholding and QI does not apply for a collective refund, it must provide a Form 1042-S for the payment that was subject to the overwithholding if requested by the account holder receiving the payment.

(A) Payments for which a Collective Refund is Permitted. Except as otherwise provided in this section 9.04, QI may use the collective refund procedures with respect to all amounts subject to chapters 3 and 4 withholding. With respect to amounts withheld under chapter 3 or 4, 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, if QI is a participating FFI or registered deemed-compliant FFI, QI shall not include in its collective refund claim tax withheld on payments made to any account holder described in the FFI agreement or 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 (and will not issue) Forms 1042-S to the account holders that received the payment that was subject to overwithholding;

(2) 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 withholding 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 its 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 issued 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 (not including extensions) of the Form 1042 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 reviewer, 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. Compliance Program

(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 a Compliance QI) to make the certifications required under section 10.03 of this Agreement. If QI is acting as a QDD, QI's compliance program must also include policies, procedures, and processes sufficient for it to satisfy and report its QDD tax liability and other reporting required as a condition of its status as a QDD. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, QI must provide to the IRS the factual information as required by and referenced in sections 10.04 and 10.05 and in Appendix I to 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 10.08 of this Agreement. With respect to QI that, prior to January 1, 2017, was a limited FFI (as defined in §1.1471–1(b)(77) (or a limited branch, as defined in §1.1471–1(b)(76)), references in this section 10 (and in Appendix I to this Agreement) to QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI include its requirements under §1.1471–4(e)(4) for purposes of its initial certification period.

(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI and, for a Direct Reporting NFFE, the Requirements of §1.1472–1(c)(3). As a condition for maintaining QI status, QI must maintain its chapter 4 status with respect to each branch of QI operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

(C) Phase-in Year for QDD. For purposes of the IRS's enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of this Agreement for calendar year 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with sections 871 and 881, chapters 3 and 4 with respect to section 871(m) transactions, and the relevant provisions of this Agreement. For calendar year 2017, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide the factual information specified in Appendix I. In addition, the QDD is not required to make the certification of internal controls as applicable to its QDD activities for the certification period ending in calendar year 2017 but rather is required to certify for this period that it has made a good faith effort to comply with the relevant provisions of this Agreement in accordance with Notice 2016-76. A QDD is not required to file the certification described in the preceding sentence with the IRS; however, a QDD must retain a record of the certification (and information in support of the certification) until the end of the calendar year 2022. As a result, the certification of internal controls (and factual information and other certifications) applicable to a QI's QDD activities are not included in Appendix I and will be added to the QI agreement for purposes of certification periods ending after December 31, 2017. For 2017, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement.

The QDD will be considered to satisfy its obligations for purposes of section 10 that apply specifically to a QDD under this Agreement for calendar year 2017 provided that the QDD made a good faith effort to comply with the relevant terms of this Agreement. Any QDD that has not made a good faith effort to comply with its QDD obligations will not be given any relief from IRS administration or enforcement during calendar 2017, including penalties.

10.02. Responsible Officer. QI must appoint an individual as a responsible officer as defined in section 2.72 of this Agreement. The responsible officer must be identified on the QI/WP/WT Application and Accounts Management System as QI's responsible party, and such person may, but is not required to, be the same responsible officer for purposes of compliance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The responsible officer 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 appointed 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 review procedures under section 10.07 of this Agreement. References in this section 10.02 to the responsible officer include a responsible officer's designee, where appropriate.

(A) Compliance Program. The responsible officer 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 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, including, with respect to QI that is acting as a QDD, satisfying its QDD tax liability. 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 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 the requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; reporting payments and accounts as required under sections 7 and 8 of this Agreement; or entering into potential section 871(m) transactions, in the case of QI that is acting as a QDD.

(3) Systems. The responsible officer must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement. For example, in order to 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 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.

(5) QDD Tax Liability Determinations. If QI is acting as a QDD, the responsible officer must ensure that the QDD has appropriate systems in place to make the necessary determinations and calculations to identify section 871(m) transactions, potential section 871(m) transactions, the amount of dividends received in its QDD equity derivatives dealer capacity and the section 881 taxes paid thereon, its net delta exposure, the dividend amount per share, the stock owned by the QDD included in its net delta exposure long position, its long position, its short position, its section 871(m) amount and the section 881 taxes paid thereon, its QDD tax liability amount, and the amount of dividend equivalent payments made by the QDD. In addition, the responsible officer must ensure that the QDD has appropriate systems in place to determine whether a transaction is as a principal or nonprincipal, whether a transaction is in an equity derivatives dealer or non-equity derivatives dealer capacity, whether the transaction exists for federal income tax purposes, whether transaction is owned by the QDD, and whether the transaction is effectively connected with the conduct of a trade or business in the United States. This includes appropriate systems to, where required, calculate the delta for a potential section 871(m) transaction, perform the substantial equivalence test described in §1.871–15(h), calculate the amount of a dividend equivalent, determine any QDD tax liability amount (and each part thereof) and its timing, and determine what payments are received or made with respect to potential section 871(m) transactions and underlying securities as a principal and whether in its equity derivatives dealer capacity or nonequity derivatives dealer capacity and by which home office or branch that is acting as a QDD. The systems must also take into account information received pursuant to §1.871–15(p).

(6) Periodic Review. Unless QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), the responsible officer must designate a reviewer 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, to the extent required.

(7) Certification of Internal Controls. The responsible officer 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(B) of this Agreement) of QI's compliance with this Agreement.

(B) 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 identify itself as such when making its periodic certification and must comply with the identification, certification of internal controls, and periodic review requirements for the QI consolidated compliance program as the IRS may prescribe. The Compliance QI must also agree to be jointly and severally liable for the obligations and liabilities of any QI in its consolidated compliance program relating to the QI's obligations under this Agreement. QIs that want to operate a consolidated compliance program must contact the IRS Foreign Intermediaries Program for approval.

10.03. Certification of Internal Controls by Responsible Officer. A QI's responsible officer must make the certification described in either Part II.A (Certification of Effective Internal Controls) or Part II.B (Qualified Certification) of Appendix I to this Agreement and must 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. If the responsible officer has identified an event of default or a material failure that has not been corrected as of the date of the certification, the responsible officer cannot make the certification in Part II.A (Certification of Effective Internal Controls) and must make the certification in Part II.B (Qualified Certification).

For a QI that uses the third year of the certification period for its periodic review, the certification is due on or before December 31 of the year following the certification period. For a QI that uses the first or second year of the certification period for its periodic review or a QI that obtains a waiver of the periodic review requirement, the certification is due on or before July 1 of the year following the certification period. 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).

The certification of internal controls required by this section 10.03 applies only to the internal controls related to QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472–1(c)(3), with respect to accounts for which it acts as a QI, and does not relate to any other obligations or requirements. The responsible officer may rely on any reasonable procedure, process, review, or certification that enables the responsible officer to make the certification described in this section 10.03. If the responsible officer relies on an internal or external review for this purpose (*i.e.*, for purposes of determining whether QI has effective internal controls), the internal or external reviewer must be independent, as described in section 10.04 of this Agreement. The responsible officer must document the procedures, processes, reviews, or certifications relied upon in making the certification. QI's responsible officer (or the responsible officer of its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe.

(A) PAIs and Partnership or Trust to which QI Applies the Agency Option. Unless QI has received a waiver of the periodic review requirement, any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide its documentation and other information to QI for inclusion in QI's periodic review or conduct an independent periodic review and provide a written certification to QI regarding its compliance with the requirements of the PAI or agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.08 of this Agreement (with a certified translation into English if the certification is not in English).

(B) 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, or registered deemed-compliant Model 1 IGA FFI. For purposes of the certifications described in Parts II.A and B of Appendix I to 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, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

(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 if QI is acting as a QDD, its obligations as a QDD under this Agreement or pursuant to section 871(m) and the regulations under that section.

(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) for one or more years covered by this Agreement that QI failed to—

(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 or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

(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 as 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 make adequate deposits to satisfy its withholding obligations, or, if QI is acting as a QDD, timely satisfy its QDD tax liability, 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 payor to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

(f) Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of this Agreement;

(g) Report or report accurately on Form 8966 under sections 8.04 and 8.05 of this Agreement; or

(h) 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(B)(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 necessary 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 of this Agreement, or to report under section 7 or 8 of this Agreement, or, for a QI that is acting as a QDD, to timely pay its QDD tax liability and timely file the appropriate return (or amended return).

Sec. 10.04. Periodic Review Absent Waiver. Unless the QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), at the time QI provides the certification described in section 10.03 of this Agreement, QI must also provide certain factual information regarding its accounts, withholdable payments, amounts subject to chapter 3 withholding, and, if QI is acting as a QDD, section 871(m) transactions, potential section 871(m) transactions, and its QDD tax liability based on the results of a periodic review. The factual information requested is included in Appendix I to this Agreement.

(A) Independent Reviewer. The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of QI or an employee of an affiliate of QI (including an employee of a Compliance QI in the case of a consolidated compliance program) ("internal reviewer"), or a certified public accountant, attorney, or third-party consultant ("external reviewer"), or any combination thereof.

(1) Internal Reviewer. QI may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (*e.g.*, the internal reviewer, in reviewing QI's documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer's reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by QI was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

In the case of a consolidated compliance program, the Compliance QI may designate an internal reviewer to perform the consolidated periodic review (or a portion of the consolidated periodic review). See section 10.02(B) of this Agreement. The internal reviewer of the Compliance QI must meet the requirements of this section with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

If QI designates an internal reviewer that is an employee of an affiliate of QI but is not part of a consolidated compliance program, QI must ensure that the internal reviewer has access to all necessary information in order to complete the review. In addition, QI must permit the IRS to communicate directly with such internal reviewer.

(2) External Reviewer. QI may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it (or the firm with which it is affiliated) was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant that has similar professional standards or requirements). The external reviewer 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, or registered deemed-compliant Model 1 IGA FFI, but the reviewer must be able to perform the periodic review as specified in section 10.05 of this Agreement. QI must permit the external reviewer to have access to all relevant records of QI for purposes of performing the review, including information regarding specific account holders. Additionally, the engagement between the external reviewer and QI must impose no restrictions on QI's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of QI's account holders to the IRS, except as otherwise provided under QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. QI must permit the IRS to communicate directly with the external reviewer, and any legal prohibitions that prevent the IRS from communicating directly with the reviewer must be waived.

Sec. 10.05. Scope and Timing of Review. The responsible officer of QI (or of the Compliance QI) must require the reviewer to test accounts related to QI's documentation, withholding, reporting, and other obligations under this Agreement, including its QDD tax liability with respect to QI that is acting as a QDD, and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for accounts for which it is acting as a QI, and to identify deficiencies in meeting these obligations. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide the information necessary for QI to test accounts and transactions of such entity as part of QI's periodic review unless such entity conducts an its own periodic review and provides QI with the report documenting the results of such review as described in section 10.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) of this Agreement.

