

respect to payments subject to withholding under paragraph (b) of this section, the participating FFI (or a branch thereof) must obtain the authorization described in this paragraph (i)(3)(i) from each account holder or payee receiving such payments to either withhold, close the account or terminate the obligation, or sell all of the assets in the account that produce (or could produce) withholdable payments. If the participating FFI does not receive such authorization from the account holder or payee within a reasonable period of time, the participating FFI must block or transfer such accounts or obligations as described in paragraph (i)(3)(ii) of this section.

(ii) *Block or transfer accounts or obligations.* If the participating FFI does not receive the authorization described in paragraph (i)(3)(i) of this section from the account holder or payee within a reasonable period of time and is prohibited by law from closing accounts or terminating obligations with account holders or payees as described in paragraph (i)(3)(i) of this section, the participating FFI must either block or transfer such accounts or obligations prior to the date on which the participating FFI would otherwise be required to withhold under paragraph (b) of this section. See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked. A transfer of an account or obligation must be made to a branch of the FFI that may so withhold or to a participating FFI or reporting Model 1 FFI.

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§ 1.1471-4(b)(1), (4); 1.1471-4(d)(7); 1.1471-4(e)(2)(v); 1.1471-4(e)(3)(iv).

[T.D. 9610, 78 FR 5942, Jan. 28, 2013]

**§ 1.1471-5 Definitions applicable to section 1471.**

(a) *U.S. accounts*—(1) *In general.* This paragraph (a) defines the term *U.S. account* and describes when a person is treated as the holder of a financial account (account holder). This paragraph also provides rules for determining when an exception to U.S. account status applies for certain depository accounts, including account aggregation

requirements relevant to applying the exception.

(2) *Definition of U.S. account.* Subject to the exception described in paragraph (a)(4)(i) of this section, a U.S. account is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities. For the definition of the term financial account, see paragraph (b) of this section. For the definition of the term specified U.S. person, see § 1.1473-1(c). For the definition of the term U.S. owned foreign entity, see paragraph (c) of this section. For reporting requirements of participating FFIs with respect to U.S. accounts, see § 1.1471-4(d).

(3) *Account holder*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the *account holder* is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraphs (a)(3)(ii) and (iii) of this section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701-2(c)(2)(i) of this chapter, the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471-6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

(ii) *Grantor trust.* A trust is not treated as an account holder if a person is treated as the owner of the entire trust under sections 671 through 679. In that case, the account is held by the person

that is treated as the owner of the trust under such sections. In the case of a person that is treated as the owner of a portion of the trust under sections 671 through 679—

(A) If such person is treated as owning all the assets in the account under sections 671 through 679, the account is treated as held by such person;

(B) If such person is treated as owning a portion of the account or the assets in the account under sections 671 through 679, the account is treated as held by both such person and the trust; and

(C) If such person is not treated as owning any portion of the account or any of the assets in the account under sections 671 through 679, the account is treated as held by the trust.

(iii) *Financial accounts held by agents that are not financial institutions.* A person, other than a financial institution, that holds a financial account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as an account holder with respect to such account for purposes of this section. Instead, such other person is treated as the account holder.

(iv) *Jointly held accounts.* With respect to a jointly held account, each joint holder is treated as an account holder for purposes of determining whether the account is a U.S. account. Thus, an account is a U.S. account if any of the account holders is a specified U.S. person or a U.S. owned foreign entity and the account is not otherwise excepted from U.S. account status under paragraph (a)(4) of this section. When more than one U.S. person is a joint holder, each U.S. person will be treated as an account holder and will be attributed the entire balance of the jointly held account, including for purposes of applying the aggregation rules set forth in paragraph (b)(4)(iii) of this section.

(v) *Account holder for insurance and annuity contracts.* An insurance or annuity contract is held by each person that is entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or change a beneficiary under the contract. If no person can access the con-

tract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

(vi) *Examples.* The following examples illustrate the provisions of paragraph (a)(3) of this section:

*Example 1. Account held by agent.* F, a non-resident alien, holds a power of attorney from U, a specified U.S. person, that authorizes F to open, hold, and make deposits and withdrawals with respect to a depository account on behalf of U. The balance of the account for the calendar year is \$100,000. F is listed as the holder of the depository account at a participating FFI, but because F holds the account as an agent for the benefit of U, F is not ultimately entitled to the funds in the account. Because the depository account is treated as held by U, a specified U.S. person, the account is a U.S. account.

*Example 2. Jointly held accounts.* U, a specified U.S. person, holds a depository account in a participating FFI. The balance of the account for the calendar year is \$100,000. The account is jointly held with A, an individual who is a nonresident alien. Because one of the joint holders is a specified U.S. person, the account is a U.S. account.

*Example 3. Jointly held accounts.* U and Q, both specified U.S. persons, hold a depository account in a participating FFI. The balance of the account for the calendar year is \$100,000. The account is a U.S. account and both U and Q are treated as holders of the account.

(4) *Exceptions to U.S. account status—*  
 (i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this paragraph (a)(4)(i), the term U.S. account shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed \$50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iv) and (b)(4) of this section.

(ii) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraph (a)(4)(i) of this section by reporting all U.S. accounts, including those accounts that would otherwise meet the conditions of the exception.

