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provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payor receives the taxpayer identification number or certification from the payee or in certain cases, from a broker. Thus, the payor may take up to 30 days to treat the taxpayer identification number or a certificate as having been received.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation.* Pursuant to section 3406(f) no person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of the information (subject to an exception for good faith).

(b) *Permissible use of information*—(1) *In general.* A payor or broker may transmit information on a Form W–9, Form W–8, or other acceptable form relating to withholding to the department, institution, or firm (or to any employee therein) responsible for withholding or processing of taxpayer identification numbers, certifications described in §31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing withholding (as described in §31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, issue an instrument to, or redeem an instrument for, a person solely because the person fails to furnish the person's taxpayer identification number or documentation of foreign status in the manner required in §31.3406(d)–1 and §31.3406(g)–1, respectively. A payor who closes an account of a payee in the calendar year in which the account was opened and during which no taxpayer identification number or evidence of foreign status was provided for that account will be presumed in the absence of evidence to the contrary to have closed the account without violating section 3406(f) even though the payee is subject to backup withholding under section 3406(a)(1)(A). A payor, except as provided in §§31.3406(d)–3 and 31.3406(g)–3, may not prohibit a payee who fails to furnish the payee's taxpayer identification number in the manner required in §31.3406(d)–1 from withdrawing any funds in the account.

(2) *Window transactions.* In the case of a window transaction (as defined in §31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section 3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]