QI is required to arrange for the performance of one review for the certification period to evaluate QI's documentation, withholding, and reporting practices. If QI is acting as a QDD, this should also include a review of its determination as to whether transactions are section 871(m) transactions, its computations and determinations of dividend equivalent amounts, dividends and taxes paid thereon, whether transactions are in its equity derivatives dealer capacity, net delta exposure, its section 871(m) amount, and its calculation of its QDD tax liability, as well as any other amounts required to be included on the reconciliation schedule. The review may be conducted for any calendar year covered by the certification period. However, all results of the review must relate to one calendar year. QI may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of this Agreement), there are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the QI's submits, upon request, a Form 872, *Consent to Extend the Time to Assess Tax*, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of this Agreement.

QI may use a sample to test accounts if there are more than 60 accounts to review. If QI has fewer than 60 accounts, it must review all accounts and cannot use a sample to test accounts. To the extent applicable, the reviewer must separately review its QI activities (when not acting in its QDD capacity) and QDD activities. The reviewer is required to record its sampling procedures and to maintain the ability to reconstruct the sample. Further, the review is not required to include statistical sampling procedures for testing transactions, but the reviewer must document its methodology for sampling determinations. A safe harbor methodology and additional information on the use of statistical sampling is provided in Appendix II to this Agreement.

If the reviewer determines that underwithholding has occurred, QI shall report and pay any amount due. QI must also notify the IRS Foreign Intermediaries Program at the address provided in section 12.06 of this Agreement of the underwithholding discovered as a result of the review. See Appendix II to this Agreement for information required to be provided when reporting underwithholding and information regarding any projection of underwithholding determined using a sampling method.

(A) Documentation. The reviewer must—

(1) Review QI's accounts, to ensure that QI obtained documentation that meets the requirements described in sections 5.01 through 5.09 of this Agreement;

(2) Review QI's accounts for which treaty benefits are claimed, to ensure that QI obtained the treaty statements and limitation on benefits information required by section 5.03(B) of this Agreement;

(3) Review information 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 reviewer 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. or a change in chapter 4 status from participating FFI to nonparticipating FFI) are being conveyed to QI's withholding agents;

(4) Review the accounts for which QI is acting as a QI to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(5) Review accounts held by U.S. nonexempt 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;

(6) For a QI that is a QDD, review accounts for which QI is acting as a QDD and that received a reportable payment to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement;

(7) For a QI that makes payments of U.S. source substitute interest and assumes primary chapters 3 and 4 withholding responsibility for such amounts, review accounts of persons to which QI pays U.S. source substitute interest to determine whether QI has documented the status of such persons under the requirements described in sections 5.01 through 5.09 of this Agreement; and

(8) For 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.

(B) Withholding Rate Pools. The reviewer must—

(1) Perform checks using 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;

(2) Verify, if QI is using the 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. nonexempt recipients; and

(3) With respect to a partnership or trust described in section 4.05 of this Agreement, if applicable, perform test checks, using account holder documentation for the selected partners, beneficiaries, or owners 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 reviewer must—

(1) To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using 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 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 and properly applied 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 (including withholding if QI failed 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 checks using 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 U.S. non-exempt account holders to verify that QI fulfilled its backup withholding responsibilities 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;

(7) To the extent that QI is acting as a QDD, determine that QI withheld when required on payments that it made with respect to potential section 871(m) transactions;

(8) To the extent that QI makes payments of U.S. source substitute interest and assumes chapter 3 and 4 withholding responsibility for such amounts, determine that QI withheld when required on such payments; and

(9) To the extent 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 reviewer 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 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;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) 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;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

(v) If QI is acting as a QDD, reviewing the reconciliation schedule described in section 7.01(c) of this Agreement and any information used to prepare such schedule or compute its QDD tax liability, including information received pursuant to §1.871–15(p), reviewing the amounts required to determine its section 871(m) amounts and its QDD tax liability over the applicable period, and reviewing such information to determine whether the section 871(m) amounts and QDD tax liability have been properly calculated;

(vi) If QI is acting as a QDD, reviewing amounts shown on Forms 1042 (including the reconciliation schedule) and Forms 1042-S, as well as any information received pursuant to §1.871–15(p), to determine whether the QDD properly took the information into account (*e.g.*, to calculate its QDD tax liability);

(vii) To the extent QI acts as a QSL, determine that QI properly reported the gross amount of the U.S. source payments of substitute dividends to which the recipient would have otherwise been entitled before consideration of any withholding tax obligations; the amount of tax withheld by the withholding agent; and the amount of tax withheld by other withholding agents in the series of securities lending or sale-repurchase transaction;

(viii) In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, determine whether those forms are accurate, and—

(a) Determine the causes of any overwithholding 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 account statements issued by QI to account holders;

(iv) 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 (or, for QI that is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to the applicable Model 1 IGA) of accounts for which QI is acting as a QI, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing U.S. accounts (or U.S. reportable accounts for which QI acts as a QI) to determine that such accounts were reported in accordance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) If QI is an NFFE acting as a QI 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 substantial U.S. owners were reported;

(iii) 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 that such substantial U.S. owners were reported to the extent required under section 8.04(B) of this Agreement;

(iv) Reviewing 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; and

(v) Reviewing work papers used to prepare these forms.

(4) If QI is acting as a QDD, the reviewer must also review accounts designated as accounts for which QI acted as a QDD to determine whether QI is acting as a QDD with respect to all potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and not any other transactions and whether the section 871(m) amount includes the amounts in its equity derivatives dealer capacity and not amounts in its non-equity derivatives dealer capacity.

(E) Significant Change in Circumstances. The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 11.04(A), (D), (E), or (H) of this Agreement.

Sec. 10.06 Periodic Review Report.

(A) In General. The results 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 actions performed to satisfy each requirement of section 10.05(A) through (E), including the methodology for sampling determinations. The report 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. The periodic review report should form the basis for the factual information provided by QI that is set forth in Appendix I.

In addition to the findings of section 10.05 of this Agreement, the periodic review report should also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in Appendix I) should report the results of the review as it was performed and should not reflect the results after curing. Any curing process should not delay certification of internal controls or factual information required in Appendix I to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for accounts with respect to which the reviewer determined that underwithholding had occurred, the number of accounts for which curative documentation was obtained and a revised calculation of the underwithholding or additional backup withholding.

(B) Periodic Review Report for QDDs. If QI is acting as a QDD, the periodic review report should also include the number of accounts that were not correctly treated as (i) principal accounts (except accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864), (ii) nonprincipal accounts, (iii) principal accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864, (iv) equity derivatives dealer accounts, and (v) non-equity derivatives dealer accounts. The report should also include any other issues related to the QDD tax liability (*e.g.*, incorrect determination of whether an account is a potential section 871(m) transaction or a section 871(m) transaction, the dividends received in the QDD's equity derivatives dealer capacity and the taxes paid on those dividends, the net delta exposure, the section 871(m) amount and the taxes on the section 871(m) amount, the amount of dividend equivalent payments made, or any other amounts subject to tax (or required to compute the tax liability) under section 871(a) and 881 (including the QDD tax liability)) for each QDD.

(C) PAI Certification and Partnership or Trust to which QI Applies the Agency Option. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option that does not provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement, must conduct an independent periodic review in accordance with the compliance procedures described in section 10.05 of this Agreement. The performance results 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).

(D) Retention of Report and Certifications. 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. Waiver of Periodic Review Requirement.

(A) In General. A QI that is not acting as a QDD and that is an FFI that meets the requirements of section 10.07(B) may apply for a waiver of the periodic review requirement. QI must request a waiver of the periodic review requirement under this section 10.07 at the time the responsible officer makes the certification described in section 10.03 of this Agreement. QI's application for such a waiver must be approved by the IRS, and waiver applications are not approved automatically. QI must apply for a waiver for each certification period for which a waiver is requested. If QI's request for a waiver of the periodic review requirement is granted, such approval is only to waive QI's obligations under sections 10.04 and 10.05 of this Agreement, and QI is still required to make the certification described in section 10.03 of this Agreement. The waiver also does not preclude the IRS from requesting information or conducting a correspondence review as described in section 10.07 of this Agreement. QI must include the information of any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option in its waiver application which is set forth in Part III of Appendix I to this Agreement.

(B) Eligibility. QI is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

(1) QI must be an FFI that is not also acting as a QDD;

(2) QI cannot be part of a consolidated compliance program;

(3) For each calendar year covered by the certification period, the reportable amounts received by QI cannot exceed $5 million;

(4) QI must have timely filed its Forms 1042, 1042-S, 945, 1099, and 8966, as applicable, for all calendar years covered by the certification period;

(5) QI must have made all periodic certifications and reviews required by sections 10.02 and 10.03 of this Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and

(6) QI must have made the certification of effective internal controls in section 10.02(A).

(C) Documentation Required with Waiver Application. When applying for a waiver under this section 10.07, QI must include the information described in Appendix I to this Agreement using the most recent calendar year covered by the certification period and reporting such results without any curing or remediation.

(D) Approval. If QI's request for a waiver of the periodic review requirement is approved, the IRS will notify QI. If QI requests a waiver but such request is not approved, QI will be granted a six month extension from the date of denial of the waiver to complete the periodic review. Such extension will not be granted if QI has made the request for waiver in bad faith.

Sec. 10.08. Periodic 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 the IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.08. The IRS may preemptively request remediation or the conduct of a limited periodic review earlier than the time period provided in this section 10 if, based on the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by QI. The IRS may also request that QI designate a replacement responsible officer if QI's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

(B) Periodic Review Report. The IRS may request, through written correspondence to the responsible officer of QI (or the Compliance QI), a copy of the results of QI's periodic review 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 results 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), a 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 QI) or any PAI or partnership or trust to which QI applies the agency option 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 reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of 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 reviewer's findings.

SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT

Sec. 11.01. Term of Agreement. This Agreement begins on the effective date and expires at the end of the sixth full calendar year the Agreement is in effect, unless terminated under section 11.02 of this Agreement. This Agreement may be renewed as provided in section 11.08 of this Agreement.

Sec. 11.02. Termination of Agreement.

(A) In General. 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 11.04 of this Agreement, or an event of default has occurred, as defined in section 11.06 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 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.

The termination of the Agreement shall not affect any of QI's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which this Agreement was in effect and portion of the calendar year in which termination is requested. The IRS shall revoke QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

(B) Final Certification after a Termination of the Agreement. Upon a termination of this Agreement, QI must provide to the IRS the certification described in section 10.03 of this Agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of this Agreement) to the date of termination within six months of the date of termination, regardless of whether a periodic review has been completed for such period.

Sec. 11.03. Loss of QDD Status. If QI is acting as a QDD and the home office or branch, as applicable, fails to qualify as an eligible entity during the term of this Agreement, the home office or branch shall lose its QDD status immediately upon the QDD failing to qualify as an eligible entity and as of that date can no longer act as a QDD. QI is required to notify its withholding agent of the date that the QDD failed to qualify as an eligible entity and no longer was permitted to act as a QDD. The QDD's loss of QDD status shall not affect any of QI's QDD reporting, tax filing, withholding, depositing, or payment responsibilities for the period QI was acting as a QDD as provided in this Agreement, including paying its QDD tax liability.