(iii) *Example. Aggregation rules for exception to U.S. account status for certain depository accounts.* In Year 1, a U.S. resident individual, U, holds a depository account with CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is \$35,000. In Year 1, U also holds a custodial account with CB's brokerage business. The custodial account has a \$45,000 balance as of the end of Year 1. CB's retail banking and brokerage businesses share computerized information management systems that associate U's depository account and U's custodial account with U and with one another within the meaning of paragraph (b)(4)(iii)(A) of this section. For purposes of applying the \$50,000 threshold described in paragraph (a)(4)(i) of this section, however, a depository account is aggregated only with other depository accounts. Therefore, U's depository account is eligible for the paragraph (a)(4)(i) exception to U.S. account status because the balance of the depository account does not exceed \$50,000.

(b) *Financial accounts*—(1) *In general.* Except as otherwise provided in this paragraph (b), the term *financial account* means—

(i) *Depository account.* Any depository account (as defined in paragraph (b)(3)(i) of this section) maintained by a financial institution;

(ii) *Custodial account.* Any custodial account (as defined in paragraph (b)(3)(ii) of this section) maintained by a financial institution;

(iii) *Equity or debt interest*—(A) *Equity or debt interests in an investment entity.* Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an investment entity described in paragraph (e)(4)(i)(B) or (C) of this section (including an entity that is also a depository institution, custodial institution, insurance company, or investment entity described in paragraph (e)(4)(i)(A) of this section);

(B) *Certain equity or debt interests in a holding company or treasury center.* Any equity or debt interest (other than interests regularly traded on an established securities market under para-

graph (e)(3)(iv) of this section) in a holding company or treasury center described in paragraph (e)(1)(v) of this section if—

(1) The expanded affiliated group of which the entity is a member includes one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs and the income derived by such investment entities or passive NFFEs is 50 percent or more of the aggregate income earned by the expanded affiliated group;

(2) The redemption or retirement amount or return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity's expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

(3) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v)) of this section); or

(4) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4;

(C) *Equity or debt interests in other financial institutions.* Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an entity that is a depository institution, custodial institution, investment entity described in paragraph (e)(4)(i)(A) of this section, or insurance company if—

(1) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v) of this section); or

(2) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4.

(iv) *Insurance and annuity contracts.* A contract issued or maintained by an insurance company, a holding company (as described in paragraph (e)(5)(i)(C) of

this section) of an insurance company, or a financial institution described in paragraphs (e)(1)(i), (ii), (iii), or (v) of this section, if the contract is a cash value insurance contract (as defined in paragraph (b)(3)(vii) of this section) or an annuity contract.

(2) *Exceptions.* A financial account does not include an account described in this paragraph (b)(2).

(i) *Certain savings accounts—(A) Retirement and pension accounts.* A retirement or pension account that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(1) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(2) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(3) Annual information reporting is required to the relevant tax authorities with respect to the account;

(4) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(5) Either—

(i) Annual contributions are limited to \$50,000 or less, or

(ii) There is a maximum lifetime contribution limit to the account of \$1,000,000 or less.

(B) *Non-retirement savings accounts.* An account (other than an insurance or annuity contract) that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(1) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

(2) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(3) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(4) Annual contributions are limited to \$50,000 or less;

(C) *Rollovers.* A financial account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section or from one or more retirement or pension funds that meet the requirements of paragraph (f)(2)(ii) of this section or § 1.1471-6(f).

(D) *Coordination with section 6038D.* The exclusions provided under paragraph (b)(2)(i) of this section shall not apply for purposes of determining whether an account or other arrangement is a financial account for purposes of section 6038D.

(E) *Account that is tax-favored.* For purposes of this paragraph (b)(2)(i), an account is tax-favored under the laws of a jurisdiction where the account is maintained if—

(1) Contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the account holder or taxed at a reduced rate; or

(2) Taxation of investment income from the account is deferred or taxed at a reduced rate.

(ii) *Certain term life insurance contracts.* A life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following conditions—

(A) Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(B) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(C) The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality,

morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(D) The contract is not held by a transferee for value.

(iii) *Account held by an estate.* An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

(iv) *Certain escrow accounts.* An escrow account that is established in connection with—

(A) A court order or judgment; or

(B) A sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—

(1) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

(2) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

(3) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

(4) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

(5) The account is not associated with a credit card account.

(v) *Certain annuity contracts.* A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) of this section.

(vi) *Account or product excluded under an intergovernmental agreement.* An account or product that is excluded from the definition of financial account under the terms of an applicable Model 1 IGA or Model 2 IGA.

(3) *Definitions.* The following definitions apply for purposes of chapter 4—

(i) *Depository account—(A) In general.* Except as otherwise provided in this paragraph (b)(3)(i), the term *depository account* means any account that is—

(1) A commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, passbook, certificate of indebtedness, or any other instrument for placing money in the custody of an entity engaged in a banking or similar business for which such institution is obligated to give credit (regardless of whether such instrument is interest bearing or non-interest bearing), including, for example, a credit balance with respect to a credit card account issued by a credit card company that is engaged in a banking or similar business; or

(2) Any amount held by an insurance company under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon or to return the amount held.

(B) *Exceptions.* A depository account does not include—

(1) A negotiable debt instrument that is traded on a regulated market or over-the-counter market and distributed and held through financial institutions; or

(2) An advance premium or premium deposit described in paragraph (b)(3)(vii)(C)(5) of this section.

(ii) *Custodial account.* The term *custodial account* means an arrangement for holding a financial instrument, contract, or investment (including, but not limited to, a share of stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract as defined in § 1.1446-3(c), an insurance or annuity contract, and any option or other derivative instrument) for the benefit of another person.

