

the issuer of the obligation to determine if such obligation meets the requirements for grandfathered treatment provided under this paragraph (b).

(ii) *Determination of material modification.* For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent is required to treat a modification of an obligation as material only if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation. A withholding agent, other than the issuer of the obligation (or agent of the issuer), has reason to know that a material modification has occurred with respect to an obligation if the withholding agent receives a disclosure from the issuer of the obligation stating that there has been a material modification to such obligation.

(iii) *Record retention.* A withholding agent that relies on a document provided by the issuer of an obligation as described in paragraph (b)(4)(i) or (ii) of this section must retain such document in its records for the applicable period of limitations on assessment and collection with respect to amounts paid under the obligation or from disposition of the obligation.

(c) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§ 1.1471-2(a)(1); 1.1471-2(a)(2)(i), (ii), (iii)(A); 1.1471-2(a)(4)(ii).

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§ 1.1471-3 Identification of payee.

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

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

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) Except as otherwise provided in paragraphs (a)(3)(iv) and (vi) of this section (applicable to territory financial institutions

and certain U.S. branches), a foreign person that is acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if such foreign person is—

(1) An NFFE, unless the NFFE is a QI that has assumed primary withholding responsibility; or

(2) In the case of a payment of U.S. source FDAP income, a participating FFI, deemed-compliant FFI, or restricted distributor, unless the participating FFI, deemed-compliant FFI, or restricted distributor is a QI that has assumed primary withholding responsibility.

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

(ii) *Foreign flow-through entity*—(A) A foreign entity that is a flow-through entity is a payee with respect to a payment only if the flow-through entity is—

(1) An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor receiving a payment of U.S. source FDAP income;

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

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

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

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(I) through (3) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(I) through (3)).

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

(iv) *Territory financial institution.* A withholding agent that makes a withholdable payment to a territory financial institution that is a flow-through entity or is acting as an intermediary or agent with respect to the payment may treat the territory financial institution as the payee only if the territory financial institution has agreed (as evidenced by a withholding certificate described in paragraphs (c)(3)(iii)(A) and (F) of this section) to be treated as a U.S. person with respect to the payment for purposes of both chapters 3 and 4. In all other cases, the withholding agent must treat as the payee the partner, beneficiary, or owner (as applicable) of the territory financial institution that is a flow-through entity (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(I) through (3)) or the per-

son on whose behalf the territory financial institution is acting.

(v) *Disregarded entity or branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under §301.7701-2(c)(2)(i) of this chapter as an entity separate from its single owner must treat the single owner as the payee. Notwithstanding the previous sentence, a withholding agent that makes a payment to a limited branch will be required to treat the payment as being made to a non-participating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of either a participating FFI or registered deemed-compliant FFI is a payment to a U.S. person if the U.S. branch is treated as a U.S. person for purposes of §1.1441-1(b)(2)(iv). In such case the U.S. branch is treated as the payee. A U.S. branch, however, that is treated as a U.S. person under §1.1441-1(b)(2)(iv) is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4. Accordingly, a U.S. branch of either a participating FFI or registered deemed-compliant FFI must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9). See also paragraph (f)(6) for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) and §1.1471-2(a)(2)(iii), for purposes of chapter 4. See §1.1471-4(c)(2)(v) for the rule requiring a U.S. branch to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See §1.1471-4(d) for rules for when a U.S. branch of a participating FFI is required to report as a U.S. person.

(vii) *Foreign branch of a U.S. person.* A payment to a foreign branch of a U.S.

person is generally a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to an FFI if the foreign branch is a QI that is acting as an intermediary with respect to the payment. Therefore, a foreign branch that is a QI will provide the withholding agent with an intermediary withholding certificate and the withholding agent will report the payment as having been made to the foreign branch on a Form 1042-S.

(b) *Determination of payee's status.* Except as otherwise provided in this section, a withholding agent must base its determination of the chapter 4 status of a payee on documentation that the withholding agent can reliably associate with such payment. If a withholding agent makes a payment to a person that is not the payee, the withholding agent will be required to determine the chapter 4 status of each intermediary or flow-through entity in the payment chain until the withholding agent is able to identify the payee. Paragraph (c) of this section provides rules for when a withholding agent can reliably associate a payment with appropriate documentation. Paragraph (d) of this section provides documentation requirements applicable to each class of payees, including exceptions for payments made with respect to offshore obligations or preexisting obligations. Paragraph (e) provides standards for determining when a withholding agent will be considered to have reason to know that a claim of exemption from withholding is unreliable or incorrect. Paragraph (f) of this section provides presumptions that apply for purposes of determining a payee's chapter 4 status in the absence of documentation or if the documentation provided is unreliable or incorrect.

(1) *Determining whether a payment is received by an intermediary.* A withholding agent must treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. A U.S. person's foreign branch that is acting in its capacity as a QI is treated as a foreign intermediary. A withholding

agent that makes a payment with respect to an offshore obligation must also treat the person who receives the payment as an intermediary if the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the type of certificate furnished as determinative of whether the person who receives the payment is an intermediary, unless the withholding agent knows or has reason to know that the certificate is incorrect. For example, a withholding agent that receives a beneficial owner withholding certificate from an FFI may treat the FFI as the beneficial owner unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (for example, sub-account numbers that do not correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the FFI receives a payment in part as a beneficial owner and in part as an intermediary, the withholding agent may request that the FFI furnish two certificates, that is, a beneficial owner certificate for the amounts it receives as a beneficial owner, and an intermediary withholding certificate for the amounts it receives as an intermediary. A withholding agent that cannot reliably associate a payment with documentation sufficient to treat the person who receives the payment as an intermediary or as other than an intermediary pursuant to this paragraph (b)(1) must follow the presumption rules set forth in paragraph (f)(5) of this section to determine whether it must treat the person who receives the payment as an intermediary. A determination that a payment is made to an intermediary under this paragraph (b)(1) is not a determination that the payment can be reliably associated with documentation. See paragraph (c)(2) of this section for rules on reliably associating a payment with documentation if such payment is made through an intermediary.

(2) *Determination of entity type.* A person's entity classification for purposes

of chapter 4 is the person's entity classification for U.S. federal income tax purposes. Thus, for example, an entity that is disregarded as a legal entity in its country of organization or an arrangement that does not have a legal personality and is not a juridical person in the country in which it was organized will be treated as an entity for purposes of chapter 4 if it is an entity for U.S. federal income tax purposes. A withholding agent may rely upon a person's entity classification contained in a valid Form W-8 or W-9 if the withholding agent has no reason to know that the entity classification is incorrect. A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent has reason to know that the entity classification indicated by the person who receives the payment is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is a per se corporation described in § 301.7701-2(b)(8) of this chapter unless the certificate or written statement contains a statement that the person is a grandfathered per se corporation described in § 301.7701-2(b)(8) and that its grandfathered status has not been terminated.

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

(4) *Determination of whether the payee is receiving effectively connected income.* A withholding agent may treat a payment as being made to a payee that is

receiving income that is effectively connected with a trade or business in the United States, or gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States, if it can reliably associate the payment with a valid Form W-8ECI described in paragraph (c)(3)(v) of this section or if it can do so under the presumption rule in paragraph (f)(6) of this section.

(c) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation—(1) In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it has obtained (either directly or through an agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee.

(2) *Reliably associating a payment with documentation if a payment is made*

through an intermediary or flow-through entity that is not the payee—(i) *In general.* A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation if, in addition to the documentation described in paragraph (d) of this section that is relevant to each payee, the withholding agent also has obtained a valid Form W-8IMY, described in paragraph (c)(3)(iii) of this section, from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a valid Form W-8IMY from each intermediary or flow-through entity in that chain). An intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI receiving a payment of U.S. source FDAP income may, in lieu of providing the withholding agent with documentation for each payee, provide pooled allocation information to the extent and in the manner permitted by paragraph (c)(3)(iii)(B)(2) of this section.

(ii) *Exception to entity account documentation rules for an offshore account of an intermediary or flow-through entity.* In the case of an offshore account held by an intermediary or flow-through entity not receiving a payment of U.S. source FDAP income, an FFI may, in lieu of obtaining a withholding certificate, reliably associate such account with valid documentation if the FFI has obtained a written statement certifying as to the account holder's chapter 4 status and stating that the account holder is a flow-through entity or is acting as an intermediary with respect to the payment. In such case, the intermediary or flow-through entity will also be required to provide the withholding statement that generally accompanies the Form W-8IMY, designating the payees and the appropriate amount that should be allocated to each payee, and valid documentation for each payee. If no such withholding statement or underlying documentation is provided, the payment will be treated as made to a nonparticipating FFI.

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

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

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

(B) A certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the person is created, incorporated, or governed (for a person other than an individual);

(C) The entity classification of the person;

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

(E) Such other information required under paragraph (d) of this section applicable to the chapter 4 status selected or otherwise required by the regulations under section 1471 or 1472, or by the form or its accompanying instructions in addition to, or in lieu of, the information described in this paragraph (c)(3)(ii).

(iii) *Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)—(A) In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch is valid for purposes of chapter 4 only if it is furnished on a Form W-

8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

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

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

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

(4) The person's chapter 4 status.

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), or an EIN in the case of a QI, WP, or WT that is not an FFI.

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

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

(8) In the case of a participating FFI or registered deemed-compliant FFI (including a U.S. branch of either such entities that is not treated as a U.S. person) that is an NQI, NWP, NWT, or a QI that makes an election to be withheld upon, an FFI withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (2) of this section.

(9) In the case of a territory financial institution that does not agree to be treated as a U.S. person or a U.S. branch that is not a U.S. branch of a participating FFI, registered deemed-compliant FFI, or nonparticipating FFI, a chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

(10) In the case of an NFFE or certified deemed-compliant FFI that is an NQI, NWP, or NWT and is not the payee, a chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

(11) In the case of a nonparticipating FFI receiving a payment on behalf of one or more exempt beneficial owners, an exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (4) of this section.