Sec. 11.04. 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 applicable foreign law, 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 applicable know-your-customer rules and procedures;

(E) A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement;

(F) If QI is an FFI, QI's failure to maintain its status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(G) 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; or

(H) If QI is acting as a QDD, the home office or branch, as applicable, ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status (see section 11.03).

Sec. 11.05. Merger. If QI merges with or is acquired by another QI and the successor QI assumes all the rights, debts, and obligations of the predecessor QI as it relates to such QI's QI agreement, the predecessor or acquired QI must notify the IRS that it intends to terminate this Agreement prior to the end of its term by delivery of a notice of termination and merger, in accordance with section 12.06 of this Agreement. A notice of termination and merger 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 and designate the successor QI to receive payments in its capacity as a QI for any accounts previously covered by predecessor QI's QI Agreement.

The successor QI must ensure that all reporting and tax filing obligations are fulfilled and any withholding is deposited, in accordance with the procedures outlined in Rev. Proc. 99-50, 1999-2 C.B. 757, when applicable, that arose in the calendar years and portion of the calendar year in which termination is requested and for which this Agreement was in effect (including for Form 1042-S filed to report withholding under chapter 4). To the extent QI is acting as a QDD, it must use the standard procedure outlined in Rev. Proc. 99-50 and cannot use the alternative procedures. See QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for the procedures, if any, for reporting on Form 8966 in the case of a merger or acquisition. In addition, the successor QI must provide the certification required by section 10.03 for the predecessor QI's compliance period prior to the merger (and must include the predecessor QI in its review following the merger).

The IRS shall revoke the predecessor QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences

Sec. 11.06. 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 of 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, or registered deemed-compliant Model 1 IGA FFI;

(G) 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 account for which QI does not act as a QI.

(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 10.08 of this Agreement;

(K) QI fails to inform the IRS of any change in the applicable know-your-customer rules 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 Part II.B of Appendix I to 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 reviewer;

(P) The IRS determines that QI's reviewer is not sufficiently independent, as described in this Agreement, to adequately perform its review function, and QI fails to arrange for a periodic review conducted by a reviewer 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;

(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; and

(S) If QI is acting as a QDD, after calendar year 2017, QI fails to timely pay a material amount of its QDD tax liability and fails to correct the underpayment and pay the appropriate tax amount.

Sec. 11.07. 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 a review, the QI may cure the default, without following the procedures of this section 11.07, if the external reviewer'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 11.07 shall be followed.

Sec. 11.08. Renewal. If QI intends to renew this Agreement, it must submit an application for renewal to the IRS on the QI/WP/WT Application and Accounts Management System. This Agreement will be renewed only upon the agreement of both QI and the IRS. A QI that seeks to renew its QI agreement and also seeks to become a QDD (that was not previously acting as a QDD) must supplement the renewal request by providing a statement containing all information required by Form 14345 relating to a QDD.

SECTION 12. MISCELLANEOUS PROVISIONS

Sec. 12.01. QI's application to become a QI, all Appendices to this Agreement, and, if QI is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, are hereby incorporated into and made an integral part of this Agreement. This Agreement, QI's application, and the Appendices 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 QI/WP/WT Application and Accounts Management System, 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 Program
290 Broadway, 12th 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 QI 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 7. EFFECTIVE DATE

The effective date of the QI agreement contained in section 6 of this revenue procedure (as modified and superseded by any future published guidance) is on or after January 1, 2017.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Leni C. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Perkins at (202) 317-6942 (not a toll free call) or, with respect to QDDs, Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free call).

APPENDIX I

General Instructions: QIs must provide the information and certifications described in this Appendix as applicable to their QI status and activities. The following Parts must be completed by the specified QIs:

Part I:	All QIs.
Part II:	All QIs.
Part III:	QIs eligible pursuant to section 10.07(A) and (B) of the QI Agreement to apply for a waiver of the periodic review requirement (as described in section 10.07 of the QI Agreement) and who wish to apply for such a waiver. Under section 10.07(A) and (B) of the QI Agreement, the following QIs are not eligible for a waiver: (a) QIs that are NFFEs, (b) QIs that are acting as QDDs, and (c) QIs that are part of a consolidated compliance program.
Part IV.A:	All QIs that have not applied for or have not been approved for a waiver.
Part IV.B-F:	All QIs, excluding QIs that are only acting as QDDs and have no other QI activities, that have not applied for or have not been approved for a waiver.
Part V:	All QIs that are acting as QDDs.
Part VI:	All QIs that assume primary withholding responsibility for payments of substitute interest.

A Compliance QI may complete Parts I and II for the QI members of its consolidated compliance group. However, the factual information provided in Parts IV through VI must be completed separately for each QI member in the consolidated compliance group.

PART I. GENERAL INFORMATION

A. Did QI assume primary chapters 3 and 4 withholding responsibility for any calendar year covered by the certification period? Y/N

B. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any calendar year covered by the certification period? Y/N

C. Is QI the Compliance QI for a consolidated compliance program? Y/N
   1. If yes, provide the names and QI-EINs of the members of the consolidated compliance group.

D. PAIs and partnerships and trusts to which QI applied the joint account or agency option during any time within the certification period:
   1. The number of PAIs with whom QI has a PAI Agreement (if none enter 0).
      a. Provide the names and addresses of those PAIs.
      b. Each PAI has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) for the certification period, as required under section 4.01 of the QI Agreement. Y/N

c. Each PAI has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.01(F) of the QI Agreement) or (2) a certification as described in section 10.03 of the QI Agreement and a periodic review report as described under section 10.06 of the QI Agreement for the certification period. Y/N

2. The number of partnerships or trusts to which QI applies the agency option (if none enter 0).
   a. Each partnership or trust to which QI applies the agency option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an NFFE, or an exempt beneficial owner, or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471–5(a), as required under section 4.06(A)(2) of the QI Agreement. Y/N
   b. Each partnership or trust to which QI applies the agency option pursuant to section 4.06 of the QI Agreement has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.06(A)(5) of the QI Agreement) or (2) a certification described in section 10.03 of the QI Agreement and a periodic review report as required under section 10.06 of the QI Agreement for the certification period. Y/N
3. The number of partnerships or trusts to which QI applies the joint account option (if none enter 0).
   a. Each partnership or trust to which QI applies the joint account option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471–5(a), as required under section 4.05(A)(1) of the QI Agreement. Y/N

PART II: CERTIFICATION OF INTERNAL CONTROLS AND GENERAL INFORMATION—To be Completed by All QIs. Complete Either A (Certification of Effective Internal Controls) or B (Qualified Certification).

A. Certification of Effective Internal Controls

If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of this certification (or such an event of default or material failure has otherwise been identified), the responsible officer cannot make the certification of effective internal controls under this Part A and must make the qualified certification under Part B, below.

The responsible officer certifies to the following, check each statement to confirm:

1. QI has established a compliance program that meets the requirements described in section 10.02(A) or 10.02(B) (if applicable) of the QI Agreement that is in effect as of the date of the certification and during the certification period.
2. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a QI.
3. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(B) of the QI Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate them and to prevent their reoccurrence by the date of this certification. See Part II.D.3.A.
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).
5. All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI Agreement) documentation and other necessary information for inclusion in the QI's periodic review or (b) provided the responsible officer of QI with a certification of effective internal controls described in Part II.A of Appendix I to the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(B) of the QI Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI together with the actions taken by the PAI, partnership, or trust to remediate such failures.
6. QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable).
7. If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI Agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement.
8. A periodic review was conducted for the certification period in accordance with section 10.04 of the QI Agreement, and the results of such review are reported to the extent required in sections 10.05 and 10.06 of the QI Agreement.

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 this certification, check the applicable statements to confirm:

1. The responsible officer (or designee) has identified an event of default, as defined in section 11.06 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(B) 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).
3. The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through QI) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure

C. Amended Form 1042

1. QI filed an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review undertaken by the responsible officer in preparation for his or her certification of internal controls. Y/N

D. Material Failures or Event of Default

Check the applicable statements to confirm. If QI is a Compliance QI and identifies a material failure or event of default, it should also indicate which QI in the consolidated compliance group is associated with the material failure or event of default. For 2017, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement relating to its QDD obligations.

1. The responsible officer has determined that as of the date of the review, there are no material failures with respect to QI's compliance with the QI Agreement.
2. The responsible officer has determined that as of the date of the review, there are one or more material failures with respect to QI's compliance with the QI Agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring.
   a. The following material failures were identified:
      i. QI's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with the QI Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.
      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 the QI Agreement, or if QI is acting as a QDD, its obligations as a QDD under the QI Agreement and pursuant to section 871(m) and the regulations under that section.
      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 the QI Agreement) that, for one or more years covered by the QI Agreement, QI failed to:
         1. Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of the QI Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;
         2. 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;
         3. Provide allocation information as described in section 6.03(D) of the QI Agreement (regarding U.S. non-exempt recipient account holders) by January 15, as required by that section when QI applies the alternative withholding rate pool procedures;

4. Make deposits in the time and manner required by section 3.08 of the QI Agreement or make adequate deposits to satisfy its withholding obligations or, if QI is acting as a QDD, timely satisfy its QDD tax liability, taking into account the procedures under section 9 of the QI Agreement
5. Report or report accurately on Forms 1099 as required under section 8.06 of the QI Agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;
6. Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of the QI Agreement;
7. Report or report accurately on Form 8966 under sections 8.04 and 8.05 of the QI Agreement; or
8. 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.

v. Other (include a detailed explanation).

3. The material failure identified in the review has been corrected by the time of this certification. Y/N/NA
   a. If yes, describe the steps taken to correct the material failure.
   b. If no, describe the proposed steps to be taken to correct the material failure and the time frame for completing such steps.
4. Did any PAI of QI inform QI that it has had a material failure with respect to its agreement with QI? Y/N/NA
   a. If yes, provide name of PAI and, based on the information provided by PAI, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
5. Did any partnerships or trusts to which QI applies the agency and/or joint account option inform QI that it has had a material failure with respect to its obligations as described in the QI Agreement? Y/N/NA
   a. If yes, provide name of the partnership or trust and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
6. An event of default as defined in section 11.06 of the QI Agreement has been identified. Y/N
   a. If yes, identify the event of default:

i. QI failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the QI Agreement;

ii. QI underwithheld a material amount of tax that QI was required to withhold under chapter 3 or 4 or backup withhold under section 3406 and failed to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

iii. QI made excessive refund claims;

iv. Documentation described in section 5 of the QI Agreement was lacking, incorrect, or unreliable for a significant number of direct account holders;

v. QI filed Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;

vi. If QI is an FFI, QI failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

vii. If QI is a sponsoring entity, QI failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

viii. QI failed to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any account for which QI does not act as a QI;

ix. QI failed to perform a periodic review when required or document the findings of such review in a written report;

x. QI failed to cooperate with the IRS on its compliance review described in section 10.08 of the QI Agreement;

xi. QI failed to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective;

xii. QI failed 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 the QI Agreement;

xiii. QI failed to inform the IRS of any PAI of QI, as described in section 4 of the QI Agreement;

xiv. QI failed to cure a material failure identified in the qualified certification described in Part II.B of Appendix I to the QI Agreement or identified by the IRS;

xv. QI made any fraudulent statement or a misrepresentation of material fact with regard to the QI Agreement to the IRS, a withholding agent, or QI's reviewer;

xvi. The IRS determined that QI's reviewer is not sufficiently independent, as described in the QI Agreement, to adequately perform its review function, and QI failed to arrange for a periodic review conducted by a reviewer approved by the IRS;

xvii. An intermediary with which QI has a PAI agreement was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.04 of the QI Agreement;

xviii. A partnership or trust to which QI applied the agency option was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.06 of the QI Agreement;

xix. If QI is acting as a QDD, after calendar year 2017, QI failed to timely pay a material amount of its QDD tax liability and failed to correct the underpayment and pay the appropriate tax amount; or

xx. Other (please describe).