(iii) *Equity interest in certain entities—*  
(A) *Partnership.* In the case of a partnership that is a financial institution, the term *equity interest* means either a capital or profits interest in the partnership.

(B) *Trust.* In the case of a trust that is a financial institution, an *equity interest* means an interest held by—

(1) A person who is an owner of all or a portion of the trust under sections 671 through 679;

(2) A beneficiary who is entitled to a mandatory distribution from the trust as defined in § 1.1473-1(b)(3); or

(3) A beneficiary who may receive a discretionary distribution as defined in § 1.1473-1(b)(3) from the trust but only if such person receives a distribution in the calendar year.

(iv) *Regularly traded on an established securities market.* Debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded on an established securities market if the requirements of § 1.1472-1(c)(1)(i)(A) and (C) are met. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder's interest is registered prior to January 1, 2014, on the books of the investment entity.

(v) *Value of interest determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments—*(A) *Equity interest.* The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if—

(1) The amount payable upon redemption by the issuer of the interest is secured primarily by reference to assets that give rise (or could give rise) to withholdable payments; or

(2) In the case of an unsecured interest, the amount payable upon redemption is determined primarily by reference to assets that give rise (or could give rise) to withholdable payments.

(B) *Debt interest.* The value of a debt interest is determined, directly or indi-

rectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if—

(1) Debt is convertible into stock of a U.S. person;

(2) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to profits or assets of a U.S. person; or

(3) The debt is secured by assets of a U.S. person.

(vi) *Redemption or retirement amount or return earned on the interest determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs—*(A) *Equity interest.* The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(B) *Debt interest.* The redemption or retirement amount or return earned on a debt interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of entity's expanded affiliated group if—

(1) Debt is convertible into stock of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group;

(2) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group; or

(3) The debt is primarily secured by the assets of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group or is guaranteed by one or more such entities.

(vii) *Cash value insurance contract*—  
(A) *In general.* The term *cash value insurance contract* means an insurance contract (other than an indemnity reinsurance contract between two insurance companies and a term life insurance contract described in paragraph (b)(2)(ii) of this section) that has an aggregate cash value greater than \$50,000 at any time during the calendar year, applying the rules set forth in paragraph (b)(4)(iii) of this section. A participating FFI may elect to disregard the \$50,000 threshold in the preceding sentence by reporting all contracts with a cash value greater than zero.

(B) *Cash value.* Except as otherwise provided in paragraph (b)(3)(vii)(C) of this section, the term *cash value* means any amount (determined without reduction for any charge or policy loan) that—

(1) Is payable under the contract to any person upon surrender, termination, cancellation, or withdrawal; or  
(2) Any person can borrow under or with regard to (for example, by pledging as collateral) the contract.

(C) *Amounts excluded from cash value.* Cash value does not include an amount payable—

(1) Solely by reason of the death of an individual insured under a life insurance contract;

(2) As a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(3) As a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than a life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract; or

(4) As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph (b)(3)(vii)(C)(2) of this section.

(5) As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

(D) *Policyholder dividend*—(1) For purposes of paragraph (b)(3)(vii)(C)(4) of this section and except as otherwise provided in this paragraph, a policyholder dividend means any dividend or similar distribution to policyholders in their capacity as such, including—

(i) An amount paid or credited (including as an increase in benefits) if the amount is not fixed in the contract but rather depends on the experience of the insurance company or the discretion of management;

(ii) A reduction in the premium that, but for the reduction, would have been required to be paid; and

(iii) An experience rated refund or credit based solely upon the claims experience of the contract or group involved.

(2) A policyholder dividend cannot exceed the premiums previously paid for the contract, less the sum of the cost of insurance and expense charges (whether or not actually imposed) during the contract's existence and the aggregate amount of any prior dividends paid or credited with regard to the contract.

(3) A policyholder dividend does not include any amount that is in the nature of interest that is paid or credited to a contract holder to the extent that such amount exceeds the minimum rate of interest required to be credited with respect to contract values under local law.

(4) *Account balance or value.* This paragraph (b)(4) provides rules for determining the balance or value of a financial account for purposes of chapter 4. For example, the rules of this paragraph apply for purposes of determining whether an FFI meets the requirements of paragraph (f)(2)(i),

(f)(2)(ii) or (f)(3) of this section to certify to a deemed-compliant FFI status. The rules of this paragraph also apply to a participating FFI's due diligence and reporting obligations to the extent required under § 1.1471-4(c) or (d) and to a U.S. withholding agent's due diligence obligations to the extent required under § 1.1471-3.

(i) *In general.* Except as otherwise provided in paragraph (b)(4)(ii) of this section with respect to immediate annuities, the balance or value of a financial account is the balance or value calculated by the financial institution for purposes of reporting to the account holder. In the case of an account described in paragraph (b)(1)(iii) of this section, the balance or value of an equity interest is the value calculated by the financial institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. Except as provided in paragraph (b)(3)(vii) of this section, the balance or value of an insurance or annuity contract is the balance or value as of either the calendar year end or the most recent contract anniversary date. The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties, or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating, or withdrawing cash from the account. Each holder of a jointly held account is attributed the entire balance or value of the joint account. See § 1.1473-1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (b)(4)(i) to determine the value of trust interests that are financial accounts.

(ii) *Special rule for immediate annuity—(A) Immediate annuities without minimum benefit guarantees.* If the value of an immediate annuity contract with no minimum benefit guarantee is not reported to the account holder, the account balance or value of the contract is the sum of the net present values on the valuation date of the amounts reasonably expected to be payable in future periods under the contract.