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

(B) *Withholding statement*—(1) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the person submitting the withholding certificate and the electronic system must document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided electronically. The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under § 1.1474-1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a payment for which a withholding statement is also required for purposes of chapter 3, may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of

this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(2) *Special requirements for an FFI withholding statement.* An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to U.S. persons, recalcitrant account holders, nonparticipating FFIs, and any other class of payees that is not subject to withholding under chapter 4; or, when payee specific information is provided for purposes of chapter 3, an allocation of the payment to each payee with the payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled basis or on a payee specific basis, the withholding statement must identify each intermediary or flow-through entity that receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(3) *Special requirements for a chapter 4 withholding statement.* A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs.

(4) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner with-

holding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment.

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

(D) *Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.* A QI that assumes primary withholding responsibility under chapter 3 for a payment may not make an

election to be withheld upon, as described in § 1.1471-2(a)(2)(iii), with respect to that payment. Thus, if a QI assumes primary withholding responsibility under chapter 3 with respect to a payment of U.S. source FDAP income, in addition to the other requirements described in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has also indicated on the intermediary withholding certificate that it will assume primary withholding responsibility for that payment for purposes of chapter 4.

(E) *Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.* A QI that does not assume primary withholding responsibility under chapter 3 with respect to a payment of U.S. source FDAP income will be required to make the election to be withheld upon with respect to that payment. Thus, if a QI does not assume primary withholding responsibility under chapter 3, a withholding agent can reliably associate a payment of U.S. source FDAP income with a valid withholding certificate only when, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the withholding certificate indicates that the QI does not assume primary withholding responsibility for that payment for purposes of chapter 4.

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

(G) *Special rules applicable to a withholding certificate of a territory financial*

institution that does not agree to be treated as a U.S. person. A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person for purposes of chapter 4 and the institution provides a withholding statement described in paragraphs (c)(3)(iii)(B)(I) and (3) of this section.

(H) *Special rules applicable to a withholding certificate of a U.S. branch treated as a U.S. person.* A withholding agent may reliably associate a payment with a withholding certificate of a U.S. branch that is treated as a U.S. person for purposes of § 1.1441-1(b)(2)(iv) if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section; the certificate contains the EIN of the U.S. branch; the GIIN of the U.S. branch; and a certification that the U.S. branch is described in paragraph § 1.1441-1(b)(2)(iv) and, accordingly, is required to accept primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4.

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

(v) *Certificate for effectively connected income (Form W-8ECI).* A Form W-8ECI is valid only if, in addition to meeting the requirements in the instructions to the form, it contains the name, address, and TIN of the payee (other than a GIIN), represents that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and are includable in the payee's gross income for the taxable year (or are gross proceeds from the sale of property that can produce income that is effectively connected with

the conduct of a trade or business in the United States), and is signed under penalties of perjury by a person with authority to sign for the payee.

(4) *Requirements for written statements.* A written statement is a statement by the payee, or other person receiving the payment, that provides the person's chapter 4 status and any other information reasonably requested by the withholding agent to fulfill its obligations under chapter 4 with respect to the payment, such as whether the person is receiving the payment as a beneficial owner, intermediary, or flow-through entity. A written statement is valid only if it is provided by a person with respect to an offshore obligation, contains the name of the person, the person's address, the certifications relevant to the person's chapter 4 status (as contained on a withholding certificate), any additional information required with respect to the chapter 4 status claimed as provided under paragraph (d) of this section (for example, a GIIN), and a signed and dated certification that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. A written statement may be submitted in any form that is acceptable to the withholding agent, including a statement made as part of the account opening documentation. A written statement may be used in lieu of a withholding certificate only to the extent provided under § 1.1471-3(d), as applicable to the chapter 4 status claimed.

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

(i) *Foreign status.* Acceptable documentary evidence supporting a claim of foreign status includes the following types of documentation if the documentation contains a permanent residence address for the person named on the documentation (or indicates the country in which a person that is an individual is a resident or citizen or the country in which a person that is an entity has a permanent residence or is incorporated or organized, if the with-

holding agent has otherwise obtained a current permanent residence address for the person)—

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

(B) *Individual government identification.* With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that is typically used for identification purposes;

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

(D) *Entity government documentation.* With respect to an entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality); and

(E) *Third-party credit report.* For a payment made with respect to an offshore obligation to an individual, a third-party credit report that is obtained pursuant to the conditions described in § 1.1471-4(c)(4)(ii).

(ii) *Chapter 4 status.* Acceptable documentary evidence supporting an entity's claim of chapter 4 status includes—

(A) *General documentary evidence.* With respect to an entity other than a participating FFI or registered deemed-compliant FFI, any organizational document (such as articles of incorporation or a trust agreement), financial statement, third-party credit report, letter from a government agency, or statement from a government Web site, agency, or registrar (such as an SEC report) to the extent permitted in paragraphs (d) and (e) of this section;

(B) *Preexisting account documentary evidence.* With respect to a preexisting

obligation of an entity, any standardized industry code or any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) and that was recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized, to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and

(C) *Payee-specific documentary evidence.* A letter from an auditor or attorney with a location in the United States that is not related to the withholding agent or payee and is subject to the authority of a regulatory body that governs the auditor's or attorney's review of the chapter 4 status of the payee, any bankruptcy filing, corporate resolution, copy of a stock market index or other document to the extent permitted in the specific payee documentation requirements in paragraph (d) and (e) of this section.

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

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

or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate or written statement to sign documentation on such person's behalf.

(ii) *Period of validity—(A) General rule.* Except as provided otherwise in paragraphs (c)(6)(ii)(B) and (C), a withholding certificate or written statement will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed. Documentary evidence is generally valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Notwithstanding the validity periods permitted by paragraphs (c)(6)(ii)(A) through (D) of this section, a withholding certificate, written statement, and documentary evidence will cease to be valid if the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect. Therefore, a withholding agent is required to institute procedures to ensure that any change to the customer master files that constitutes a change in circumstances described in paragraph (c)(6)(ii)(E) of this section is identified by the withholding agent. In addition, a withholding agent is required to notify any person providing documentation of the person's obligation to notify the withholding agent of a change in circumstances.

(B) *Indefinite validity.* Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates (or parts of certificates), written statements, or documentary evidence shall remain valid until the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect—

(1) A withholding certificate or written statement provided by a participating FFI or registered deemed-compliant FFI that has furnished a valid GIIN that has been verified by the withholding agent in the manner set forth in paragraph (e)(3) of this section;

(2) A beneficial owner withholding certificate that is provided by an individual claiming foreign status if the withholding certificate is furnished with documentary evidence supporting the individual's claim of foreign status and the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section if the withholding certificate is furnished with documentary evidence establishing the entity's foreign status;

(4) A withholding certificate of an intermediary, flow-through entity, or U.S. branch (not including the withholding certificates, written statements, or documentary evidence of the payees, or withholding statements associated with the withholding certificate);

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

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

(C) *Indefinite validity in the case of certain offshore obligations.* Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates, written statements, and documentary evidence that are provided with respect to offshore obligations shall remain valid until a change in circumstances occurs that makes the information on the documentation incorrect—

(1) A withholding certificate or documentary evidence provided by an individual claiming foreign status if the

withholding agent does not have a current U.S. residence or U.S. mailing address for the payee, does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and has not been provided standing instructions to make a payment in the United States for the obligation;

(2) A withholding certificate, written statement, or documentary evidence provided by one of the following entities if such entity is the payee—

(i) A retirement fund described in §1.1471-6(f) or an entity that is wholly owned by such a retirement fund;

(ii) An excepted nonfinancial group entity described in §1.1471-5(e)(5)(i);

(iii) A section 501(c) entity described in §1.1471-5(e)(v);

(iv) A non-profit organization described in §1.1471-5(e)(5)(vi);

(v) A nonreporting IGA FFI;

(vi) A territory financial institution that agrees to be treated as a U.S. person for chapter 4 purposes;

(vii) An NFFE whose stock is regularly traded as described in §1.1472-1(c)(1)(i);

(viii) An NFFE affiliate described in §1.1472-1(c)(1)(ii);

(ix) An active NFFE that the withholding agent has determined, through its AML due diligence, is engaged in a business other than that of a financial institution, and ongoing monitoring of the account for purposes of AML due diligence does not indicate that the determination is incorrect; and

(x) A sponsored FFI described in §1.1471-5(f)(2)(iii);

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

(4) A withholding statement associated with a withholding certificate of an owner-documented FFI provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed \$1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last day of each subsequent

calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(5) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed \$1,000,000 on the later of December 31, 2013, or the last of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), and the withholding agent does not know or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) *Exception for certificate for effectively connected income.* Notwithstanding paragraphs (c)(6)(ii)(B) to (C) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (c)(6)(ii)(A) of this section.

(E) *Change in circumstances—(1) Defined.* For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change in circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia that is not otherwise cured by documentation on file and that is relevant to the chapter 4 status claimed) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(E) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools con-

tained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(2) *Obligation to notify withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. If an intermediary or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change in circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances.

(3) *Withholding agent's obligation with respect to a change in circumstances.* A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to treat a person as having the same chapter 4 status that it had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became unreliable due to the change in circumstances or the date that a new certificate or new documentation is obtained. A withholding agent may rely

on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

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

(B) *Exception for documentary evidence received with respect to offshore obligations.* A withholding agent that is making a payment with respect to an offshore obligation and is not required to retain copies of documentation reviewed pursuant to its AML due diligence, may, in lieu of retaining the documents as set forth in paragraph (c)(6)(iii)(A), retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any) (for example, a passport number), and whether such documentation contained any U.S. indicia. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation, except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. See also § 1.1471-4(c)(2)(iv) for the record retention requirements of a participating FFI.