E. Significant Change in Circumstances

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review has not identified any significant change in circumstances, as described in section 11.04(A), (D), (E), or (H) of the QI Agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:
   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 material change in the applicable know-your-customer rules and procedures.
   c. A significant change in QI's business practices that affects QI's ability to meet its obligations under the QI Agreement.
   d. If QI is acting as a QDD, QI ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status.
   e. Other.
3. Describe any significant changes in circumstances identified in Question 2 (and, if 2.d is selected, include the date on which the QI ceased to qualify as an eligible entity).

F. Chapter 4 Status

Complete the applicable section and check the applicable statement to confirm.

Participating FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has obtained status as a participating FFI and made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one). Note: You may only check N/A if, during the certification period, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI or if your certification under the FFI agreement is not due as of the date of this certification.
   a. Certification of Effective Internal Controls
   b. Qualified Certification
   c. N/A

Registered Deemed-Compliant FFIs

1. For the most recent certification period under the QI Agreement, QI certified as required under Treas. Reg. § 1.1471–5(f)(1)(ii)(B) or Annex II of an applicable Model 2 IGA that it has satisfied the requirements for the deemed-compliant FFI status claimed.

Registered Deemed-Compliant Model 1 IGA FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States (or in the case of a branch of QI, the branch operates in the jurisdiction) and has met the requirements under the IGA to be treated as a deemed-compliant FFI.

PART III. WAIVER OF PERIODIC REVIEW

For Parts B.1 through 6, while the curing of inadequate documentation is permissible, the information reported in this section of the Appendix must not reflect any remediation or curing.

Note: In order to be eligible for a waiver, QI must be able to confirm all of the eligibility requirements in Part A are met.

For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI.

A. Eligibility for Waiver (check each statement to confirm)

1. QI is an FFI that is not also acting as a QDD.
2. QI is not part of a consolidated compliance program.
3. For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed $5 million.
4. QI timely filed its Forms 1042, 1042-S, 945, 1099, and 8966 (as required for chapter 4 purposes or the reporting required under an applicable IGA), as applicable, for all calendar years covered by the certification period.

5. QI made all periodic certifications and reviews required by sections 10.02 and 10.03 of the QI Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI or registered deemed-compliant FFI.
6. QI made the certification of internal controls in Part II.A.

B. Information required (provided for the most recent calendar year within the certification period)
1. The total number of accounts
    a. Total number of direct account holders
        i. Foreign persons
        ii. U.S. exempt recipients
        iii. U.S. non-exempt recipients
        iv. Intermediaries and flow-through entities
    b. Total number of indirect account holders
        i. Foreign persons
        ii. U.S. exempt recipients
        iii. U.S. non-exempt recipients
        iv. Intermediaries and flow-through entities
2. The total number of U.S. account holders that received reportable payments.
3. The total number of non-U.S. account holders that received reportable amounts.
4. The total number of such accounts that have valid documentation.
5. The total number of accounts that have no documentation or invalid documentation.
6. The total number of Forms 1042-S filed by QI.
7. Total of reportable amounts received for non-U.S. accounts.
8. Total of reportable payments received for U.S. accounts.
9. The aggregate amount of tax withheld under chapter 3 and chapter 4 (by QI or QI's withholding agent(s)).
10. The total number of Forms 1099 filed by QI.
11. The aggregate amount of backup withholding under section 3406 by QI or QI's payor(s).

PART IV. PERIODIC REVIEW: QI FACTUAL INFORMATION—To be Completed by All QIs that have not Applied for or Obtained a Waiver. **If QI acts solely as a QDD and has no other QI activities, QI is not required to complete Part IV.B through F.**

A. General Information
1. Did QI use an external reviewer to conduct any portion of its periodic review? Y/N
    a. If yes, provide name(s) of reviewer(s).
2. Did QI use an internal reviewer to conduct any portion of its periodic review? Y/N
    a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to the QI's QI activities.
3. Calendar year reviewed for periodic review.

Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of the QI Agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted or the QI must submit, upon request by the IRS, a Form 872, Consent to Extend the Time to Assess Tax*, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of the QI Agreement.*

B. General Information on Accounts and Review of Accounts

For Parts B through F, while the curing of inadequate documentation is permissible, unless otherwise indicated, the information reported shall be based on the review and not results obtained after curing. For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI. However, do not include accounts for which QI is acting as a QDD or accounts receiving substitute interest payments for which QI has assumed primary withholding responsibility.
1. Did QI assume primary chapters 3 and 4 withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
2. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
3. Total accounts reviewed for periodic review.
4. Did QI use a statistical sampling method in conducting the review of its accounts? Y/N/NA
    a. If yes, was it the safe harbor method under Appendix II to the QI Agreement?
    b. If no, describe the method used.
5. Total accounts reviewed that received reportable amounts.
6. Total accounts reviewed that received withholdable payments that are not reportable amounts.

C. Documentation

1. Total accounts reviewed held by direct account holders.
2. Total accounts reviewed held by indirect account holders.
3. Total accounts reviewed with valid documentation.
4. Total accounts reviewed with invalid documentation or no documentation.
5. Total accounts reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the review.
6. Total accounts reviewed for which treaty benefits were claimed.
7. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
8. Total accounts reviewed held by U.S. non-exempt recipient account holders.
9. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.
10. If QI has not assumed primary Form 1099 reporting and backup withholding responsibility, total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has transmitted Forms W-9 to a withholding agent.
11. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools.
12. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools where QI did not correctly report withholding rate pool information to a withholding agent.
13. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable).
14. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable) for which QI has obtained a valid Form W-9 or, if applicable, self-certification.

D. Withholding

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S.
2. Number of accounts for which amounts were withheld under chapter 3.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S.
4. Number of accounts for which amounts were withheld under chapter 4.
5. The aggregate amount reported as withheld by QI on Forms 1099.
6. Number of accounts for which amounts were backup withheld under section 3406.
7. Additional withholding required under chapter 4 based on results of periodic review.
8. Additional withholding required under chapter 3 based on results of periodic review.
9. Additional backup withholding required under section 3406 based on results of periodic review.
10. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement.
11. Number of partnerships or trusts to which the joint account treatment of section 4.05 of the QI Agreement was applied (if applicable).
    a. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
    b. Total accounts to which joint account treatment applied for which ppropriate documentation was obtained and the appropriate rate of withholding was not applied.
    c. Total accounts to which joint account treatment applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
    d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to an account to which the joint account treatment applied.

E. Reconciliation of Reporting on Payments of Reportable Amounts

1. The aggregate amount reported paid to QI on all Forms 1042-S issued to QI.
2. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a PAI or a partnership or trust to which QI applies the agency option).
3. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pool- U.S. payee pool.
4. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 3 reporting pools (including chapter 3 reporting pools of a PAI or partnership or trust to which QI applies the joint account or agency option).
5. The aggregate amount reported paid by QI on Forms 1042-S to other QIs (excluding QIs that are acting as QDDs), QSLs, and WPs and WTs as a class.
6. The aggregate amount reported paid by QI on Forms 1042-S to QIs that are acting as QDDs.
7. The aggregate amount reported paid by QI on Forms 1042-S to participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are intermediaries or flow-through entities as a class and with respect to their chapter 4 reporting pools (excluding amounts referenced in Questions 5 and 6 directly above).
8. The aggregate amount reported paid by QI on Forms 1042-S to indirect account holders (not included in Question 2 or 7 above and including an account holder of an intermediary or flow through entity reported by QI as made to an unknown recipient on Form 1042-S).
9. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. non-exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.

10. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
11. The aggregate amount paid by QI to its direct account holders (including account holders of any PAI or partner, beneficiary, or owner of a partnership or trust to which QI applies the joint account or agency option) that requested individual Form(s) 1042-S.
12. Total of questions 2 through 11.
13. The amount of any unreconciled variances (if Question 1 minus Question 12 is other than 0).

F. *Reconciliation of Withholding on Reportable Amounts*
1. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI.
2. The aggregate amount reported by QI as amounts it withheld on Forms 1042-S.
3. The aggregate amount reported by QI as amounts it backup withheld on Forms 1099.
4. If QI did not assume primary withholding responsibility and amounts are entered for questions 2 or 3, explain any underwithholding that occurred by the withholding agent.
5. If QI assumed primary withholding responsibility and an amount is entered for question 1, explain the amount withheld by others.
6. The aggregate amount of any collective claims for refund or credit made by QI.

Part V. Qualified Derivatives Dealers

[RESERVED]

Part VI. Substitute Interest

Complete only if a QI that has assumed primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of the QI Agreement).

A. General Information
1. Total number of accounts receiving substitute interest payments.
2. Total number of accounts receiving substitute interest reviewed as part of the periodic review.

B. Documentation
1. Total accounts reviewed with valid documentation.
2. Total accounts reviewed with invalid documentation or no documentation for which documentation or additional documentation was obtained after the initial review.
3. Total accounts reviewed for which treaty benefits were claimed.
4. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
5. Total accounts reviewed held by U.S. non-exempt recipient account holders.
6. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.

C. Withholding
1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S with respect to substitute interest payments.
2. Number of accounts for which amounts were withheld under chapter 3 with respect to substitute interest payments.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S with respect to substitute interest payments.
4. Number of accounts for which amounts were withheld under chapter 4 with respect to substitute interest payments.
5. Additional withholding required under chapter 4 based on results of periodic review.
6. Additional withholding required under chapter 3 based on results of periodic review.
7. Aggregate amount reported as withheld on Forms 1099 on reportable payments (including reportable amounts) subject to backup withholding.
8. Additional backup withholding required based on results of periodic review.
9. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement with respect to substitute interest payments.

D. Reporting
1. Total amount of interest or substitute interest payments received for which QI represented itself as assuming primary withholding responsibility.
2. Aggregate amount of substitute interest payments made.
3. Total amount of payments in Question 2 that were reported on Forms 1099.
4. Total amount of payments in Question 2 that were amounts subject to chapter 4 reporting reported on Form 1042-S.
5. Total amount of payments in Question 2 that were amounts subject to chapter 3 reporting reported on Form 1042-S.
6. Aggregate amount of any claims for credit or refund made by QI with respect to payments of substitute interest.