(B) *Immediate annuities with a minimum benefit guarantee.* The account balance or value of an annuity contract with a minimum guarantee is the sum of the net present values on the valuation date of—

(1) The non-guaranteed amounts reasonably expected to be payable in future periods; and

(2) The guaranteed amounts payable in future periods.

(C) *Net present value of amounts payable in future periods.* The net present value of an amount payable in a future period shall be determined using—

(1) A reasonable actuarial valuation method, and

(2) The mortality tables and interest rate(s)—

(i) Prescribed pursuant to section 7520 and the regulations thereunder; or

(ii) Used by the issuer of the contract to determine the amounts payable under the contract.

(iii) *Account aggregation requirements—(A) In general.* To the extent a financial institution is required under chapter 4 to determine the aggregate balance or value of an account, the financial institution is required to aggregate the account balance or value of all accounts that are held (in whole or in part) by the same person and that are maintained by the financial institution or members of its expanded affiliated group, but only to the extent that the financial institution's computerized systems link the accounts by reference to a data element, such as client number, EIN, or foreign tax identifying number, and allow the account balances of such accounts to be aggregated. Notwithstanding the rules set forth in this paragraph (b)(4)(iii), a financial institution is required to aggregate the balance or value of accounts that it treats as consolidated obligations.

(B) *Aggregation rule for relationship managers.* To the extent a financial institution is required under chapter 4 to apply the aggregation rules of this paragraph (b)(4)(iii), the financial institution also is required to aggregate all accounts that a relationship manager knows are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, as well as all accounts that the



relationship manager has associated with one another through a relationship code, customer identification number, TIN, or similar indicator, or that the relationship manager would typically associate with each other under the procedures of the financial institution (or the department, division, or unit with which the relationship manager is associated).

(C) *Examples.* The following examples illustrate the account aggregation requirements of this paragraph (b)(4)(iii):

*Example 1. FFI not required to aggregate accounts for U.S. account exception.* A U.S. resident individual, U, holds a depository account with Branch 1 of CB, a commercial bank that is a participating FFI. The balance in U's Branch 1 account at the end of Year 1 is \$35,000. U also holds a depository account with Branch 2 of CB, with a \$45,000 balance at the end of Year 1. CB's retail banking businesses share computerized information management systems across its branches, but U's accounts are not associated with one another in the shared computerized information system. In addition, CB has not assigned a relationship manager to U or U's accounts. Because the accounts are not associated in CB's system or by a relationship manager, CB is not required to aggregate the accounts under paragraph (b)(4)(iii) and both accounts are eligible for the exception to U.S. account status described in paragraph (a)(4)(i) of this section as neither account exceeds the \$50,000 threshold.

*Example 2. FFI required to aggregate accounts for U.S. account exception.* Same facts as *Example 1*, except that both of U's depository accounts are associated with U and with one another by reference to CB's internal identification number. The system shows the account balances for both accounts, and such balances may be electronically aggregated, though the system does not show a combined balance for the accounts. In determining whether such accounts meet the exception to U.S. account status described in paragraph (a)(4)(i) of this section for certain depository accounts with an aggregate balance or value of \$50,000 or less, CB is required to aggregate the account balances of all depository accounts under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as holding depository accounts with CB with an aggregate balance of \$80,000. Accordingly, neither account is eligible for the exception to U.S. account status, because the accounts, when aggregated, exceed the \$50,000 threshold.

*Example 3. Aggregation rules for joint accounts maintained by a participating FFI.* In Year 1, a U.S. resident individual, U, holds a

custodial account that is a preexisting account at custodial institution CI, a participating FFI. The balance in U's CI custodial account at the end of Year 1 is \$35,000. U also holds a joint custodial account that is a preexisting account with her sister, A, a non-resident alien for U.S. federal income tax purposes, with another custodial institution, CI2. The balance in the joint account at the end of Year 1 is also \$35,000. CI and CI2 are part of the same expanded affiliated group and share computerized information management systems. Both U's custodial account at CI and U and A's custodial account at CI2 are associated with U and with one another by reference to CI's internal identification number and the system allows the balances to be aggregated. In determining whether such accounts meet the documentation exception described in § 1.1471-4(c)(4)(iv) for certain preexisting individual accounts with an aggregate balance or value of \$50,000 or less, CI is required to aggregate the account balances of accounts held in whole or in part by the same account holder under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as having financial accounts with CI and CI2, each with an aggregate balance of \$70,000. Accordingly, neither account is eligible for the documentation exception.

*Example 4. Aggregation for applying indefinite validity periods.* In Year 1, an owner-documented FFI, O, holds an offshore account with Branch 1 of CB, a commercial bank that is a U.S. withholding agent. The balance in O's CB account at the end of Year 1 is \$600,000. In Year 1, O also holds an account in the United States with Branch 2 of CB. The Branch 2 account has a \$450,000 balance at the end of Year 1. CB's banking businesses share computerized information management systems across its branches. O's accounts are associated with one another in the shared computerized information system and the system allows the balances to be aggregated. In determining whether CB is permitted to apply an indefinite validity period for the documentation submitted for O's account at Branch 1 pursuant to § 1.1471-3(c)(6)(ii)(C)(4) (permitting indefinite validity for a withholding statement of an owner-documented FFI if the balance or value of all accounts held by the owner-documented FFI does not exceed \$1,000,000), CB is required to aggregate the account balance of O's accounts at Branch 1 and Branch 2 to the extent required under the rules of paragraph (b)(4)(iii) of this section. Accordingly, O is treated as holding financial accounts with CB with an aggregate balance of \$1,050,000 and the documentation submitted for O's account at Branch 1 is not eligible for the indefinite validity period described under § 1.1471-3(c)(6)(ii)(C)(4).