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.* A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in § 1.1441-1(e)(4)(iv). See § 1.1441-1(e)(4)(iv) for procedures for the electronic transmission of a withholding certificate that has been completed and signed with a handwritten signature, scanned into an electronic system, and sent to the withholding agent via email. A withholding certificate (including a substitute form), written statement, or other such form prescribed by the IRS may be accepted by facsimile if the withholding agent confirms that the individual or entity furnishing the form is the individual or entity named on the form and the faxed form contains a signature of the person whose name is on the form (or such person's authorized representative) made under penalties of perjury in the manner described in § 1.1441-1(e)(4)(iv)(B)(3)(i). A withholding agent may also accept a copy of documentary evidence electronically, including by facsimile or by email, if the withholding agent confirms that the person furnishing the documentary evidence is the person named on the documentary evidence (or such person's authorized representative) and the copy does not appear to have been altered from its original form.

(v) *Acceptable substitute withholding certificate—(A) In general.* A withholding agent may substitute its own form for an official Form W-8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained

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

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

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

(vi) *Electronic confirmation of TIN on withholding certificate.* The Commissioner may prescribe procedures in a revenue procedure or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

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

(7) *Curing documentation errors.* The provisions in this paragraph (c)(7) describe standards generally applicable to withholding certificates (Forms W-8 or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding the Form W-9 (or a substitute Form W-9), see section 3406 and the regulations thereunder.

(i) *Curing inconsequential errors on a withholding certificate.* A withholding agent may treat a withholding certificate as valid, notwithstanding that the withholding certificate contains an inconsequential error, if the withholding agent has sufficient documentation on file to supplement the information missing from the withholding certificate due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive. For example, a withholding certificate in which the individual submitting the form abbreviated the country of residence may be treated as valid, notwithstanding the abbreviation, if the withholding agent has government issued identification for the person from a country that reasonably matches the abbreviation. On the other hand, an abbreviation for the country of residence that does not reasonably match the country of residence shown on the person's passport is not an inconsequential error. A failure to select an entity type on a withholding certificate is not an inconsequential error, even if the withholding agent has an organization document for the entity that provides sufficient information to determine the person's entity type, if the person was eligible to make an election under § 301.7701-3(c)(1)(i) of this chapter (that is, a check-the-box election). A failure to check a box to make a required certification on the withholding certificate or to provide a country of residence or a country under which treaty benefits are sought is not an inconsequential error. In addition, information on a withholding certificate that contradicts other information contained on the withholding certificate or in the customer master file is not an inconsequential error.

(ii) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will

be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment.

(8) *Documentation furnished on account-by-account basis unless exception provided for sharing documentation within expanded affiliated group.* Except as otherwise provided in this paragraph (c)(8), a withholding agent that is a financial institution with which a customer may open an account must obtain withholding certificates, written statements, Forms W-9, or documentary evidence on an account-by-account basis. Notwithstanding the previous sentence, a withholding agent may rely upon the withholding certificate, written statement, or documentary evidence furnished by a customer under any one or more of the circumstances described in this paragraph (c)(8).

(i) *Single branch systems.* A withholding agent may rely on documentation furnished by a customer for another account if both accounts are held at the same branch location and both accounts are treated as consolidated obligations.

(ii) *Universal account systems.* A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated obligations and the withholding agent and the other branch location or expanded affiliated group member are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the universal account system without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iii) *Shared account systems.* A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated accounts and the withholding agent and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, that is described in this paragraph (c)(8)(iii). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained

in the documentation (including a copy of the documentation itself), and the validity status of the documentation. The information system must also allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the shared account system without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iv) *Document sharing for gross proceeds.* [Reserved]

(9) *Reliance on documentation collected by or certifications provided by other persons—(i) Shared documentation system maintained by an agent.* A withholding agent may rely on documentation collected by an agent (including a fund advisor for mutual funds, hedge funds, or a private equity group) of the withholding agent. The agent may retain the documentation as part of an information system maintained for a single withholding agent or multiple withholding agents provided that under the system, any withholding agent on behalf of which the agent retains documentation may easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and its validity, and must allow such withholding agent to easily transmit data, either directly

into an electronic system or by providing such information to the agent, regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. The agent must have a system in effect to ensure that any information it receives regarding facts that affect the reliability of the documentation or the chapter 4 status assigned to the customer are provided to all withholding agents for which the agent retains the documentation and any chapter 4 status assigned by the agent is amended to incorporate such information. A withholding agent that opts to rely upon the chapter 4 status assigned by the agent without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from a failure of the agent to assign the correct status based upon the available information. See § 1.1474-1(a) for a withholding agent's liability when it relies upon an agent for chapter 4 purposes. This paragraph (c)(9)(i) does not apply to a withholding certificate provided by a QI, a withholding certificate provided by a territory financial institution that elects to be treated as a U.S. person, or any withholding statement, unless the person submitting the form specifically identifies the withholding agents for which the certificates and/or statements are provided.

(ii) *Third-party data providers.* A withholding agent may rely upon documentation collected by a third-party data provider with respect to an entity, subject to the conditions described in this paragraph (c)(9)(ii).

(A) The third-party data provider must have collected documentation that is sufficient to determine the

chapter 4 status of the entity under paragraph (d) of this section.

(B) The third-party data provider must be in the business of providing credit reports or business reports to unrelated customers and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity.

(C) The third-party data provider must notify the entity submitting the documentation that such entity must notify the third-party data provider in the event of a change in circumstances within 30 days of the change in circumstances, and the third-party data provider must be obligated under its contract with the withholding agent to notify the withholding agent if a change in circumstances occurs.

(D) The withholding agent may not rely upon a chapter 4 status provided by a third-party data provider if the withholding agent knows or has reason to know that the chapter 4 status is unreliable or incorrect based on information in the withholding agent's account records, or if the documentation or information provided by the third-party data provider does not support the chapter 4 status claimed.

(E) The withholding agent must be able to submit copies of the documentation received from the third-party data provider upon request to the IRS and will remain liable for any underwithholding that occurs as a result of its reliance on information provided by the third-party data provider if the documentation is invalid or unreliable.

(F) This paragraph (c)(9)(ii) does not apply to a withholding statement or a withholding certificate that contains an election to accept withholding or reporting responsibility (such as one made by a QI, territory financial institution, or U.S. branch) provided by a third-party data provider.

(iii) *Reliance on certification provided by introducing brokers*—(A) A withholding agent may rely on a certification of a broker indicating the broker's determination of a payee's chapter 4 status and indicating that the broker holds valid documentation sufficient to determine the payee's chapter 4 status under paragraph (d) of this

section with respect to any readily tradable instrument as defined in §1.3406(h)-1(d) of this chapter if the conditions in paragraph (c)(9)(iii)(B) of this section are satisfied and the broker is either—

(1) A U.S. person (including a U.S. branch that is treated as a U.S. person) that is acting as the agent of the payee; or

(2) A participating FFI or a reporting Model 1 FFI that is acting as the agent of the payee with respect to an obligation and receiving all payments from the withholding agent with respect to such obligation as an intermediary on behalf of the payee.

(B) The certification from the broker must be in writing or in electronic form and contain all of the information required of a chapter 4 withholding statement described in paragraph (c)(3)(iii)(B)(3). Notwithstanding this paragraph (c)(9)(iii), a withholding agent may not rely upon a certification provided by a broker if it knows or has reason to know that the broker has not obtained valid documentation as represented or the information contained in the certification is otherwise inaccurate. A broker that chooses to provide a certification under this paragraph (c)(9)(iii) will be responsible for applying the rules set forth in the regulations under section 1471 and 1472 to the withholding certificates, written statements, or documentary evidence obtained from the payee and shall be liable for any underwithholding that occurs as a result of the broker's failure to reasonably apply such rules.

(iv) *Reliance on documentation and certifications provided between principals and agents*—(A) *In general*. Subject to the conditions under §1.1474-1(a)(3), a withholding agent is permitted to use an agent to fulfill its chapter 4 obligations and such agent's actions are imputed to the principal. However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under §1.1473-(d) applies. Therefore, the paying agent will have its own obligation to determine the chapter 4 status of the payee and withhold upon the payment if required. Although a paying agent is generally a

withholding agent for purposes of chapter 4, the financial accounts to which it makes payments are not necessarily financial accounts of the paying agent. See the rules under §1.1471-5(b)(5) to determine when a financial institution maintains a financial account. In addition, the status of a payment as made with respect to an offshore obligation or as a preexisting obligation will be determined based on such obligation's status in relation to the principal. Further, the due diligence required with respect to the payment will be determined by the status of the principal and not the paying agent. Consequently, a payment that is made, for example, by a paying agent that is a foreign entity on behalf of a principal that is a U.S. withholding agent will be subject to the due diligence applicable to the principal. See §1.1474-1(a)(3) for rules regarding the reporting obligations of a principal and agent in the case of a payment made by an agent of behalf of a principal.

(B) *Reliance upon certification of the principal*. An agent that makes a payment on behalf of a principal that it may treat, pursuant to paragraph (d) of this section, as a U.S. withholding agent, participating FFI, or reporting Model 1 FFI may rely upon a certification provided by the principal indicating that the principal has obtained valid documentation sufficient to determine the chapter 4 status of the payee and may rely upon the principal's determination as to the payee's chapter 4 status. In such a case, the agent will be permitted to rely upon the certification provided by the principal when determining whether it is required to withhold on the payment and will not be liable for any underwithholding that occurs as a result of the principal's failure to properly determine the chapter 4 status of the payee unless the agent knows or has reason to know the certification provided by the principal is inaccurate.

(C) *Document sharing*. In lieu of obtaining a certification from the principal as described in paragraph (c)(9)(iv)(B) of this section, or when reliance upon such certification is not permitted, an agent that makes a payment on behalf of a principal may rely upon copies of documentation provided

to the principal with respect to the payment. However, in such case, both the principal and the agent are obligated to determine the chapter 4 status of the payee based upon the documentation and ensure that adequate withholding occurs with respect to the payment. While a principal is imputed the knowledge of the agent with respect to the payment, the agent is not imputed the knowledge of the principal.