APPENDIX II

Section I. Background.

To the extent provided in section 10.05 of the QI Agreement, the reviewer is permitted to use a sampling methodology to perform the periodic review. This Appendix includes safe harbor procedures covering basic sample design parameters and methodologies, including sample size, strata allocation, and projection. Generally, sampling should only be used whenever an examination of all accounts within a particular class of accounts would be prohibitive in terms of time and expense. If it is reasonable to examine all accounts in connection with a particular part of the periodic review, sampling techniques should not be used. Except as otherwise provided herein, the terms used in this Appendix are as defined in section 2 of the QI Agreement.

Sampling should only be used if there are more than 60 accounts to review. If any accounts of a QI held by PAIs ("PAI accounts") or accounts of a QI held by partnerships or trusts utilizing the Agency Option ("Agency Accounts") are also included in the QI's review (because the PAI or the partnership or trust did not perform its own compliance review), the PAI or Agency Accounts should be included in the sample of accounts for which QI acts as a QI ("QI accounts") by adding additional strata, replicating the strata prescribed in section II.A.3 of this Appendix, as applicable, that contain only PAI accounts or Agency Accounts. For purposes of the QI's periodic review, a QI account is referred to as a "sample unit" (and collectively as the "sample") with respect to each review. If a population contains 60 or fewer sample units, all sample units for that population must be reviewed.

The sampling methodology employed envisions a documentation review (as prescribed in section 10.05(A) of the QI Agreement) requiring review of all selected sample units, and a review of: (1) withholding rate pool classifications (as prescribed in section 10.05(B) of the QI Agreement), (2) withholding responsibilities (as prescribed in section 10.05(C) of the QI Agreement), and (3) information reporting (as prescribed in section 10.05(D) of the QI Agreement) that requires review of a subset (a "spot check" under section II.B.1 of this Appendix) of the sample units reviewed in the documentation review. See section 10.05 of the QI Agreement.

The statistical sampling methodologies used in this Appendix are not intended to be and cannot be used for any other tax purpose. A QI may use another sampling technique provided it documents its parameters and methodologies for the IRS to review, as described in section 10.05 of the QI Agreement. The standards and principles of Rev. Proc. 2011-42, 2011-37 I.R.B. 318, should be applied to any safe harbor sampling procedures. At the time it reviews the QI's periodic certification, the IRS will determine if a projection of underwithholding identified utilizing a statistical sampling method is required based on that review, along with a review of the QI's compliance report and other relevant information.

A reviewer may request approval to modify the safe harbor methodology or approval of another sampling methodology in order to select more than one sample or to use multistage, cluster, or other sampling methodologies including additional stratifications. To obtain IRS approval, contact the Financial Intermediaries Program in accordance with section 12.06 of the QI Agreement.

The safe harbor in this Appendix applies to all QIs, irrespective of whether the QI also acts as a QDD or not, with a certification period ending December 31, 2017. For a QI that also acts as a QDD, the safe harbor excludes a sample of QDD accounts, which will be added in 2017 and applicable to certifications ending after December 31, 2017.

Section II. Safe Harbor Methodology.

A. DOCUMENTATION REVIEW

1. *Population*.

Sample of QI Accounts. The reviewer selects a random sample of accounts from a portion of the population of all QI accounts. The portion of the population will consist of: (1) all accounts held by U.S. persons (or account holders presumed to be U.S. persons) that received a reportable payment and (2) all accounts held by non-U.S. persons (or account holders presumed to be non-U.S. persons) that received a reportable amount.

2. *Sample Sizes for Documentation Review*.

(a) *Sample Size Calculations*. If PAI accounts or Agency Accounts have been added to the sample of QI accounts because the PAI or Agency Partnership or Trust did not perform its own periodic review, a separate sample size calculation should also be performed for the PAI accounts or the Agency Accounts as if they were part of a separate QI sample. If multiple samples are used, the sample size for the each sample (including for any additional PAI accounts or Agency Accounts) is calculated independently. The sample size for each sample is the lesser of (1) the number of sample units determined using the sample formula in section II.A.2(c) , or (2) 25 percent of the total number of sample units in the population. However, in determining the sample size, the reviewer must adhere to the guidelines for minimum stratum sample sizes in sections II.A.3 and II.A.4 of this Appendix. This may result in a sample size greater than the sample size resulting from using the formula in sections II.A.2(b) and II.A.2(c) of this section. The minimum sample size of any sample shall not be less than 60. A sample size larger than calculated under this section may be used without contacting the Financial Intermediaries Program.

(b) *Sample Size Adjustments*. The variable P "error rate" should be set equal to 5 percent for the sample of QI accounts.

(c) *Sample Formula*. The number of sample units to be reviewed is determined using the sample formula as follows:

$$\textbf{Sample Size} = \frac{\dfrac{t^2 PQ}{d^2}}{1 + \dfrac{1}{N}\left(\dfrac{t^2 PQ}{d^2} - 1\right)}$$

where t= 1.645 (confidence coefficient at 95 percent one-sided)
P= 5 percent (error rate) for the QI account sample
Q= 1-P
d = 2 percent (precision level)
N= total population

3. *Strata*.

Sample of QI Accounts. The reviewer must segregate all of the QI accounts into the following strata. While segregating accounts, steps should be taken to ensure all partnerships and trusts for which the QI has utilized the joint account option are placed into the appropriate direct account stratum (stratum 1) while the underlying partners, beneficiaries, or owners of the partnerships or trusts are excluded from the indirect stratum (stratum 3). Such underlying accounts will be selected for review in accordance with section II.A.7 of this Appendix.

Further substratification by dollar amounts may be used in accordance with section II.A.6 of this Appendix.

(a) A stratum of all accounts held by direct account holders that are not U.S. non-exempt recipients.
(b) A stratum of all accounts that are held by direct account holders that are U.S. non-exempt recipients.
(c) A stratum of all accounts held by indirect account holders.

4. *Allocation of Sample Size to Each Stratum*.

The reviewer must allocate the number of sample units for each sample (including for any PAI accounts or Agency Accounts added to the sample of QI accounts) independently of the other samples. The reviewer must allocate the number of sample units in the sample determined under section II.A.2 of this Appendix to each stratum described in section II.A.3 by multiplying the number of sample units in the sample, as determined under section II.A.2, by a fraction, the numerator of which is the total number of sample units in the stratum and the denominator of which is the total number of sample units in the population. If the allocation of sample units to a stratum using the above method results in a sample size of a stratum that is less than 60 and less than the actual number of sample units in the stratum, the minimum allocation to that stratum is the lesser of (1) 60 sample units or (2) the total number of sample units in the stratum. If there are fewer than 60 sample units in any stratum, all sample units in that stratum must be examined, and the difference between 60 and the number of sample units in the stratum must be reallocated to the remaining strata on a pro rata basis. If there are 60 or more sample units in the stratum, but the allocation, as determined under the fraction above, is less than 60 sample units, the number of sample units to be used in the sample from that stratum is 60.

5. *Random Number Generator*.

The reviewer must select for the documentation review sample units from each stratum identified in section II.A.3 of this Appendix by using a random number generator. Random numbers should be drawn separately for each sample (including for any PAI or Agency Account added to the sample of QI accounts) including the use of separate seeds. Information regarding the random number generator used must be included in the records as required in section III.D of this Appendix. This information must be sufficient to allow the IRS to replicate the random numbers as well as to allow the reviewer to continue the sequences of randomly generated numbers if it is determined additional sample units need to be reviewed. This information must include the name and version of the random number generator, the seed numbers used or generated, specification of any options selected, and the computer equipment on which it was run.

6. *Optional Further Stratification by Dollar Amounts*.

For each sample (including for any PAI or Agency Account added to the sample of QI accounts), the reviewer may further stratify by dollar amounts for that sample without submitting a request for approval when the reviewer is otherwise selecting the sample in accordance with this Appendix. Reportable amounts for foreign recipients and reportable payments for U.S. recipients are to be

considered in the substratification. If the reviewer chooses to substratify under this section, the reviewer must comply with the following rules:
(a) The strata consisting of sample units that have received payments of the highest dollar amounts during the audit year shall not consist of more than 30 accounts. All items in these strata shall be reviewed.
(b) The remaining strata shall be randomly selected to contain approximately equal amounts in each substratum.
(c) The minimum strata size shall not be less than 30 sample units.

7. *Determining Rate of Withholding for Partnerships and Trusts for Which the QI has Applied the Joint Account Option.*

When reviewing documentation of partners, beneficiaries, or owners of a partnership or trust to which a QI has applied the joint account option to determine the rate of withholding the QI should have applied to the partnership or trust, the reviewer may limit the review to the number of partners, beneficiaries, or owners by referring to the table below.

Number of partners, beneficiaries, or owners	Number to be reviewed
0 – 10	All
11 – 14	10
15 – 19	13
20 – 24	16
25 – 29	18
30 – 34	20
35 – 39	21
40 – 49	22
50 – 74	24
75 – 99	26
100 – 199	27
200 – 499	29
500 – 4,999	31
> 4,999	32

B. WITHHOLDING RATE POOL, WITHHOLDING RESPONSIBILITIES, AND RETURN FILING AND INFORMATION REPORTING REVIEWS (SPOT CHECK)

1. *Selection of Accounts for Review.*

For purposes of further reviewing and testing accounts previously reviewed in the documentation review for compliance with the withholding rate pool, withholding responsibilities, and return filing and information reporting subsections of sections 10.05(B) through 10.05(D) of the QI Agreement, the reviewer must review accounts from every stratum in the sample that has failed the documentation review specified under section 10.05(A) of the QI Agreement, taking into account the applicable presumption rules where documentation is missing, invalid, or unreliable.

To the extent the number of sample units listed above from the sample (or in the population, if the reviewer has not used statistical sampling) in any stratum is less than 30, the reviewer must also select for review (in the order selected by the random number generator under section II.A.5 of this Appendix or, if the reviewer has not used statistical sampling, in the order used by the QI for its record keeping) an additional number of sample units drawn from that stratum that equal the difference between 30 and the number of sample units from the sample in that stratum.

When performing portions of the spot check review, if the reviewer determines underwithholding occurred on a payment to an account, all payments to that account must be considered when calculating total underwithholding for that account.

Section III. Additional Requirements Regarding the Use of Sampling

A. DOCUMENTATION OF SAMPLE PLAN

The reviewer should provide in its periodic report the information described in Rev. Proc. 2011-42, Appendix (A), Sampling Plan Standards, and Appendix (B), Sampling Documentation Standards, as applicable. Additionally, originally recorded payment and withholding amounts as well as the amount that should have been withheld and the amount actually withheld as determined by the compliance review should be retained for every sample unit, as well as any other additional information required by this Appendix.