(iv) *Currency translation of balance or value.* If the balance or value of a financial account, other obligation, or the aggregate amount payable under a group life or group annuity contract described in § 1.1471-4(c)(4) is denominated in a currency other than U.S. dollars, a withholding agent must calculate the balance or value by applying a spot rate determined under § 1.988-1(d) to translate such balance or value into the U.S. dollar equivalent. For the purpose of a participating or registered deemed-compliant FFI reporting an account under § 1.1471-4(d), the spot rate must be determined as of the last day of the calendar year (or, in the case of an insurance contract or annuity contract, the most recent contract anniversary date, when applicable) for which the account is being reported or, if the account was closed during such calendar year, the date the account was closed. In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in § 1.1471-4(c)(3)(iii), (c)(4)(iv), or (c)(4)(v) or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

(5) *Account maintained by financial institution.* A custodial account is maintained by the financial institution that holds custody over the assets in the account (including a financial institution that holds assets in street name for an account holder in such institution). A depository account is maintained by the financial institution that is obligated to make payments with respect to the account (excluding an agent of a financial institution regardless of whether such agent is a financial institution under paragraph (e)(1) of this section). Any equity or debt interest in a financial institution that constitutes a financial account under paragraph (b)(1)(iii) of this section is maintained by such financial institution. A cash value insurance contract or an annuity contract described in paragraph (b)(1)(iv) of this section is maintained by the financial institution that is ob-

ligated to make payments with respect to the contract.

(c) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* means any foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473-1(b)), including a foreign entity described in paragraph (c)(2) of this section. See § 1.1473-1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and indirect ownership in an entity, see § 1.1473-1(b)(2).

(d) *Definition of FFI.* The term *FFI* means, with respect to any entity that is not resident in a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. With respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, an FFI is any entity that is treated as a Financial Institution pursuant to such Model 1 IGA or Model 2 IGA. A territory financial institution is not an FFI under this paragraph (d).

(e) *Definition of financial institution—*  
(1) *In general.* Except as otherwise provided in paragraph (e)(5) of this section, the term *financial institution* means any entity that—

(i) Accepts deposits in the ordinary course of a banking or similar business (as defined in paragraph (e)(2) of this section) (depository institution);

(ii) Holds, as a substantial portion of its business (as defined in paragraph (e)(3) of this section), financial assets for the benefit of one or more other persons (custodial institution);

(iii) Is an investment entity (as defined in paragraph (e)(4) of this section);

(iv) Is an insurance company or a holding company (as described in paragraph (e)(5)(i)(C) of this section) that is a member of an expanded affiliated group that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract described in paragraph (b)(1)(iv) of this section (specified insurance company); or

(v) Is an entity that is a holding company or treasury center (as described

in paragraphs (e)(5)(i)(C) and (e)(5)(i)(D)(I) of this section) that—

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity described in paragraphs (e)(4)(i)(B) and (C) of this section; or

(B) Is formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(2) *Banking or similar business*—(i) *In general.* Except as otherwise provided in paragraph (e)(2)(ii) of this section, an entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities—

(A) Makes personal, mortgage, industrial, or other loans or provides other extensions of credit;

(B) Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(C) Issues letters of credit and negotiates drafts drawn thereunder;

(D) Provides trust or fiduciary services;

(E) Finances foreign exchange transactions; or

(F) Enters into, purchases, or disposes of finance leases or leased assets.

(ii) *Exception for certain lessors and lenders.* An entity is not considered to be engaged in a banking or similar business for purposes of this paragraph (e)(2) if the entity solely accepts deposits from persons as collateral or security pursuant to a sale or lease of property or pursuant to a similar financing arrangement between such entity and the person holding the deposit with the entity.

(iii) *Application of section 581.* Entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks

as defined in section 581 and any corporation to which section 581 would apply but for the fact that it is a foreign corporation).

(iv) *Effect of local regulation.* Whether an entity is subject to the banking and credit laws of a foreign country, the United States, a State, a U.S. territory, or a subdivision thereof, or is subject to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to, but not necessarily determinative of, whether that entity qualifies as a financial institution under section 1471(d)(5)(A). Whether an entity conducts a banking or similar business is determined based upon the character of the actual activities of such entity.

(3) *Holding financial assets for others as a substantial portion of its business*—(i) *Substantial portion*—(A) *In general.* An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to holding financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence before the determination is made.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination is considered to hold financial assets for the account of others as a substantial portion of its business if the entity expects to meet the gross income threshold described in paragraph (e)(3)(i)(B) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(ii) *Income attributable to holding financial assets and related financial services.* For purposes of this paragraph (e)(3), *income attributable to holding financial assets and related financial services* means custody, account maintenance, and transfer fees; commissions and fees earned from executing and

pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; and fees for providing financial advice and for clearance and settlement services.

(iii) *Effect of local regulation.* Whether an entity is subject to the banking and credit, broker-dealer, fiduciary, or other similar laws and regulations of the United States, a State, a U.S. territory, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banks, credit issuers, or other financial institutions, is relevant to, but not necessarily determinative of, whether that entity holds financial assets for the account of others as a substantial portion of its business.

(4) *Investment entity*—(i) *In general.* The term *investment entity* means any entity that is described in paragraph (e)(4)(i)(A), (B), or (C) of this section.