(D) *Examples—(1) Example 1. Paying agent that does not collect documentation.* A fund, P, that is a participating FFI contracts with a U.S. person, A, to make payments to its account holders with respect to their equity interests in P. P contracts with another agent, B, to obtain documentation sufficient to determine the chapter 4 status of such account holders. Based on the documentation it collects, B determines that none of P's account holders are subject to withholding. P provides a certification to A indicating that it has obtained documentation sufficient to determine the chapter 4 status of P's account holders and that each payee is not subject to withholding under chapter 4. As the actions of B, as P's agent, are attributed to P, P may provide a certification to A indicating that it has determined the chapter 4 status of its payees, even if it is B, and not P, who made the determinations. However, P will be liable for any underwithholding that results from a failure by B to reasonably apply the rules under chapter 4. A is permitted to rely upon the certification provided by P and, accordingly, is not required to withhold on the payments made to P's account holders and would not be liable for any underwithholding that results if the determinations made by B are incorrect unless A had reason to know that chapter 4 status claimed was inaccurate.

(ii) *Example 2. Paying agent that collects documentation.* A fund, P, that is a participating FFI contracts with a U.S. person, A, to make a payment to its account holders on its behalf. P also contracts with A to obtain documentation sufficient to determine the chapter 4 status of P's account holders. Based on the documentation it collects, A determines that none of P's account holders are subject to withholding. As the actions of A, as P's agent, are imputed to P, P will be liable for any underwithholding that results from a failure by A to reasonably apply the rules under chapter 4. P is also required to retain the documentation upon which A relied in determining the chapter 4 status of its account holders. Because A performed the due diligence on behalf of P, A will have reason to know if any of the chapter 4 determinations made based on the documentation received were made incorrectly, and, as a with-

holding agent with respect to the payment, is liable, in addition to P, for any underwithholding that results from an incorrect determination that withholding was not required. This result applies regardless of whether A retains copies of the documentation obtained with respect to P's account holders or receives a certification from P indicating that P has obtained documentation sufficient to determine the chapter 4 status of its account holders and that each payee is not subject to withholding under chapter 4.

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

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

(d) *Documentation requirements to establish payee's chapter 4 status.* Unless the withholding agent knows or has reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) to determine the chapter 4 status of a payee (or other person that receives a payment). Except as otherwise provided in this paragraph (d), a withholding agent is required to obtain a valid withholding certificate or a Form W-9 from a payee in order to treat the payee as having a particular chapter 4 status. Paragraphs (d)(1) through (12) of this section indicate when it is appropriate for a withholding agent to rely upon a written statement, documentary evidence, or other information in lieu of a Form W-8 or W-9. Paragraphs (d)(1) through (12) of this section also prescribe additional documentation requirements that must be met in certain cases in order to treat a payee as having a specific chapter 4 status and specific standards of knowledge that apply to a particular payee, in addition to the general standards of knowledge set forth in paragraph (e) of this section. This paragraph (d) also provides the circumstances in which special documentation rules are permitted with respect to preexisting obligations. A withholding agent may not rely on documentation described in this paragraph (d) if the documentation is not valid or cannot reliably be associated with the

payment pursuant to the requirements of paragraph (c) of this section, or the withholding agent knows or has reason to know that such documentation is incorrect or unreliable as described in paragraphs (d) and (e) of this section. If the chapter 4 status of a payee cannot be determined under this paragraph (d) based on documentation received, a withholding agent must apply the presumption rules in paragraph (f) to determine the chapter 4 status of the payee.

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

(2) *Identification of U.S. persons—(i) In general.* A withholding agent must

treat a payee as a U.S. person if it has a valid Form W-9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 indicates that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W-9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W-9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W-9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person.

(ii) *Reliance on documentary evidence.* A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the presumption rules in § 1.6049-4(c)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under § 1.6049-4(c)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under § 1.1473-1(c).

(iii) *Preexisting obligations.* As an alternative to applying the rules in para-

graphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W-9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W-9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the presumption rules in § 1.6049-4(c)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

(3) *Identification of individuals that are foreign persons—(i) In general.* A withholding agent may treat a payee as an individual that is a foreign person if the withholding agent has a withholding certificate identifying the payee as such a person.

(ii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an individual that is a foreign person if it obtains documentary evidence supporting the payee's claim of status as a foreign individual (as described in paragraph (c)(5)(i)) or if the payee is presumed to be an individual that is a foreign person under the presumption rules set forth in paragraph (f) of this section.

(4) *Identification of participating FFIs and registered deemed-compliant FFIs—(i) In general.* Except as otherwise provided in paragraph (d)(4)(ii) through (iv) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI or registered deemed-compliant FFI and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For payments made prior to January 1, 2016, a participating FFI that is a sponsored

FFI may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

(ii) *Exception for payments made prior to January 1, 2017, with respect to pre-existing obligations (transitional).* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI if the payee has provided the withholding agent (either orally or in writing) its GIIN and indicated whether it is a participating FFI or a registered deemed-compliant FFI, and the withholding agent has verified the GIIN in the manner described in paragraph (e)(3) of this section.

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

(A) The payee provides the withholding agent with—

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

(2) Documentary evidence supporting the payee's claim of foreign status; and

(B) The withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(iv) *Exceptions for payments to reporting Model 1 FFIs.*—(A) For payments made prior to January 1, 2015, a withholding agent may treat the payee as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting

Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(B) For payments made prior to January 1, 2015, with respect to a pre-existing obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if it obtains a pre-FATCA Form W-8 from the payee, and the payee indicates (either orally or in writing) that it is a reporting Model 1 FFI and the country in which it is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat the payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

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

(v) *Reason to know.* Except as otherwise provided in this paragraph (d)(4), a withholding certificate or written statement that identifies the payee as a participating FFI or registered deemed-compliant FFI but does not provide the payee's GIIN or provides a GIIN that does not appear on the current published IRS FFI list within 90 calendar days after the date that the claim is made, will be treated as invalid for purposes of chapter 4, and the payee will be treated as an undocumented payee beginning on the date that the form was submitted until valid documentation or a correct GIIN is provided. A withholding agent that

discovers that the payee's GIIN does not appear on the published IRS FFI list within 90 calendar days after the date the claim is made and, as a result, has not withheld as it would have been required to but for its reliance upon the payee's claim of status as a participating FFI or registered deemed-compliant FFI, will be required to withhold on future payments, if any, made to the payee of the amount of tax that should have been withheld during the 90 day period but for the erroneous classification as to the payee's status. The withholding required pursuant the prior sentence is in addition to any withholding required under §1.1471-2(a) on those payments. A withholding agent that has withheld as required in the previous two sentences may apply reimbursement or set-off procedures, as described in §1.1474-2(a), if it is later determined that the payee appeared on the IRS FFI list as a participating FFI or registered deemed-compliant FFI at the time of payment.

(5) *Identification of certified deemed-compliant FFIs*—(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a category of certified deemed-compliant FFI, other than a sponsored FFI, if the withholding agent has a withholding certificate that identifies the payee as a certified deemed-compliant FFI, and the withholding certificate contains a certification by the payee that it meets the requirements to qualify as the type of certified deemed-compliant FFI identified on the withholding certificate.

(ii) *Sponsored, closely held investment vehicles*—(A) *In general.* A withholding agent may treat a payee as a *sponsored, closely held investment vehicle* described in §1.1471-5(f)(2)(iii) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a sponsored FFI and includes the sponsor's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle de-

scribed in §1.1471-5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee.

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

(6) *Identification of owner-documented FFIs*—(i) *In general.* A withholding agent may treat a payee as an owner-documented FFI if all the following requirements of paragraphs (d)(6)(i)(A) through (F) of this section are met. A withholding agent may not rely upon a withholding certificate to treat a payee as an owner-documented FFI, either in whole or in part, if the withholding certificate does not contain all of the information and associated documentation required by paragraphs (d)(6)(i)(A), (C), and (D) of this section.

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

(B) The withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees pursuant to §1.1471-5(f)(3) to act as a designated withholding agent with respect to the payee;

(C) The payee submits to the withholding agent an FFI owner reporting statement that meets the requirements of paragraph (d)(6)(iv) of this section;

(D) The payee submits to the withholding agent valid documentation meeting the requirements of paragraph (d)(6)(iii) of this section with respect to each person identified on the FFI owner reporting statement;

(E) The withholding agent does not know or have reason to know that the payee (or any other FFI that is an owner of the payee and that the designated withholding agent is treating as an owner-documented FFI) maintains any financial account for a non-participating FFI; and

(F) The withholding agent does not know or have reason to know that the payee is in an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any U.S. specified persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding \$50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) *Auditor's letter substitute.* A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(6)(i)(C) and (D) of this section, provide a letter from an auditor or an attorney that is licensed in the United States or whose firm has a location in the United States, signed no more than four years prior to the date of the payment, that certifies that the firm or representative has reviewed the payee's documentation with respect to all of its owners and debt holders described in paragraph (d)(6)(iv) of this section in accordance with § 1.1471-4(c) and that the payee meets the requirements of § 1.1471-5(f)(3). The payee must also provide an FFI owner reporting statement and a Form W-9, with any applicable waiver, for each specified U.S. person that owns a direct or indirect interest in the payee or that holds debt interests described in paragraph (d)(6)(iv) of this section. A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter is unreliable or incorrect.

(iii) *Documentation for owners and debt holders of payee.* Acceptable documentation for an individual owning an equity in the payee or debt holders de-

scribed in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W-9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3) of this section. Acceptable documentation for a specified U.S. person means a valid Form W-9 (including any necessary waiver). Acceptable documentation for all other persons owning an equity or debt interest in the payee means documentation described in this paragraph (d), applicable to the chapter 4 status claimed by the person. The rules for reliably associating a payment with a withholding certificate or documentary evidence set forth in paragraph (c) of this section, the rules for payee documentation provided in this paragraph (d), and the standards of knowledge set forth in paragraph (e) of this section will apply to documentation submitted by the owners and debt holders by substituting the phrase "owner of the payee" or "debt holder" for "payee."