B. DETERMINATION OF UNDERWITHHOLDING

If the reviewer determines that underwithholding has occurred with respect to the sampled accounts, QI shall report and pay, in accordance with the requirements of the QI Agreement, the actual underwithheld tax without regard to projection. The QI will also notify the Financial Intermediaries Program within 30 days of the completion of the review, at the address provided in section 12.06 of the QI Agreement, of any underwithholding identified as a result of the review. The QI must report to the IRS the amount of any underwithholding without regard to any curing of any documentation required to support reduced withholding applied by the QI as well as the amount of any underwithholding following any such curing. Curing for purposes of the preceding sentence is limited to curing performed after the selection of the sample.

C. PROJECTION

At the time it reviews the QI's periodic certification, the IRS will determine if a projection of underwithholding identified from the sample is required based on that review, along with a review of QI's compliance report and other relevant information. If projection is required, the QI or the QI's reviewers will be directed to perform the projection. The IRS will instruct the QI or the QI's reviewers on the use of the formulas in Rev. Proc. 2011-42 to perform the projection.

If the reviewer has determined that overwithholding has occurred with respect to a sample, and the IRS determines projection is appropriate, projection may not be used for the QI to claim a refund. A projection of overwithholding may offset any underwithholding in the sample, provided that QI enters into a closing agreement (Form 906) that QI will not file a claim for refund for any overwithholding that the reviewer has discovered.

The IRS reserves the right to review and adjust any projection. If after reviewing all relevant information, the IRS determines that further action is necessary with respect to determining the amount of underwithholding for the year of review or any other year, the IRS may request that QI have the reviewer review additional sample units or conduct a full review of the entire sample or may determine that it is not appropriate to project an amount of underwithholding.

D. REPORTING OF SAMPLE RESULTS IN THE PERIODIC REVIEW REPORT

At a minimum, the reviewer should describe in the report, the steps taken to construct the sample population and the steps taken to ensure all accounts subject to review were included in the population and subject to sampling under the procedures outlined in this Appendix.

The reviewer should also record the original population and sample statistics separately for each sample (including for any PAI or Agency Account added to the sample of QI accounts) by stratum as follows:

(1) Total number of sample units in the population;
(2) Total number of sample units in the sample;
(3) Total reportable amounts for foreign recipients for the population;
(4) Total reportable payments for U.S. recipients for the population;
(5) Total reportable amounts for foreign recipients for the sample;
(6) Total reportable payments for U.S. recipients for the sample;
(7) Total chapter 3 withholding for the population;
(8) Total backup withholding for the population;
(9) Total chapter 4 withholding for the population;
(10) Total chapter 3 withholding for the sample;
(11) Total backup withholding for the sample; and
(12) Total chapter 4 withholding for the sample.

Additionally, the reviewer should note a reconciliation of amounts included in the sample population to payments and withholding of reportable amounts as detailed in Part IV, sections E (Reconciliations of Reporting on Payments of Reportable Amounts) and F (Reconciliation of Withholding on Reportable Amounts) of Appendix I to the QI Agreement.

Rev. Proc. 2017–16

SECTION 1. PURPOSE

This revenue procedure sets forth 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). 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. The FFI agreement provided in Revenue Procedure 2014-38 (2014-29 I.R.B. 131) (2014 FFI agreement) expires on December 31, 2016. The FFI agreement in this revenue procedure will apply to FFIs with an FFI agreement effective on or after January 1, 2017.

Section 2 of this revenue procedure provides background on the FFI agreement. Section 3 of this revenue procedure provides information on registering as a participating FFI (including a reporting Model 2 FFI) to comply with the terms of the FFI agreement and renewing an FFI agreement on the IRS FATCA registration website. Section 4 of this revenue procedure provides information on the scope of FFIs that are eligible to register to enter into the FFI agreement to be treated as a participating FFI. Section 5 of this revenue procedure provides a highlight of the changes to the 2014 FFI agreement. Section 6 of this revenue procedure provides the FFI agreement. Section 7 of this revenue procedure provides the effective date; section 8 provides the effect on other documents; section 9 describes the collection of information burdens under the Paperwork Reduction Act; and section 10 provides drafting information. This revenue procedure supersedes Revenue Procedure 2014-38 with respect to the requirements of a participating FFI (including a reporting Model 2 FFI) that apply on or after January 1, 2017.

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) of 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 (TD 9610) under chapter 4 in the Federal Register (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (collectively, the 2013 chapter 4 regulations). The 2013 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 §1.1471–4. On January 13, 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-13 (2014-3 I.R.B. 419), which provides the terms of the FFI agreement and substantially incorporates the provisions of §1.1471–4 of the 2013 chapter 4 regulations, as modified by Notice 2013-43 (2013-31 I.R.B. 113) (for example, to reflect revised timelines for FATCA implementation).

On March 6, 2014, temporary regulations (TD 9657) under chapter 4 were published in the Federal Register (79 FR 12812) and corrections to the temporary regulations were published in the Federal Register on July 1, 2014, and November 18, 2014 (79 FR 37175 and 78 FR 68619, respectively). TD 9657 and the corrections thereto are referred to collectively as the 2014 chapter 4 regulations.

On July 14, 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-38, which updated the FFI agreement published in Revenue Procedure 2014-13 consistent with the 2014 chapter 4 regulations and temporary regulations (TD 9658) under chapters 3 and 61 and sections 3406 and 6402 (79 FR 12726). The Treasury Department and the IRS are publishing regulations finalizing certain temporary regulations under chapter 4 (final chapter 4 regulations) and temporary regulations providing additional rules under chapter 4 (temporary chapter 4 regulations) shortly after the publication date of the FFI agreement (T.D. 9809). The Treasury Department and the IRS are also publishing regulations finalizing certain temporary regulations under chapters 3 and 61 and sections 3406 and 6402 and temporary regulations providing rules under chapter 3 shortly after the publication date of the FFI agreement (T.D. 9808). The FFI agreement references and incorporates certain provisions of the aforementioned regulations.

SECTION 3. FATCA REGISTRATION FOR PARTICIPATING FFI (INCLUDING A REPORTING MODEL 2 FFI) STATUS AND RENEWAL OF THE FFI AGREEMENT

.01 *New Applicants*. An FFI may register on Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, via the FATCA registration website available at https://www.irs.gov/fatca to enter into an FFI agreement on behalf of all branches (defined in section 2.07 of the FFI agreement as including a home office), other than branches that are reporting Model 1 FFIs or U.S. branches, so that each of such branches may be treated as a participating FFI and receive a global intermediary identification number (GIIN). An FFI that is eligible to be treated as a reporting Model 2 FFI pursuant to an applicable Model 2 IGA with respect to one or more of its branches (including a home office) may also register on the FATCA registration website on behalf of such 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, so that such branches may be treated as reporting Model 2 FFIs. 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.

.02 *Renewals*. A participating FFI (including a reporting Model 2 FFI) that seeks to renew its FFI agreement must do so through the FATCA registration website. The IRS anticipates that the renewal function for 2017 FFI agreements will be available in May 2017. An FFI that seeks to renew its FFI agreement must renew prior to July 31, 2017, and the renewed FFI agreement shall apply beginning January 1, 2017, provided that the FFI acts in accordance with the FFI agreement provided in section 6 of this revenue procedure beginning on January 1, 2017. An FFI that does not renew its FFI agreement by July 31, 2017, will be treated as having terminated its FFI agreement on January 1, 2017.

SECTION 4. SCOPE OF THE FFI AGREEMENT

An FFI that registers as a participating FFI (other than a reporting Model 2 FFI) must comply with the FFI agreement with respect to all of its branches (including a home office), other than branches that are reporting Model 1 FFIs or that are U.S. branches. In the case of an FFI that registers as a reporting Model 2 FFI with respect to a branch (including a home office) to be treated as a reporting Model 2 FFI, the FFI does not have to agree to comply with the terms of the FFI agreement for its branches that are not reporting Model 2 FFIs. However, if any branches of a reporting Model 2 FFI are not treated as reporting Model 2 FFIs and need to be treated as participating FFIs, the FFI must be able to comply with the FFI agreement with respect to all of its branches (other than branches that are reporting Model 1 FFIs or that are U.S. branches). In general, the FFI agreement does not apply to a reporting Model 1 FFI, unless the reporting Model 1 FFI has registered a branch located outside of a Model 1 IGA jurisdiction to agree to comply with the terms of the FFI agreement and to treat the branch as a participating FFI or reporting Model 2 FFI. In such a case, the terms of the FFI agreement apply to the operations of such branch.

With respect to an FFI that agrees that one or more branches (other than a branch that is a reporting Model 1 FFI or a U.S. branch) will be subject to the requirements of the FFI agreement 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 5. HIGHLIGHTS OF AMENDMENTS TO THE FFI AGREEMENT

Section 6 of this revenue procedure sets forth the FFI agreement applicable to FFIs with agreements effective on or after January 1, 2017. The FFI agreement is updated to be consistent with the final and temporary chapter 4 regulations and to provide further clarification of certain of the requirements in the 2014 FFI agreement. The following provides a highlight of the changes to the 2014 FFI agreement.

Under the final chapter 4 regulations, a U.S. branch of an FFI that is treated as a U.S. person (as defined in §1.1441–1(b)(2)) is not required to be part of an FFI that is a participating FFI or registered deemed-compliant FFI when it is acting as an intermediary. Additionally, a U.S. branch that does not agree to be treated as a U.S. person is not required to be part of an FFI that is a participating FFI or registered deemed-compliant FFI if the branch, when acting as an intermediary, applies the rules in §1.1471–4(d)(2)(iii)(C). Section 1.1471–4(d)(2)(iii)(C) of the final chapter 4 regulations provides that such U.S. branches must report their U.S. accounts and accounts held by owner-documented FFIs under §1.1471–4(d)(3), (d)(5), or (d)(6) and apply the withholding and due diligence rules in §1.1471–4(b) and (c)(2) to all of its accounts as if the U.S. branch were a participating FFI. Although such U.S. branch applies certain rules in §1.1471–4 as if it were a participating FFI, it is unnecessary for the U.S. branch to be registered and to agree to the terms of the FFI agreement. Accordingly, the FFI agreement removes the provisions on U.S. branches that were in the 2014 FFI agreement. See the preamble to the final chapter 4 regulations for a more detailed explanation of the changes to the regulations that apply to U.S. branches.

Section 1.02 of the FFI agreement is revised to clarify that a reporting Model 2 FFI does not need to apply the FFI agreement to all branches of the reporting Model 2 FFI, unless the reporting Model 2 FFI has other branches that need to be covered by the FFI agreement to be treated as participating FFIs (in which case all branches of the FFI other than branches that are reporting Model 1 FFIs or U.S. branches must be registered to agree to the terms of the FFI agreement).