(A) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—

(1) Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange; interest rate, and index instruments; transferable securities; or commodity futures;

(2) Individual or collective portfolio management; or

(3) Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons.

(B) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets (as defined in paragraph (e)(4)(ii) of this section) and the entity is managed by another entity that is described in paragraph (e)(1)(i), (ii), (iv), or (e)(4)(i)(A) of this section. For purposes of this paragraph (e)(4)(i)(B), an entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities described in paragraph (e)(4)(i)(A) of

this section on behalf of the managed entity.

(C) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(ii) *Financial assets.* For purposes of this paragraph, the term *financial asset* means a security (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interest, commodity (as defined in section 475(e)(2)), notional principal contract (as defined in §1.446-3(c)), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract.

(iii) *Primarily conducts as a business*—

(A) *In general.* An entity is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if the entity's gross income attributable to such activities equals or exceeds 50 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if such entity expects to meet the gross income threshold described in paragraph (e)(4)(iii)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(iv) *Primarily attributable to investing, reinvesting, or trading in financial assets*—(A) *In general.* An entity's gross

income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if the entity's gross income attributable to investing, reinvesting, or trading in financial assets equals or exceeds 50 percent of the entity's gross income during the shorter of—

(1) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(2) The period during which the entity has been in existence.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination will be considered to have income that is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if such entity expects to meet the income threshold described in paragraph (e)(4)(iv)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(v) *Examples.* The following examples illustrate the provisions of paragraph (e)(4) of this section:

*Example 1. Investment advisor.* Fund Manager is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Fund Manager, among its various business operations, organizes and manages a variety of funds, including Fund A, a fund that invests primarily in equities. Fund Manager hires Investment Advisor, a foreign entity, to provide advice about the financial assets in which Fund A invests. Investment Advisor earned more than 50% of its gross income for the last three years from providing services as an investment advisor. Because Investment Adviser primarily conducts as a business providing investment advice on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

*Example 2. Entity that is managed by an FFI.* The facts are the same as in *Example 1*. In addition, in every year since it was organized, Fund A has earned more than 50% of its gross income from investing in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by Fund Manager and Investment Advisor and its gross

income is primarily attributable to investing, reinvesting, or trading in financial assets.

*Example 3. Investment manager.* Investment Manager, a U.S. entity, is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Investment Manager organizes and registers Fund A in Country A. Investment Manager is authorized to facilitate purchases and sales of financial assets held by Fund A in accordance with Fund A's investment strategy. In every year since it was organized, Fund A has earned more than 50% of its gross income from investing, reinvesting, or trading in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

*Example 4. Foreign real estate investment fund that is managed by an FFI.* The facts are the same as in *Example 3*, except that Fund A's assets consist solely of non-debt, direct interests in real property located within and without the United States. Fund A is not an investment entity under paragraph (e)(4)(i)(B) of this section, even though it is managed by Investment Manager, because less than 50% of its gross income is attributable to investing, reinvesting, or trading in financial assets.

*Example 5. Trust managed by an individual.* On January 1, 2013, X, an individual, establishes Trust A, a nongrantor foreign trust for the benefit of X's children, Y and Z. X appoints Trustee A, an individual, to act as the trustee of Trust A. Trust A's assets consist solely of financial assets, and its income consists solely of income from those financial assets. Pursuant to the terms of the trust instrument, Trustee A manages and administers the assets of the trust. Trustee A does not hire any entity as a third-party service provider to perform any of the activities described in paragraph (e)(4)(i)(A) of this section. Trust A is not an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed solely by Trustee A, an individual.

*Example 6. Trust managed by a trust company.* The facts are the same as in *Example 5*, except that X hires Trust Company, an FFI, to act as trustee on behalf of Trust A. As trustee, Trust Company manages and administers the assets of Trust A in accordance with the terms of the trust instrument for the benefit of Y and Z. Because Trust A is managed by an FFI, Trust A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

*Example 7. Individual introducing broker.* IB, an individual introducing broker, provides investing advice to her clients, and uses the services of a foreign entity to conduct and execute trades on behalf of her clients. IB has earned 50% or more of her gross income

for the past three years from her services as an investment advisor. Because IB is an individual, she is not an investment entity within the meaning of paragraph (e)(4) of this section.

*Example 8. Entity introducing broker.* The facts are the same as in *Example 7*, except that IB is a foreign entity and not an individual. Because IB is an entity that conducts investment activities and its gross income is primarily attributable to such investment activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

(5) *Exclusions.* A financial institution does not include an entity described in this paragraph, provided that the entity is not also described in paragraph (e)(1)(iv) of this section. For the treatment of foreign entities described in this paragraph under section 1472, see § 1.1472-1(c)(1)(vi).

(i) *Excepted nonfinancial group entities—(A) In general.* A foreign entity that is a member of a nonfinancial group (as defined in paragraph (e)(5)(i)(B) of this section) if—

(1) The entity is not a depository institution or custodial institution (other than for members of its expanded affiliated group);

(2) The entity is a holding company, treasury center, or captive finance company and substantially all the activities of such entity are to perform one or more of the functions described in paragraphs (e)(5)(i)(C), (D), or (E) of this section; and

(3) The entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes.

(B) *Nonfinancial group.* An expanded affiliated group is a *nonfinancial group* if, taking into account the application of this section,—

(1) For the three-year period preceding the year for which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an

entity described in paragraph (e)(5)(ii) or (iii) of this section) consists of passive income (as defined in § 1.1472-1(c)(1)(v)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFIs (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the fair market value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section) are assets that produce or are held for the production of passive income; and

(2) Any member of the expanded affiliated group that is an FFI is either a participating FFI or deemed-compliant FFI.