(iv) *Content of FFI owner reporting statement.* The FFI owner reporting statement provided by an owner-documented FFI must contain the information required by this paragraph (d)(6)(iv) and is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(I) of this section. An FFI that is a partnership, simple trust, or grantor trust may substitute an NWP withholding statement described in § 1.1441-5(c)(3)(iv) or a foreign simple trust or foreign grantor trust withholding statement described in § 1.1441-5(e)(5)(iv) for the FFI owner reporting statement, provided that the NWP withholding certificate or foreign simple trust or foreign grantor trust withholding certificate contains all of the information required in this paragraph (d)(6)(iv). The owner reporting statement will expire on the last day of the third calendar year following the year in which the statement was provided to the withholding agent unless an exception in paragraph (c)(6)(ii) of this section (for example, accounts with a balance or value of \$1,000,000 or less) or this paragraph (d)(6) applies. The owner-documented FFI will also be required to provide the withholding

agent with an updated owner reporting statement if there is a change in circumstances as required under paragraph (c)(6)(ii)(E) of this section.

(A) The FFI owner reporting statement must provide the following information:

(1) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a direct or indirect equity interest in the payee (looking through all entities other than specified U.S. persons).

(2) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a debt interest in the payee (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee), in either such case if the debt interest constitutes a financial account in excess of \$50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEes, exempt beneficial owners, or U.S. persons other than specified U.S. persons).

(3) Any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(B) The information on the FFI owner reporting statement may contain names of equity and debt holders that are prepopulated by the withholding agent based on prior information provided to the withholding agent by the payee if the prepopulated form instructs the payee to amend the statement if the contents are inaccurate, incomplete, or have changed, and the payee confirms in writing that the FFI owner reporting statement submitted to the withholding agent is accurate and complete.

(C) The FFI owner reporting statement may be submitted in any form that meets the requirements of this paragraph, including a form used for purposes of AML due diligence.

(v) *Exception for preexisting obligations (transitional)*. A withholding agent may treat a payment made prior to January 1, 2017, with respect to a preexisting obligation as made to an owner-docu-

mented FFI if the withholding agent has collected, for purposes of satisfying its AML due diligence, documentation with respect to each individual and specified U.S. person that owns a direct or indirect interest in the payee, other than an interest as a creditor, within four years of the date of payment, that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account, the withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee, and the withholding agent does not know, or have reason to know, that any nonparticipating FFI owns an equity interest in the FFI or that any nonparticipating FFI or specified U.S. person owns a debt interest in the FFI constituting a financial account in excess of \$50,000.

(vi) *Exception for offshore obligations*. A withholding agent that is making a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may, in lieu of obtaining a withholding certificate as otherwise required under paragraph (d)(6)(i)(A) of this section, rely upon a written statement that indicates the payee meets the requirements to qualify as an owner-documented FFI under § 1.1471-5(f)(3) and is not acting as an intermediary, if the withholding agent provides a written notice to the payee indicating that the payee is required to update the written statement and all associated documentation (such as the FFI owner reporting statement and underlying documentation) within 30 days of a change in circumstances.

(vii) *Exception for certain offshore obligations of \$1,000,000 or less*—(A) A withholding agent may treat the payment as being made to an owner-documented FFI if—

(1) The payment is made with respect to an offshore obligation that has a balance or value not exceeding \$1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last calendar day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4);

(2) The withholding agent has collected documentation or a certification as to the payee's owners (either for purposes of complying with its AML due diligence or for purposes of satisfying the requirements of this paragraph (d)(6)(vii)) sufficient to identify every individual and specified U.S. person that owns any direct or indirect interest in the payee (other than an interest as a creditor) and determine the chapter 4 status of such person;

(3) The documentation described in paragraph (d)(6)(vii)(A)(2) of this section is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account (and such jurisdiction is a FATF-compliant jurisdiction);

(4) The withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee in accordance with § 1.1474-1(d); and

(5) The withholding agent does not know, or have reason to know, that the payee has any contingent beneficiaries or designated classes with unidentified beneficiaries or owners, that any nonparticipating FFI owns a direct or indirect equity interest in the payee, or that any specified U.S. persons or nonparticipating FFIs own a debt interest constituting a financial account in excess of \$50,000 in the payee (other than specified U.S. persons that the withholding agent has sufficient information to report).

(B) For example, a withholding agent that is required to obtain a certification from the payee identifying all persons owning an interest in the payee as part of its AML due diligence will not be required to obtain an FFI owner reporting statement, provided the other conditions of this paragraph (d)(6)(vii) are met. On the other hand, a withholding agent that has only obtained documentation for persons owning a certain threshold percentage of the payee will be required to obtain additional documentation to satisfy the requirements of this paragraph (d)(6)(vii). A withholding agent that treats a payee as an owner-documented FFI pursuant to this paragraph (d)(6)(vii) will not be required to obtain new documentation, including the FFI

owner reporting statement, until there is a change in circumstances or until the account balance or value exceeds \$1,000,000 on the last day of the calendar year.

(7) *Nonreporting IGA FFIs*—(i) *In general.* A withholding agent may treat a payee as a nonreporting IGA FFI if it has a withholding certificate identifying the payee, or the relevant branch of the payee, as a nonreporting IGA FFI.

(ii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a nonreporting IGA FFI if it can reliably associate the payment with a written statement identifying the payee (or the relevant branch of the payee) as a nonreporting IGA FFI and, with respect to a payment of U.S. source FDAP income, the written statement indicates that the payee is the beneficial owner of the income and is accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat a payee as a nonreporting IGA FFI if the withholding agent has a permanent residence address for the payee, or an address of the relevant branch of the payee, and has obtained a notification, either orally or in writing, indicating that the payee is not acting as an intermediary and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to reasonably determine that the payee is an entity listed as a nonreporting IGA FFI pursuant to a Model 1 or Model 2 IGA.

(8) *Identification of nonparticipating FFIs*—(i) *In general.* A withholding agent is required to treat a payee as a nonparticipating FFI if the withholding agent can reliably associate the payment with a withholding certificate identifying the payee as a nonparticipating FFI, the withholding agent knows or has reason to know that the payee is a nonparticipating

FFI, or the withholding agent is required to treat the payee as a nonparticipating FFI under the presumption rules described in paragraph (f) of this section.

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

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

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(I) and (4) of this section and contains the associated documentation necessary to establish the chapter 4 status of the exempt beneficial owner in accordance with paragraph (d)(9) of this section as if the exempt beneficial owner were the payee.

(9) *Identification of exempt beneficial owners—(i) Identification of foreign governments, governments of U.S. territories, international organizations, and foreign central banks of issue—(A) In general.* A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign bank of central issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and for a government or foreign central bank, indicates that the payee is not engaged in commercial activities with respect to the payments or accounts identified on the form. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288f) and other facts surrounding the transaction reasonably indicate that the international organization is not receiving the payment as an intermediary on behalf of another person. A withholding agent

may treat a payee as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA if it has a withholding certificate that identifies the payee as such an entity and indicates that the payee is the beneficial owner of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if the payee provides a written statement that it is such an entity and the written statement indicates that the payee receives the payment as a beneficial owner (within the meaning provided in §1.1471-6). A written statement provided by a foreign central bank of issue must also state that the foreign central bank of issue does not receive the payment in connection with a commercial activity as provided in §1.1471-6(h).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if—

(1) The payee is generally known to the withholding agent to be, the payee's name and the facts surrounding the payment reasonably indicate, or the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that reasonably indicates that the payee is a foreign government or government of a U.S. territory, a political subdivision of a foreign government or government of a U.S. territory, any wholly owned agency or instrumentality of any one or more of the foregoing, an international organization, a foreign central bank of issue, or the Bank for International Settlements; and

(2) The withholding agent does not know that the payee is not the beneficial owner, within the meaning of §1.1471-6(b) through (e) (disregarding

any presumption that a financial institution is assumed to be an intermediary absent documentation indicating otherwise) or a foreign central bank of issue receiving the payment in connection with a commercial activity.

(ii) *Identification of retirement funds—*

(A) *In general.* A withholding agent may treat a payee as a retirement fund described in § 1.1471-6(f) if it has a withholding certificate in which the payee certifies that it is a retirement fund meeting the requirements of § 1.1471-6(f).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as being made to a retirement fund described in § 1.1471-6(f) if it obtains a written statement in which the payee certifies that it is a retirement fund under the laws of its local jurisdiction meeting the requirements of § 1.1471-6(f) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat the payment as made to a retirement fund if it obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a retirement fund meeting the requirements of § 1.1471-6(f).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a retirement fund described in § 1.1471-6(f) if the withholding agent has general documentary evidence or preexisting account documentary evidence (as described in paragraphs (c)(5)(ii)(A) or (B)) that establishes that the payee is a foreign entity that qualifies as a retirement fund in the country in which the payee is organized.

(iii) *Identification of entities wholly owned by exempt beneficial owners.* A withholding agent may treat a payee as an entity described in § 1.1471-6(g) (referring to certain entities wholly

owned by exempt beneficial owners) if the withholding agent has—

(A) A withholding certificate or, for a payment made with respect to an offshore obligation, a written statement that identifies the payee as an investment entity that is the beneficial owner of the payment;

(B) An owner reporting statement that contains the name, address, TIN (if any), chapter 4 status (identifying the type of exempt beneficial owner), and a description of the type of documentation (Form W-8 or other documentary evidence) provided to the withholding agent for every person that owns a direct equity interest, or a debt interest constituting a financial account, in the payee, and that is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(I) of this section; and

(C) Documentation for every person identified on the owner reporting statement establishing, pursuant to the documentation requirements described in this paragraph (d)(9), that such person is an exempt beneficial owner (without regard to whether the person is a beneficial owner of the payment).

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

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a territory financial institution if the withholding agent receives written notification, whether signed or not, that the payee is the beneficial owner of the payment and the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the

payee was organized or incorporated under the laws of any U.S. territory and is a depository institution, custodial institution, or specified insurance company.