Allowances in the temporary chapter 4 regulations for combined reporting on Forms 1042-S and 8966 following a merger or bulk acquisition of an FFI's accounts are incorporated by cross-reference to such regulations in sections 6.02(B)(2) and 6.05(F) of the FFI agreement. Additionally, rules in the temporary chapter 4 regulations that clarify information reported by participating FFIs that are partnerships on Form 8966 on financial accounts held by their partners are added by cross-reference to such regulations in section 6.02(B) of the FFI agreement. In sections 8.03 and 8.04 of the FFI agreement, the timing of certifications and the scope of IRS inquiries are updated consistent with the final chapter 4 regulations. A coordination rule for reporting on owner-documented FFIs in the final chapter 4 regulations is added in section 9.02(B)(5) of the FFI agreement, and section 9 of the FFI agreement is reorganized for clarity.

Several revisions are made to the FFI agreement to reflect the expiration of transitional periods that were provided for in the 2014 chapter 4 regulations. Sections 1.02, 4.02(C), 6.05(E), 9.01, and 11.01(A) of the FFI agreement are revised, and sections 7.04(A) and 11.01(C) of the FFI agreement are removed, to coordinate with the expiration of limited FFI and limited branch statuses on December 31, 2016. Sections 4.02(C), 6.05(E), 7.04, 11.01(B), and 11.02(B)(6) of the FFI agreement are modified to apply to related entities or branches (as defined in section 2.67 of the FFI agreement) of reporting Model 2 FFIs due to the expiration of the transitional period for limited FFI and limited branch statuses. Section 6.02(B)(2) of the 2014 FFI agreement (relating to reporting of payments on U.S. accounts) is removed to coordinate with the expiration of the transitional reporting rules for 2014 and 2015, and section 6.02(B)(3) of the FFI agreement is renumbered as section 6.02(B)(2) of the FFI agreement.

Section 4.01(A) of the FFI agreement is revised to clarify that a participating FFI is required to withhold on a withholdable payment to a payee that is (or is presumed to be) a passive NFFE that has not identified its substantial U.S. owners or certified that it has no substantial U.S. owners, as required under §1.1471–3(d)(12)(iii), with respect to an offshore obligation that is not an account. In addition, section 6.02(A)(3) of the FFI agreement is revised to remove a reference to a trustee-documented trust subject to a Model 1 IGA because a participating FFI when acting as a trustee of a trustee-documented trust would report such trustee-documented trust to the applicable Model 1 jurisdiction, not the IRS.

Additional revisions are made to the FFI agreement to correct and clarify certain provisions applicable to reporting Model 2 FFIs. In section 2.62 of the FFI agreement, the definition of a preexisting account is modified to include the definition of the term from the Model 2 IGA that is applied by a reporting Model 2 FFI. Under the 2014 FFI agreement, a reporting Model 2 FFI may apply the due diligence procedures in the FFI agreement or the procedures in Annex I of the applicable Model 2 IGA for the two year period after an applicable Model 2 IGA has been signed without being bound to such procedures. Section 3.01 of the FFI agreement is revised to extend such period to two years from the date the applicable Model 2 IGA enters into force (rather than the date of signature), but only with respect to accounts for which the due diligence procedures commenced prior to entry into force of the applicable Model 2 IGA.

The presumption rules for reporting Model 2 FFIs for entity accounts are updated in section 3.04(C) of the FFI agreement. Section 3.04(C) of the 2014 FFI agreement provides that, 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 as a non-consenting U.S. account. Section 3.04(C) of the 2014 FFI agreement also provides that, 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). A comment to the 2014 chapter 4 regulations suggested that an undocumented entity account should be treated as a non-consenting U.S. account and should not be subject to withholding. The Treasury Department and the IRS do not agree with this suggested treatment of undocumented accounts. Under Annex I of the Model 2 IGA, reporting Model 2 FFIs must apply the due diligence procedures described in Annex I to document the status of their account holders under the IGA as U.S. accounts, non-consenting U.S. accounts, or nonparticipating FFIs, and if such procedures are applied, cases in which an entity account is undocumented should not arise. If a reporting Model 2 FFI does not have information in its possession or that is publicly available based on which it can reasonably determine the status of an entity account holder, the FFI must obtain a self-certification to establish the status of such entity (or in some cases, a self-certification to establish the status of the controlling persons of a passive NFFE) consistent with Annex I of the applicable IGA. In cases where a reporting Model 2 FFI acts as an intermediary for a withholdable payment that is allocated to an entity account and is unable to document the account by obtaining such information or self-certification consistent with the procedures described in Annex I of the applicable IGA, the chapter 4 regulations and the FFI agreement provide presumption rules for withholdable payments made to such account (and if an FFI has many such undocumented accounts, the U.S. Competent Authority may determine that the FFI is significantly non-compliant with the requirements of the IGA). In such cases, the reporting Model 2 FFI must apply the presumption rules in §1.1471–3(f) to treat such entity account as a nonparticipating FFI and provide sufficient information to the upstream withholding agent to withhold on the payment (or, if such reporting Model 2 FFI is a WP, WT, or a QI that assumes primary withholding responsibility on the payment for chapters 3 and 4, the WP, WT, or QI must withhold). Treating undocumented entity accounts as accounts of nonparticipating FFIs, and withholding on them accordingly, is consistent with the approach of the IGAs, which contemplate that nonparticipating FFIs remain subject to withholding on withholdable payments received through a reporting Model 2 FFI.

The 2014 FFI agreement provides that a reporting Model 2 FFI may document account holders and payees with documentation that meets the requirements under Annex I of an applicable Model 2 IGA. However, the due diligence procedures in Annex I of the Model 2 IGA permits a reporting Model 2 FFI to rely on certain publicly available information to document certain account holders. Section 3.03(B)(2) of the FFI agreement is revised to cover publicly available information used to document an account, and provides that a reporting Model 2 FFI may rely on such information, to the extent permitted in Annex I of an applicable Model 2 IGA, until the date there is a change in circumstances that affects the account holder's claim of chapter 4 status.

The FFI agreement includes new procedures for final certifications of compliance upon a termination of the FFI agreement. An FFI must provide to the IRS within six months of the date of termination a certification of compliance covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of the FFI agreement) to the date of termination, irrespective of whether a periodic review has been completed for such period. The FFI agreement is also revised to make clear that an FFI's obligations under the FFI agreement with respect to the period covered by the agreement when it was applicable will survive termination of the agreement. This revision is consistent with the QI, WP, and WT agreements, which provide that a termination of a QI, WP, or WT agreement does not affect the entity's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which the QI, WP, or WT agreement was in effect, including the pre-termination portion of the calendar year during which the termination occurred.

If a jurisdiction that is not treated as having an IGA in effect is later treated as having a Model 1 IGA in effect, each participating FFI (other than a participating FFI that is a branch) in such jurisdiction should modify its registration on the FATCA registration website to reflect an updated chapter 4 status consistent with the Model 1 IGA if it chooses to comply with such IGA, and will be treated as having terminated its FFI agreement only with respect to the home office of the FFI that is treated as a reporting Model 1 FFI. A participating FFI that is a branch that is in a jurisdiction that is later treated as having a Model 1 IGA may terminate its FFI agreement and be treated as a reporting Model 1 FFI by applying the provisions of the applicable Model 1 IGA consistent with the terms of the applicable IGA. Section 12.03(C) of the FFI agreement (survival of obligations under the FFI agreement) will apply with respect to the home office or branch. Within 30 days of the change in chapter 4 status, the FFI must provide to each withholding agent either a new withholding certificate or oral or written confirmation (including by e-mail) of the change in the FFI's chapter 4 status. The FFI agreement will continue to apply to any other branches of the reporting Model 1 FFI that are covered by the FFI agreement to be treated as participating FFIs.

SECTION 6. 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 Nonparticipating 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 pursuant to, 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 (as defined in section 2.07 of this agreement, which includes a home office) seeks to be treated as a participating FFI, and has represented that such branches (other than a branch that is a reporting Model 1 FFI or a U.S. branch) 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 all of its branches, other than a branch that is a reporting Model 1 FFI or a U.S. branch, 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, other than a branch that is a reporting Model 1 FFI or a U.S. branch) 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. Notwithstanding the preceding sentences, an FFI that agrees to comply with the terms of this agreement applicable only to branches that are located in a jurisdiction that is treated as having a Model 2 IGA in effect will be treated as a reporting Model 2 FFI with respect to such branches, and such branches will not be subject to withholding under section 1471, even if not all branches of the FFI are able to comply with the terms of the FFI agreement. 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 a participating 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 https://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 that has agreed to comply with the requirements of an FFI agreement with respect to all branches of the FFI, other than a branch that is a reporting Model 1 FFI or a U.S. branch. A participating FFI also includes a reporting Model 2 FFI. See the definition of reporting Model 2 FFI in section 2.69 of this agreement.

.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). With respect to a reporting Model 2 FFI, "preexisting account" means a financial account maintained by the reporting Model 2 FFI as of the determination date (as defined in the applicable Model 2 IGA).

.63 Preexisting obligation. "Preexisting obligation" means an obligation described in §1.1471–1(b)(104).

.64 Qualified intermediary. "Qualified intermediary" or "QI" has the meaning set forth in §1.1471–1(b)(107).

.65 Recalcitrant account holder. "Recalcitrant account holder" has the meaning set forth in §1.1471–1(b)(110).

.66 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.

.67 Related entity or branch. "Related entity or branch" means a related entity or branch of a reporting Model 1 FFI or a reporting Model 2 FFI that is treated as a nonparticipating FFI under Article 3(5) of the Model 2 IGA (or any analogous provision in an applicable Model 2 IGA) or Article 4(5) of the Model 1 IGA (or any analogous provision in an applicable Model 1 IGA) if the requirements in the applicable IGA with respect to such related entity or branch are satisfied.

.68 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.

.69 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.

.70 Reportable payment. "Reportable payment" has the meaning set forth in §1.1471–1(b)(113).

.71 Responsible officer. "Responsible officer" has the meaning set forth in §1.1471–1(b)(116).

.72 Specified insurance company. "Specified insurance company" has the meaning set forth in §1.1471–1(b)(119).

.73 Territory FI. "Territory FI" or "territory financial institution" has the meaning set forth in §1.1471–1(b)(130).

.74 U.S. account. "U.S. account" has the meaning set forth in §1.1471–1(b)(134).

.75 U.S. payor. "U.S. payor" has the meaning set forth in §1.1471–1(b)(140).

.76 U.S. source FDAP income. "U.S. source FDAP income" has the meaning set forth in §1.1471–1(b)(142).

.77 Withholdable payment. "Withholdable payment" has the meaning set forth in §1.1471–1(b)(145).

.78 Withholding agent. "Withholding agent" has the meaning set forth in §1.1471–1(b)(147).

.79 Withholding certificate. "Withholding certificate" has the meaning set forth in §1.1471–1(b)(148).

.80 Withholding foreign partnership (WP). "Withholding foreign partnership" or "WP" has the meaning set forth in §1.1471–1(b)(149).

.81 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. 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 FFI must perform 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 as provided for the two year period following the date that an applicable Model 2 IGA has entered into force, 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 entered into force, 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, and only to the extent due diligence procedures with respect to such accounts commenced prior to entry into force of the applicable Model 2 IGA. Notwithstanding the foregoing, 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 other than an account holder that is receiving a withholdable payment.