(C) *Holding company.* For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group.

(D) *Treasury center—(1)* Except as otherwise provided in this paragraph, an entity is a treasury center for purposes of this paragraph (e)(5)(i) if the primary activity of such entity is to enter into investment, hedging, and financing transactions with or for members of its expanded affiliated group for purposes of—

(i) Managing the risk of price changes or currency fluctuations with respect to property that is held or to be held by the expanded affiliated group (or any member thereof);

(ii) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to borrowings made or to be made by the expanded affiliated group (or any member thereof);

(iii) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to assets or liabilities to be reflected in financial statements of the expanded affiliated group (or any member thereof);

(iv) Managing the working capital of the expanded affiliated group (or any

member thereof) by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(v) Acting as a financing vehicle for borrowing funds for use by the expanded affiliated group (or any member thereof).

(2) An entity is not a treasury center if any equity or debt interest in the entity is held by a person that is not a member of the entity's expanded affiliated group and the redemption or retirement amount or return earned on such interest is determined primarily by reference to—

(i) The investment, hedging, and financing activities of the treasury center with members outside of its expanded affiliated group; or

(ii) Any member of the group that is an investment entity described in (e)(4)(i)(B) or passive NFFE (as described in paragraph (b)(3)(vi) of this section with respect to either such entity).

(E) *Captive finance company.* For purposes of this paragraph (e)(5)(i), an entity is a captive finance company if the primary activity of such entity is to enter into financing (including the extension of credit) or leasing transactions with or for suppliers, distributors, dealers, franchisees, or customers of such entity or of any member of such entity's expanded affiliated group that is an active NFFE.

(ii) *Excepted nonfinancial start-up companies or companies entering a new line of business—(A) In general.* A foreign entity that is investing capital in assets with the intent to operate a new business or line of business other than that of a financial institution or passive NFFE for a period of—

(1) In the case of an entity intending to operate a new business, 24 months from the initial organization of such entity; and

(2) In the case of an entity with the intent to operate a new line of business, 24 months from the date of the board resolution (or its equivalent) approving the new line of business, provided that such entity qualified as an active NFFE for the 24 months preceding the date of such approval.

(B) *Exception for investment funds.* An entity is not described in this paragraph (e)(5)(ii) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and hold interests in those companies as capital assets for investment purposes.

(iii) *Excepted nonfinancial entities in liquidation or bankruptcy.* A foreign entity that was not a financial institution or passive NFFE at any time during the past five years and that is in the process of liquidating its assets or reorganizing with the intent to continue or recommence operations as a nonfinancial entity.

(iv) *Excepted inter-affiliate FFI.* A foreign entity that is a member of a participating FFI group if—

(A) The entity does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);

(B) The entity does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) The entity does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and

(D) The entity has not agreed to report under § 1.1471-4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

(v) *Section 501(c) entities.* A foreign entity that is described in section 501(c) other than an insurance company described in section 501(c)(15).

(vi) *Non-profit organizations.* A foreign entity that is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes if—

(A) The entity is exempt from income tax in its country of residence;

(B) The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(C) Neither the laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, an individual or noncharitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered or the use of property, or as payment representing the fair market value of property that the entity has purchased; and

(D) The laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that meets the requirements of § 1.1471-6(b) or another organization that meets the requirements of this paragraph (e)(5)(vi) or escheat to the government of the entity's country of residence or any political subdivision thereof.

(6) *Reserving activities of an insurance company.* The reserving activities of an insurance company will not cause the company to be a financial institution described in (e)(1)(i), (ii), or (iii) of this section.

(f) *Deemed-compliant FFIs.* The term *deemed-compliant FFI* includes a registered deemed-compliant FFI (as defined in paragraph (f)(1) of this section), a certified deemed-compliant FFI (as defined in paragraph (f)(2) of this section), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b). A deemed-compliant FFI that complies with the due diligence and withholding requirements applicable to such entity as provided in this paragraph (f) will also be deemed to have met its withholding obligations under sections 1471(a) and 1472(a). For this purpose, an intermediary or flow-through entity that has a residual withholding obligation under § 1.1471-2(a)(2)(ii) must fulfill such obligation to be considered a deemed-compliant FFI.

(1) *Registered deemed-compliant FFIs.* A registered deemed-compliant FFI means an FFI that meets the procedural requirements described in paragraph (f)(1)(ii) of this section and that

either is described in any of paragraphs (f)(1)(i)(A) through (F) of this section or is treated as a registered deemed-compliant FFI under a Model 2 IGA. A registered deemed-compliant FFI also includes any FFI, or branch of an FFI, that is a reporting Model 1 FFI that complies with the registration requirements of a Model 1 IGA.

(i) *Registered deemed-compliant FFI categories—(A) Local FFIs.* An FFI is described in this paragraph (f)(1)(i)(A) if the FFI meets the following requirements.

(1) The FFI is licensed and regulated as a financial institution under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status).

(2) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(3) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a Web site, provided that the Web site does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents, and does not otherwise target or solicit U.S. customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.



(4) The FFI is required under the laws of its country of incorporation or organization to identify resident account holders for purposes of either information reporting or withholding of tax with respect to accounts held by residents or is required to identify resident accounts for purposes of satisfying such country's AML due diligence requirements.