(ii) *Identification of territory financial institutions acting as intermediaries or that are flow-through entities.* A withholding agent may treat a payment as being made to a territory financial institution that is acting as an intermediary or that is a flow-through entity if the withholding agent has an intermediary withholding certificate or flow-through withholding certificate as described in paragraph (c)(3)(iii) of this section that identifies the person who receives the payment as a territory financial institution. A withholding agent that obtains the documentation described in the preceding sentence may treat the territory financial institution as the payee if the withholding certificate contains a certification that the territory financial institution agrees to be treated as a U.S. person with respect to the payment. If the withholding certificate does not contain such a certification, then the withholding agent must treat the person on whose behalf the territory financial institution receives the payment as the payee. See paragraph (c)(3)(iii) of this section for additional documentation that must accompany the withholding certificate of the territory financial institution in this case.

(iii) *Reason to know.* In addition to the general standards of knowledge described in paragraph (e) of this section, a withholding agent will have reason to know that an entity is not a territory financial institution if the withholding agent has: a current residence or mailing address, either in the entity's account files or on documentation provided by the payee, for the entity that is outside the U.S. territory in which the entity claims to be organized; a current telephone number for the payee that has a country code other than the country code for the U.S. territory or has an area code other than the area code(s) of the applicable U.S. territory and no telephone number for the payee in the applicable U.S. territory; or standing instructions for the withholding agent to pay amounts from its account to an address or ac-

count outside the applicable U.S. territory. A withholding agent that has knowledge of a current address, current telephone number, or standing payment instructions for the entity outside of the applicable U.S. territory, may nevertheless treat the entity as a territory financial institution if it obtains documentary evidence that establishes that the entity was organized in the applicable U.S. territory.

(11) *Identification of excepted NFFE's—*
(i) *Identification of excepted nonfinancial group entities—(A) In general.* A withholding agent may treat a payee as an excepted nonfinancial group entity described in § 1.1471-5(e)(5)(i) if the withholding agent has a withholding certificate identifying the payee as such an entity.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial group entity described in § 1.1471-5(e)(5)(i) if the withholding agent obtains:

(1) A written statement in which the payee certifies that it is a foreign entity operating primarily as an excepted nonfinancial group entity for a group that primarily engages in a business other than a financial business described in § 1.1471-5(e)(4) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is an excepted nonfinancial group entity described in § 1.1471-5(e)(5)(i).

(ii) *Identification of excepted nonfinancial start-up companies—(A) In general.* A withholding agent may treat a payee as an excepted nonfinancial start-up company described in § 1.1471-5(e)(5)(ii) if the withholding agent has a withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides a formation date for the payee that is less than

24 months prior to the date of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial start-up company described in § 1.1471-5(e)(5)(ii) if it obtains—

(I) A written statement from the payee in which the payee certifies that it is a foreign entity formed for the purpose of operating a business other than that of a financial institution and provides the entity's formation date which was less than 24 months prior to the date of the payment and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a foreign entity other than a financial institution and has a formation date which is less than 24 months prior to the date of the payment.

(C) *Exception for preexisting offshore obligations.* A withholding agent may treat a payment made with respect to an offshore obligation that is also a preexisting obligation as made to a start-up company described in § 1.1471-5(e)(5)(ii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that provides the withholding agent sufficient information to establish that the payee is, or intends to be, engaged in a business other than as a financial institution and establishes that the payee is a foreign entity that was organized less than 24 months prior to the date of the payment.

(iii) *Identification of excepted nonfinancial entities in liquidation or bankruptcy—(A) In general.* A withholding agent may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent has a withholding certificate that identi-

fies the payee as such an entity and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or bankruptcy.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a copy of a bankruptcy filing, or similar documentation, establishing that the payee is a foreign entity in liquidation or bankruptcy and establishing that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution. A withholding agent may also treat the payee with respect to an offshore obligation as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent obtains a written statement stating that the payee is a foreign entity in the process of liquidating or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution, the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years (unless the withholding agent has obtained additional documentary evidence to support the claim that the entity remains in bankruptcy or liquidation), and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat a payee

as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is not a financial institution and is a foreign entity that entered liquidation or bankruptcy within the three years preceding the date of the payment.

(iv) *Identification of section 501(c) organizations*—(A) *In general.* A withholding agent may treat a payee as a 501(c) organization described in § 1.1471-5(e)(5)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a section 501(c) organization and the payee provides either a certification that the payee has been issued a determination letter by the IRS that is currently in effect concluding that the payee is a section 501(c) organization and providing the date of the letter, or a copy of an opinion from U.S. counsel certifying that the payee is a section 501(c) organization (without regard to whether the payee is a foreign private foundation).

(B) *Reason to know.* A withholding agent must cease to treat a foreign organization's claim that it is a section 501(c) organization as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not a section 501(c) organization or 90 days after the date on which the IRS gives notice to the public that such foreign organization is not a section 501(c) organization. Further, a withholding agent will have reason to know that a payee is not a section 501(c) organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(v) *Identification of non-profit organizations*—(A) *In general.* A withholding agent may treat a payee as a non-profit organization described in § 1.1471-5(e)(5)(vi) if the withholding agent has a withholding certificate that identifies the payee as a non-profit organiza-

(B) *Exception for offshore obligations.* A withholding agent may treat a payment with respect to an offshore obligation as made to a nonprofit organization without obtaining a withholding certificate for the payee if the payee—

(1) Has provided a written statement indicating that the payee is a non-profit organization described in § 1.1471-5(e)(5)(vi) and, with respect to a payment of U.S. source FDAP income, has provided documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) Is required to be reported by the withholding agent as a tax-exempt charitable organization under the information reporting laws of the country in which the account is maintained or is permitted an exemption from withholding due to its status as a tax exempt charitable organization under the laws of the country in which the account is maintained, and the withholding agent obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee was organized for charitable purposes in the same country in which the account is maintained by the withholding agent for the purposes described in § 1.1471-5(e)(5)(vi) and that the payee has no beneficial owners (as that term is used for purposes of that country's AML due diligence).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a nonprofit organization described in § 1.1471-5(e)(5)(vi) if the payee—

(1) Provides a letter of local counsel that certifies that the payee qualifies as a tax-exempt entity in its local jurisdiction; or

(2) Provides a letter issued by the tax authority of the country in which the payee is organized or a statement provided on the Web site of such tax authority indicating that the payee is a tax-exempt entity or charitable organization in the payee's country of organization.

(D) *Reason to know.* A withholding agent will have reason to know that a

payee is not a nonprofit organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(vi) *Identification of NFFEs that are publicly traded corporations.* A withholding agent may treat a payee as an NFFE described in §1.1472-1(c)(1)(i) (applying to an entity the stock of which is regularly traded on an established securities market) if it has a withholding certificate that certifies that the payee is such an entity and provides the name of a securities exchange upon which the payee's stock is regularly traded.

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

(1) A written statement that the payee is a foreign corporation that is not a financial institution, that its stock is regularly traded on an established securities market, the name of one of the exchanges upon which the payee's stock is traded, and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) Any documentation establishing that the payee is listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee is a foreign corporation other than a financial institution.

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an entity described in §1.1472-1(c)(1)(i) if the withholding agent has any documentation confirming that the payee is listed on a public securities exchange or on a stock market index and preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is a foreign corporation other than a financial institution.

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

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

(1) Documentary evidence or other information confirming that the payee is affiliated with an entity listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that indicates that the payee is a foreign corporation other than a financial institution; or

(2) A written statement that the payee is a foreign corporation that is not a financial institution, that the payee is an affiliate of another non-financial entity whose stock is regularly traded on an established securities exchange, providing the name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an NFFE described in §1.1472-1(c)(1)(ii) if the withholding agent has—

(1) Documentation or other information confirming that the payee is affiliated with a corporation that is listed

on a public securities exchange or on a stock market index;

(2) Preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a corporation that is not a financial institution; and

(3) In the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(viii) *Identification of excepted territory NFFEs.* A withholding agent may treat a payee as an excepted territory NFFE described in § 1.1472-1(c)(1)(iii) if it has a withholding certificate that identifies the payee as an NFFE that was organized in a U.S. territory and includes a certification for chapter 4 purposes that all of its owners are bona fide residents of that U.S. territory.

(A) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in § 1.1472-1(c)(1)(iii) if the withholding agent—

(1) Has a pre-FATCA Form W-8 identifying the payee as a foreign entity with a permanent residence address in a U.S. territory; and

(2) Has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section), preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section), or a prospectus establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company; and

(3) Is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and as part of its AML due diligence has not identified any owners of the payee that are not bona fide residents of the U.S. territory in which the payee is organized.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as being made to an excepted territory NFFE described in § 1.1472-1(c)(1)(iii) if it has—

(1) A written statement providing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company, was organized in a U.S. territory, and is wholly owned by one or more bona fide residents of that U.S. territory, and, with respect to a payment of U.S. source FDAP income, the written statement must indicate that the payee is the beneficial owner of the income and be accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(2) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a prospectus establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company, establishing that the payee was organized in a U.S. territory, and establishing that the payee is wholly owned by one or more bona fide residents of that U.S. territory.

(C) *Exception for preexisting offshore obligations of \$1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence

of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence, as provided in paragraph (d)(11)(viii)(B) of this section, or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

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

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

(1) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution; or

(2) A written statement stating that the payee is a foreign entity engaged in an active business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an active NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a foreign entity engaged in a trade or business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Limit on reason to know.* A withholding agent relying on documentary evidence to determine that a payee is an active NFFE will not be required to determine that the payee meets the income and asset thresholds but rather must determine only that the payee is primarily engaged in a business other than that of a financial institution.

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

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

(A) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

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

(ii) *Special rule for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a passive NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Required owner certification for passive NFFEs—(A) In general.* Unless it is a WP or WT, a passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does

not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE to avoid being withheld upon under § 1.1472-1(b).

(B) *Exception for preexisting obligations of \$1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding \$1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding \$1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471-5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules).