.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). As provided in §1.1471–1(b)(104)(i), 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. However, the timeframes provided in §1.1471–4(c)(3) apply to all preexisting obligations held by an entity, including those obligations described in the preceding sentence. 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, 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 (defined in section 2.10 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 or publicly available information used to document the account must meet the requirements described in the applicable Model 2 IGA. In the case of documentation, 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. In the case of publicly available information, the reporting Model 2 FFI may rely on such information until 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 an Entity Account Holder of a Reporting Model 2 FFI. To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, the FFI must determine the status of the account as a U.S. account, non-consenting account, or a nonparticipating FFI by applying such procedures. With respect to a withholdable payment made to an entity account holder of a reporting Model 2 FFI, if the reporting Model 2 FFI is unable to document the entity account consistent with the procedures described in Annex I, the reporting Model 2 FFI must apply the presumption rules described in §1.1471–3(f). With respect to a withholdable payment made to an entity payee that is not an account holder, a reporting Model 2 FFI must apply the presumption rules of §1.1471–3(f). A reporting Model 2 FFI that has undocumented accounts may be determined to be significantly non-compliant with the requirements of an applicable IGA.

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 or a passive NFFE that has not identified its substantial U.S. owners or certified that it has no substantial U.S. owners as required under §1.1471–3(d)(12)(iii) 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, 2019 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 an account holder or a payee other than an account holder that is (or is presumed to be under section 3.04(C) of this agreement) a nonparticipating FFI.

(C) 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, a participating FFI 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(C) and that withholds under section 1471(b) with respect to a withholdable 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 (including an entity account that is opened on or after July 1, 2014, and before January 1, 2015, that the FFI treats as a preexisting obligation under §1.1471–1(b)(104)(i)) 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, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for a payment is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary or as an NWP or NWT 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(C) 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 certificate, 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 holds 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 Related Entities and Branches. A participating FFI is required to withhold on a withholdable payment it makes to a related entity or branch of a reporting Model 1 FFI or reporting Model 2 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 related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI. A participating FFI making a withholdable payment to a reporting Model 1 FFI or reporting Model 2 FFI will have reason to know that a withholdable payment is made to a related entity or branch of such reporting Model 1 FFI or reporting Model 2 FFI when the participating FFI has reason to know under §1.1471–3(e)(3)(i). For the withholding required by a reporting Model 2 FFI making a withholdable payment to its related branch, see section 7.04 of this agreement.

.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 §1.1474–6(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(C) 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(C) 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 dormant 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 nonconsenting 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 section 6.06 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 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 is a flow-through entity or 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 or is a flow-through entity 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 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. A participating FFI may report its U.S. accounts on Form 8966 in the manner described in §1.1471–4(d)(3). If a participating FFI is a partnership, see §1.1471–4(d)(4)(iv)(C) for the payments required to be reported on Form 8966 with respect to an account that is a partner's interest in the partnership. 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 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, passive NFFE that is a 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) 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. If a participating FFI (successor) acquires substantially all of the accounts maintained by another participating FFI (predecessor), or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value, the successor may assume the predecessor's obligations to report the acquired accounts on Form 8966 for the calendar in which the merger or acquisition occurs, provided the requirements in §1.1471–4(d)(2)(ii)(G)(*1*) through (*6*) are satisfied.

.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. With respect to calendar year 2015, however, a participating FFI is not required to report gross proceeds described in §1.1471–4(d)(4)(iv)(B)(3) paid to an account held by a nonparticipating FFI. 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.

(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 may 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(C) 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.

(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 Related Entities and Branches. 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 makes to, or receives as an intermediary on behalf of, a related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a related entity or branch of a reporting Model 1 FFI or reporting Model 2 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 required to report on Forms 1042-S under section 6.05(A) of this agreement may rely on the procedures used for chapter 3 purposes for reporting on Forms 1042-S (even if the participating FFI is not required to report under chapter 3) for combined reporting following a merger or acquisition, provided that all of the requirements for such reporting provided in the Instructions for Form 1042-S are satisfied. 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.

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(C) 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(F) 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.

.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 a 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(C) 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 Related Branch of a Reporting Model 2 FFI. If a reporting Model 2 FFI maintains one or more related branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each related branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.03(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 related 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 branches that are treated as nonparticipating FFIs solely due to the expiration of the transitional rule for limited branches under §1.1471–4(e)(2)(v) will continue to be a reporting Model 2 FFI, 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 the due date of the participating FFI's first certification of compliance required under section 8.03(B) 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 end of 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 on the form and 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 (or the absence of such reporting) for each calendar year, the IRS may request additional information with respect to the information reported, or required to be reported, on such forms, or may request the account statements described in §1.1471–4(d)(4)(v), or confirmation that the FFI has no reporting requirements. The IRS may also request any additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(B) Inquiries of Reporting Model 2 FFIs. In the case of a reporting Model 2 FFI, the IRS or the U.S. Competent Authority, as provided in the applicable Model 2 IGA, 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 IRS or 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 IRS or 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 nonparticipating 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 determine 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.

(A) Beneficial Owner. 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 beneficial 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, in the case of a reporting Model 2 FFI, the branch of the reporting Model 2 FFI receiving the withholdable payment is a related branch, the reporting Model 2 FFI must identify the branch 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.

(B) Intermediary or Flow-Through Entity. 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 that meets the requirements in §1.1471–3(c)(3)(iii) (or acceptable substitute form under §1.1471–3(c)(6)(v)). 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 a payment on behalf of recalcitrant account holders or nonparticipating FFIs and fails to provide sufficient information for its withholding agent to withhold and report on Form 1042-S 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.

(1) In General. In general, unless a participating FFI is permitted to provide on its withholding statement pooled information for the payees described in section 9.02(B)(2) or (3), 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. In addition, the withholding statement must include the information necessary for the withholding agent to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

(2) Chapter 4 Withholding Rate Pools. A participating FFI may include on the withholding statement information 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(C) 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.

(3) Exempt Payee Pool. To the extent a withholdable payment is not subject to reporting by the withholding agent on any of Forms 1042-S, 1099, and 8966, a participating FFI may allocate a portion of a withholdable payment to a group of documented payees (other than nonqualified intermediaries or flow-through entities), provided that the participating FFI provides to the withholding agent for each account holder payee-specific information (including the payee's chapter 4 status (using the applicable status code used for filing Form 1042-S)) and any other information required for purposes of chapter 3 or 61 on the withholding statement, and the participating FFI provides documentation for each account holder in the pool (an "exempt payee pool"). For example, a participating FFI can provide an exempt payee pool for a payment of U.S. source interest on a bank deposit not subject to withholding or reporting under chapter 4 that is allocable to a group of documented foreign account holders (that is, a withholdable payment that is not reported on any of Forms 1042-S, 1099, and 8966) and provide to the withholding agent documentation for each account holder included in the pool.

(4) Allocation of Payment to Payees Subject to Withholding or Reporting under Chapter 3 or 61 but not Chapter 4. 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 chapter 3 or 61, see §§1.1441–1(e)(3)(iv) (nonqualified withholding statement), 1.1441–5(c)(3)(iv) (withholding statement of a foreign simple or grantor trust), 1.1441–5(e)(5)(iv) (withholding statement of a nonwithholding foreign partnership), 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. 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.

(5) Coordination with Reporting on Form 8966. In a case in which a withholdable payment is allocable to an account holder of the participating FFI that is a passive NFFE with one or more substantial U.S. owners, the FFI may certify on the withholding statement that it is reporting, for the year in which the payment is made, the account holder as a U.S. account (excluding a non-consenting U.S. account or an account held by a recalcitrant account holder) as required under this agreement. Further, an FFI withholding statement provided by a participating FFI may include a certification that the FFI is reporting to the IRS for the year of the payment all of the information described in §1.1471–4(d) or §1.1474–1(i)(1) (as applicable) with respect to all specified U.S. persons described in §1.1471–3(d)(6)(iv)(A)(*1*) and (*2*) with respect to an account holder or payee that the FFI has agreed to treat as an owner-documented FFI.

(6) Documentation from Intermediaries and Flow-Through Entities. 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) Optional Procedure for Specific Recipient Reporting for Payees that are Recalcitrant Account Holders or Nonparticipating FFIs. 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, 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 (without regard to extensions) for filing Form 1042 and Form 1042-S, 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 information 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 (without regard to extension) for filing Form 1042-S, 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 (without regard to extensions) of Form 1042 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. With respect to a participating FFI other than a reporting Model 2 FFI, each FFI that is a member of an FFI group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI or registered deemed-compliant FFI. In addition, the participating FFI and each FFI (other than a certified deemed-compliant 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 or registered deemed-compliant FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. 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 related entity or branch will not cease to be a reporting Model 2 FFI, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such related entities and branches.

.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 designated 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 or U.S. financial institution 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 (or instruct the member to 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) With respect to a lead FI of an FFI group that is a group of related entities as defined in an applicable Model 2 IGA, 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 related entity, or a branch of a member of the FFI group ceases to be a related branch, and designate on the FATCA registration website the status for which such member FFI or branch 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, 2018 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.

.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 agreement) 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.

(C) Survival of Obligations. The termination of this agreement shall not affect any of the participating FFI's due diligence, withholding, information reporting, tax return filing, compliance obligations, or other obligations as a participating FFI arising in or with respect to a calendar year (or a portion of a calendar year) for which this agreement was in effect.

.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 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 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 under §1.1471–4(e)(3)(iv); and

(E) A significant change in a participating FFI's business practices or applicable foreign law 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 13.03 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. After receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List. If the FFI's status as a participating FFI is terminated (whether by the FFI or by the IRS), the FFI must send notice of the termination within 30 days after the date of termination to each withholding agent from which it receives payments and each financial institution with which it holds an account to which it has provided a withholding certificate or other documentation pursuant to section 9.01 of this agreement.

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

(1) If a participating FFI seeks to terminate its status as 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 other 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 has full access to the information that relates to such periods that will act as the compliance FI for 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 in accordance with its instructions or as otherwise provided other 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, including any modified terms pursuant to section 12.02 of this agreement.

.10 Final Certification after a Termination of the FFI Agreement. Upon a termination of this agreement, a participating FFI must provide to the IRS the certification of compliance described in section 8.03(B) of this agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of the FFI agreement) to the date of termination (the "short certification period") within six months of the date of termination, irrespective of whether a periodic review has been completed for such period.

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 7. EFFECTIVE DATE

The effective date of this revenue procedure is January 1, 2017.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2014-38 is superseded.

SECTION 9. PAPERWORK REDUCTION ACT

This revenue procedure refers to a collection of information in the following sections of the FFI agreement (set forth in section 6 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 nonprofit 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 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 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 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Kamela Nelan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Nelan at (202) 317-6942 (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 substance 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.

Numerical Finding List[1]

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Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

Finding List of Current Actions on Previously Published Items[1]

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Notices:

2002-1
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2011-86
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2016-29
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Notice 2017-6, 2017-3 I.R.B. *xxx*

Revenue Procedures:

2017-01 I.R.B. *1*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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INTERNAL REVENUE BULLETIN

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