(e) *Standards of knowledge—(1) In general.* The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, intermediaries, flow-through entities, and persons that own an interest in an

owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section may also be liable for tax, interest, and penalties. See paragraph (e)(4) in this section for the specific standards of knowledge applicable to a person's specific claims of chapter 4 status.

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

(3) *Participating FFIs and registered deemed-compliant FFIs—(i) In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI and that is required under paragraph (d)(4) of this section to confirm that the branch of the FFI claiming status as a participating FFI or registered-deemed compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 calendar days of the date that the claim is made. The withholding agent will also have reason to know that an FFI is either a limited branch or limited FFI (and, thus, not a participating FFI or registered-deemed compliant FFI) if the withholding agent has a permanent residence address or mailing address for the FFI that is in a country other than the country that in which the FFI claims to be a participating FFI or registered

deemed-compliant FFI or the withholding agent makes a payment to the FFI at an address outside of the country in which the FFI claims to be a participating FFI or registered deemed-compliant FFI. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide a withholding agent with a Form W-8 claiming the chapter 4 status it applied for and writing “applied for” in the box for the GIIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its GIIN and the withholding agent will have 90 calendar days from the date it receives the GIIN to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI’s GIIN was actually removed from the list.

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

(4) *Reason to know.* A withholding agent shall be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding

certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. For accounts opened on or after January 1, 2014, a withholding agent will also be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the payee’s claim of chapter 4 status. In addition to the general standards of knowledge set forth in this paragraph (e) regarding a person’s claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has relied upon documentation that is valid pursuant to paragraph (c) to treat a person as a foreign person, however, will have reason to know that a person’s claim of status as a foreign person is inaccurate only if there are U.S. indicia associated with the person, as described in paragraphs (e)(4)(ii) through (vi) of this section, for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in this paragraph (e) has not been obtained.

(i) *Information conflicting with person’s claim of chapter 4 status.* A withholding certificate, written statement, or documentary evidence is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent’s account files that conflicts with the person’s claim regarding its chapter 4 status. For example, a withholding agent will have reason to know that a person’s claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has a financial statement or credit report that indicates that the person is engaged in business as a financial institution or if documentation submitted by the person indicates that the person is acting as an intermediary with respect to the payment and, thus, is not a beneficial owner for purposes of § 1.1472-1(c)(1). Further, a withholding agent

that has classified the person as engaged in a particular type of business in its own records, such as through a standard industrial classification code, will have reason to know that that the chapter 4 status claimed by the person is unreliable or incorrect if the claim conflicts with the withholding agent's internal classification.

(ii) *Specific standards of knowledge applicable to withholding certificates*—(A) *In general.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent. Paragraphs (e)(4)(ii)(B) through (D) of this section do not apply to a withholding certificate provided by a participating FFI, a registered deemed-compliant FFI, or a sponsored FFI, described in § 1.1471-5(f)(2)(iii), if the certificate contains a GIIN for the FFI or sponsor that the withholding agent verifies on the current published IRS FFI list as provided in paragraph (e)(3) of this section.

(B) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its customer files, the withholding certificate has a current permanent residence address in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the person no-

tifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States. Notwithstanding the foregoing, a withholding agent may rely upon a withholding certificate to establish the person's status as a foreign person despite knowing that the person has any of the U.S. indicia described in this paragraph (e)(4)(ii)(B) if it may do so under the provisions of paragraphs (e)(4)(ii)(B)(1) and (2) of this section.

(1) *Presumption of individual's foreign status.* A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the individual has provided a withholding certificate and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(ii) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), that does not contain a U.S. address; or

(iii) For a payment made with respect to an offshore obligation, the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(2) *Presumption of entity's foreign status.* A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the entity has provided a withholding certificate and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(ii) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth—(1) Accounts opened on or after January 1, 2014.* For accounts opened on or after January 1, 2014, a withholding agent has reason to know that a withholding certificate indicating foreign status provided by an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph (e)(4)(ii) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. place of birth and any other U.S. indicia described in paragraph (e)(4)(ii) of this section, if the withholding agent obtains a non-U.S. passport or other government-issued identification that is evidence of

citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States, or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(2) *Preexisting obligations.* For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding agent, on or after January 1, 2014, reviews documentation that contains a U.S. birth place for an individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section regarding the time period allowed to cure a change in circumstances.

(D) *Standing instructions with respect to offshore obligations.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if it is provided with respect to an offshore obligation and the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may rely upon the withholding certificate to establish the person's status as a foreign person, however, if the person provides documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Specific standard of knowledge applicable to written statements.* A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(i) and (ii) of this section, when determining whether it can rely on a written statement.

(iv) *Specific standard of knowledge applicable to documentary evidence—(A) In*

general. A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent may not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules in paragraph (f) of this section if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's claim, or the documentary evidence lacks information necessary to establish the person's chapter 4 status.

(B) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding agent may not treat documentary evidence provided by a person as valid for purposes of establishing the person's foreign status if the withholding agent does not have a permanent residence address for the person. The previous sentence will not apply, however, to a withholding agent that is making a payment with respect to an offshore obligation. Documentary evidence is unreliable or incorrect to establish a person's status as a foreign person if the withholding agent has classified the person as a U.S. person in its customer files, the withholding agent has a current residence or mailing address (whether or not on the documentation) for the person in the United States, if the person notifies the withholding agent of a new address in the United States, or if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States.

Notwithstanding the foregoing, a withholding agent may rely on documentary evidence to establish the person's status as a foreign person despite knowing that the person has any of the

U.S. indicia described in this paragraph (e)(4)(iv)(B) if it may do so under the provisions of paragraphs (e)(4)(iv)(B)(1) and (2) of this section.

(1) *Presumption of individual's foreign status.* A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the individual has provided documentary evidence and—

(i) The withholding agent has in its possession, or obtains, additional documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), that does not contain a U.S. address, and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(ii) The withholding agent has in its possession, or obtains, a valid beneficial owner withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or, if a mailing address is inside the United States, the direct account holder provides a reasonable written explanation supporting the individual's claim of foreign status); or

(iii) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, a beneficial owner withholding certificate that contains a permanent residence address outside the United States.

(2) *Presumption of entity's foreign status.* A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the entity has provided documentary evidence and—

(i) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country;

(ii) The withholding agent obtains a valid withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States; or

(iii) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth—(1) Accounts opened on or after January 1, 2014.* For accounts opened on or after January 1, 2014, a withholding agent has reason to know that documentary evidence provided to demonstrate an individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the individual or the withholding agent has, as part of its account information, a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph (e)(4)(iv) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. birth place and any other U.S. indicia described in paragraph (e)(4)(iv) of this section, if the withholding agent obtains a withholding certificate from the individual that establishes the payee's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(2) *Preexisting obligations.* For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding

agent, on or after January 1, 2014, reviews documentation that contains a U.S. place of birth for the individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section for rules regarding the time period allowed to cure a change in circumstances.

(D) *Standing Instructions.* With respect to an offshore obligation, documentary evidence is unreliable or incorrect as an indication of a person's status as a foreign person if the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the person as a foreign person, however, if the person provides a withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), to the extent such documentary evidence was not already provided.

(E) *Standards of knowledge applicable to certain types of documentary evidence—(1) Financial statement.* A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold will have reason to know that the chapter 4 status claimed is inaccurate only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in §1.1472-1(c)(1)(iv) and the footnotes

of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has collected the financial statement in the course of its account opening or other procedures.

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

(v) *Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.* A withholding agent may not rely upon a standard industry code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia described in paragraph (e)(4)(v)(A) of this section

associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

(A) *U.S. indicia for entities.* The term *U.S. indicia* when used with respect to an entity includes, for purposes of this paragraph (e)(4)(v) any of the following—

(1) Classification of an account holder as a U.S. resident in the withholding agent's customer files;

(2) A current U.S. residence address or U.S. mailing address;

(3) With respect to an offshore obligation, standing instructions to pay amounts to a U.S. address or an account maintained in the United States;

(4) A current telephone number for the entity in the United States but no telephone number for the entity outside of the United States;

(5) A current telephone number for the entity in the United States in addition to a telephone number for the entity outside of the United States;

(6) A power of attorney or signatory authority granted to a person with a U.S. address; and

(7) An "in-care-of" address or "hold mail" address that is the sole address provided for the entity.

(B) *Documentation required to cure U.S. indicia.* A withholding agent may rely upon a code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia associated with the entity and the withholding agent obtains the relevant documentation described in this paragraph (e)(4)(v)(B).

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

(2) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(1) to (4) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore

obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(3) If there are indicia described in paragraphs (e)(4)(v)(A)(5) through (7) of this section associated with the entity, the withholding agent may treat the entity as a foreign person if the withholding agent obtains a withholding certificate or one form of documentary evidence, described in paragraph (c)(5) of this section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(vi) *Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities—*
(A) *In general.* A withholding agent that receives documentation from a payee through an intermediary or flow-through entity is required to review all documentation obtained with respect to the payee and all intermediaries and/or flow-through entities in the chain of payment, applying the standards of knowledge set forth in paragraph (e) of this section. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (e)(4)(vi)(A)(1) and (2) of this section.

(1) The withholding agent is required to review the withholding statement or owner reporting statement provided and may not rely on information in the statement to the extent the information does not support the claims made regarding the chapter 4 status of the person. For this purpose, a withholding agent may not treat a person as a for-

foreign person if an address in the United States is provided for such person unless the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(2) The withholding agent must review each withholding certificate and written statement in accordance with paragraph (e)(4)(i) through (iii) of this section and all documentary evidence in accordance with paragraph (e)(4)(i) and (iv) of this section, and must verify that the information contained on the withholding certificate, written statement, and documentary evidence is consistent with the information on the withholding statement or owner reporting statement. If there is a discrepancy between the withholding certificate, written statement, or documentary evidence and the withholding statement or owner reporting statement, the withholding agent may choose to rely on the withholding certificate, written statement, or documentary evidence provided such documentation is valid and the intermediary or flow-through entity does not indicate that the documentation is unreliable or inaccurate, or may apply the presumption rules set forth in paragraph (f) of this section. If the withholding agent chooses to rely upon the withholding certificate, written statement, or documentary evidence, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the documentation is unreliable or inaccurate.

(B) *Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.* A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered

deemed-compliant FFI in the withholding statement unless the withholding agent has information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records conflicts with the chapter 4 status claimed, the withholding agent will have reason to know that the chapter 4 status claimed is inaccurate. A withholding agent is not, however, required to verify information contained in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapter 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section. Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE will have reason to know that the claim is inaccurate if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section has been obtained and provides details of such documentation, such as the type of

documentation and an identification number of the person contained on the document.

(vii) *Limits on reason to know—(A) Scope of review for preexisting obligations of entities.* For purposes of determining whether a withholding agent that makes a payment with respect to a preexisting obligation to an entity has reason to know that the chapter 4 status applied to the entity is unreliable or incorrect, the withholding agent is only required to review information contradicting the chapter 4 status claimed if such information is contained in the current customer master file, the most recent withholding certificate, written statement, and documentary evidence for the person, the most recent account opening contract, the most recent documentation obtained by the withholding agent for purposes of AML due diligence or for other regulatory purposes, any power of attorney or signature authority forms currently in effect, and any standing instructions to pay amounts that is currently in effect.

(B) *Reason to know there is a U.S. telephone number associated with a preexisting obligation.* For payments made with respect to a preexisting obligation, a withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether the payee (or other person receiving the payment) has a current telephone number in the United States, may rely upon a search of its electronically searchable information associated with such person. However, the withholding agent may only rely upon the electronic search described in the previous sentence if the electronic search produces at least one current phone number for the person. If the electronic search does not produce a telephone number for the person, the withholding agent will be required, by January 1, 2017, to search the files described in paragraph (e)(4)(vii)(A) of this section to locate a current telephone number for the payee.

(C) *Reason to know there are U.S. indicia associated with preexisting offshore obligations.* For payments made outside of the United States with respect to an

offshore obligation that is also a pre-existing obligation and with respect to a withholding agent that had not already documented the payee for purposes of chapter 3 or 61, the withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether there are U.S. indicia associated with the payee (or other person who receives the payment), may instead rely upon a search of its electronically searchable information associated with such person. A withholding agent that relies upon an electronic search pursuant to this paragraph (e)(4)(vii)(C) must also review for U.S. indicia any documentation upon which the withholding agent relies to determine the chapter 4 status of the person and any documentation that the withholding agent had been relying upon to determine the residency or citizenship of the person.

(D) *Limits on reason to know for multiple obligations belonging to a single person.* A withholding agent that maintains multiple obligations for a single person will have reason to know that a chapter 4 status assigned to the person is inaccurate based on information contained in the customer files for another obligation held by the person only to the extent that—

(1) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the customer information and payment information for the obligations; or

(2) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to paragraph (c)(8) of this section or for purposes of treating one or more accounts as pre-existing obligations.

(viii) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting a claim of foreign status for an individual means a written statement prepared by the individual (or the individual's completion of a checklist provided by the withholding agent), stating that the individual meets one of the requirements of paragraphs (e)(4)(viii)(A) through (D).

(A) The individual certifies that he or she—

(1) Is a student at a U.S. educational institution and holds the appropriate visa;

(2) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(3) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

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

(B) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in §301.7701(b)-1(c) of this chapter (for example, a written statement indicating the number of days present in the United States during the 3-year period that includes the current year);

(C) The individual certifies that he or she meets the closer connection exception described in §301.7701(b)-2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(D) With respect to a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

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

(6) *Additional guidance.* The IRS may prescribe other circumstances for

which a withholding certificate or documentary evidence to establish a payee's chapter 4 status is unreliable or incorrect in addition to the circumstances described in this paragraph (e).

(f) *Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation*—(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) a payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a participating FFI or a nonparticipating FFI). See paragraph (f)(9) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity*—(i) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence, as described in paragraph (c)(5) of this section, but cannot determine a person's status as an individual or an entity from the documentary evidence, must presume that the person is an individual if the person appears to be an individual (for example, based on the person's name or information in the customer file). If the person does not appear to be an individual, then the person shall be presumed to be an entity. In the absence of reliable documentation, a withholding agent must treat a person that is presumed to be an entity as a trust or estate if the person appears to be a trust or estate (for example, based on the person's name or information in the customer file). In addition, a withholding agent must treat a person that is presumed to be a trust, or a person that is known to be a trust but for which the withholding agent cannot determine the type of trust, as a grantor trust if the with-

holding agent knows that the settlor of the trust is a U.S. person, and otherwise as a simple trust. In the absence of reliable indications that the entity is a trust or estate, the withholding agent must presume the person is a corporation if it can be treated as such under § 1.6049-4(c)(1)(ii)(A)(1). If the withholding agent cannot treat the person as a corporation under § 1.6049-4(c)(1)(ii)(A)(1), then the person must be presumed to be a partnership. See paragraph (a) of this section to determine, based upon the person's presumed entity type, whether the person is treated as a payee.

(ii) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in paragraph (d) of this section, with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume that the entity is a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. However, a withholding agent may not treat a person that is known or presumed to be a foreign corporation as a beneficial owner if the withholding agent knows, or has reason to know, that the person is not the beneficial owner with respect to the payment. For this purpose, a withholding agent will have reason to know that the person is not a beneficial owner if the documentary evidence indicates that the person is a bank, broker, intermediary, custodian, or other agent. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides written notification, regardless of whether such notification is signed, that indicates the person is the beneficial owner of the payment.

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

payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, will be presumed to be made to a specified U.S. person unless the withholding agent can apply the presumption rules of § 1.6049-4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person or the person's name reasonably indicates that the person is a bank (for example because it contains the word "Bank" or a foreign equivalent).

(i) *Payments to entities with indicia of foreign status.* If a withholding agent cannot reliably associate a payment with valid documentation sufficient to determine the person's status as a U.S. person or foreign person and the person is presumed to be an entity, the person is presumed to be a foreign person and not a U.S. person—

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

(B) If the withholding agent's communications with the person are mailed to an address in a foreign country;

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

(D) If the name of the person indicates that the entity is of a type that is on the per se list of foreign corporations contained in § 301.7701-2(b)(8)(i) of this chapter (other than a name which contains the designation "corporation" or "company").

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

(iii) *Payments with respect to offshore obligations.* A payment to an individual or an entity is presumed to be made to a foreign person if the payment is made outside of the United States with respect to an offshore obligation and the withholding agent does not know that the person is a U.S. person.

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

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

(6) *Presumption of effectively connected income for payments to certain U.S. branches.* A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee and the payment is effectively connected with the conduct of a trade or business in the United States if the withholding agent has

both an EIN for the branch and a valid GIIN for the home office establishing that the U.S. branch is a branch of a participating FFI or registered deemed-compliant FFI. A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

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

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

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

(9) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(i) *In general*. Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in this paragraph (f) with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See § 1.1474-1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

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

(g) *Effective/applicability date*. This section generally applies on January

28, 2013. For other dates of applicability, see §§1.1471-3(d)(1); 1.1471-3(d)(4)(i), (ii), and (iv); 1.1471-3(d)(6)(v); 1.1471-3(d)(11)(viii)(A); 1.1471-3(d)(12)(iii)(B); 1.1471-3(e)(3)(ii); and 1.1471-3(e)(4)(vii)(B).

[T.D. 9610, 78 FR 5916, Jan. 28, 2013]

§ 1.1471-4 FFI agreement.

(a) *In general.* An FFI agreement will be in effect in accordance with section 1471(b) if an FFI registers with the IRS pursuant to procedures prescribed by the IRS and agrees to comply with the terms of an FFI agreement. The FFI agreement will incorporate the requirements set forth in this section, any modifications set forth in an applicable Model 2 IGA, and any provisions applicable to a reporting Model 1 FFI.

(1) *Withholding.* A participating FFI is required to deduct and withhold tax with respect to payments made to recalcitrant account holders and nonparticipating FFIs to the extent required under paragraph (b) of this section. A participating FFI that is prohibited by foreign law from withholding as required under paragraph (b) of this section with respect to an account must close such account within a reasonable period of time or must otherwise block or transfer such account as described in paragraph (i) of this section.

(2) *Identification and documentation of account holders.* A participating FFI is required to obtain such information regarding each holder of each account maintained by the participating FFI to determine whether each account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI in accordance with the due diligence procedures for identifying and documenting account holders described in paragraph (c) of this section.

(3) *Reporting.* A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in §1.1474-1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders

and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in §1.1474-1(d)(4)(iii)(C)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) *Expanded affiliated group.* Except as otherwise provided in Model 1 IGA or Model 2 IGA, in order for any FFI that is a member of an expanded affiliated group to be a participating FFI, each FFI that is a member of the expanded affiliated group must be a participating FFI or registered deemed-compliant FFI as described in paragraph (e) of this section. For a limited period described in paragraph (e)(2) or (e)(3) of this section, however, a branch of an FFI or an FFI that is a member of an expanded affiliated group and is unable under foreign law to satisfy the requirements of this section may instead obtain status as a limited branch of a participating FFI or limited FFI if the branch or FFI meets the requirements set forth in paragraph (e)(2) or (e)(3) of this section (as applicable).

(5) *Verification.* A participating FFI is required to adopt a compliance program as described in paragraph (f) of this section under the authority of the responsible officer, who will be required to certify periodically to the IRS on behalf of the FFI regarding the participating FFI's compliance with the requirements of the FFI agreement. If the IRS identifies concerns about the participating FFI's compliance, the IRS may request additional information to verify compliance with the requirements of the FFI agreement as described in paragraph (f)(4) of this section.

(6) *Event of default.* A participating FFI is required to cure an event of default with respect to the FFI agreement as defined in paragraph (g) of this section. Upon the occurrence of an event of default, the IRS will deliver to a participating FFI a notice of default and will allow the FFI an opportunity