(5) At least 98 percent of the accounts by value maintained by the FFI as of the last day of the preceding calendar year are held by residents (including residents that are entities) of the country in which the FFI is incorporated or organized. An FFI that is incorporated or organized in a member state of the European Union may treat account holders that are residents (including residents that are entities) of other member states of the European Union as residents of the country in which the FFI is incorporated or organized for purposes of this calculation.

(6) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent with those set forth for a participating FFI under §1.1471-4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under §1.1471-4(b) and (d) if the FFI were a participating FFI.

(7) With respect to each preexisting account held by a nonresident of the country in which the FFI is organized or held by an entity, the FFI reviews those accounts in accordance with the

procedures described in §1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and certifies to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified or transferred them to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or that it agrees to withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI.

(8) In the case of an FFI that is a member of an expanded affiliated group, each FFI in the group is incorporated or organized in the same country and, with the exception of any member that is a retirement plan described in §1.1471-6(f), meets the requirements set forth in this paragraph (f)(1)(i)(A) and the procedural requirements of paragraph (f)(1)(ii) of this section.

(9) The FFI does not have policies or practices that discriminate against opening or maintaining accounts for individuals who are specified U.S. persons and who are residents of the FFI's country of incorporation or organization.

(B) *Nonreporting members of participating FFI groups.* An FFI that is a member of a participating FFI group is described in this paragraph (f)(1)(i)(B) if it meets the following requirements.

(I) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(2) The FFI reviews its accounts that were opened prior to the time it implements the policies and procedures (including time frames) described in paragraph (f)(1)(i)(B)(I) of this section, using the procedures described in §1.1471-4(c) applicable to preexisting

accounts of participating FFIs, to identify any U.S. account or account held by a nonparticipating FFI. Within six months of the identification of any account described in this paragraph, the FFI transfers the account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(3) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) *Qualified collective investment vehicles.* An FFI is described in this paragraph (f)(1)(i)(C) if it meets the following requirements.

(1) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund either in its country of incorporation or organization or in all of the countries in which it is registered and all of the countries in which it operates. A fund will be considered to be regulated as an investment fund under this paragraph if its manager is regulated with respect to the investment fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

(2) Each holder of record of direct debt interests in the FFI in excess of \$50,000, direct equity interests in the FFI (for example the holders of its units or global certificates), and any other account holder of the FFI is a participating FFI, registered deemed-compliant FFI, retirement plan described in §1.1471-6(f), non-profit organization described in paragraph (e)(5)(vi) of this section, U.S. person that is not a specified U.S. person, non-reporting IGA FFI, or exempt bene-

ficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in §1.1471-4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under §1.1471-4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term "U.S. person" for "FFI" and "member"), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(3) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(1)(i)(F)(1) or (2) of this section, non-reporting IGA FFIs, or exempt beneficial owners.

(D) *Restricted funds.* An FFI is described in this paragraph (f)(1)(i)(D) if it meets the following requirements.

(1) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status) or in all of the countries in which it is registered and in all of the countries in which it operates. A fund will be considered to be regulated as an investment fund for purposes of this paragraph if its manager is regulated with respect to the fund in all of the countries in which the investment

fund is registered and in all of the countries in which the investment fund operates.

(2) Interests issued directly by the fund are redeemed by or transferred by the fund rather than sold by investors on any secondary market. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a restricted fund solely because it issued interests in bearer form provided that the FFI ceased issuing interests in bearer form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471-4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(D), interests in the FFI that are issued by the fund through a transfer agent or distributor that does not hold the interests as a nominee of the account holder will be considered to have been issued directly by the fund.

(3) Interests that are not issued directly by the fund are sold only through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks described in paragraph (f)(2)(i) of this section, or restricted distributors described in paragraph (f)(4) of this section. For purposes of this paragraph (f)(1)(i)(D) and paragraph (f)(4) of this section, a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement with the FFI, in the distribution of securities and holds interests in the FFI as a nominee.

(4) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to speci-

fied U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(5) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement entered into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(3) of this section, the FFI will terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(3) of this section within six months of the distributor's change in status.

(6) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in § 1.1471-4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals.

An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in § 1.1471-4(c) applicable to accounts other than preexisting accounts. By the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, the FFI will be required to certify to the IRS either that it did not identify any U.S. account or account held by a nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such accounts as would be required under § 1.1471-4(b) and (d) if it were a participating FFI.

(7) By the later of December 31, 2013, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in § 1.1471-4(c) to ensure that it either—

(i) Does not open or maintain an account for, or make a withholdable payment to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the FFI had reason to know the account holder became such a person; or

(ii) Withholds and reports on any account held by, or any withholdable payment made to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners to the extent and in the manner that would be required under § 1.1471-4(b) and (d) if the FFI were a participating FFI.

(8) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(2)(iii)(B) or (C) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(E) *Qualified credit card issuers.* An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(1) The FFI is an FFI solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer.

(2) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of \$50,000 or to ensure that any customer deposit in excess of \$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) *Sponsored investment entities and controlled foreign corporations.* An FFI is described in this paragraph (f)(1)(i)(F) if the FFI is described in paragraph (f)(1)(i)(F)(1) or (2) of this section and the sponsoring entity meets the requirements of paragraph (f)(1)(i)(F)(3) of this section.

(1) An FFI is a sponsored investment entity described in this paragraph (f)(1)(i)(F)(1) if—

(i) It is an investment entity that is not a QI, WP, or WT; and

(ii) An entity has agreed with the FFI to act as a sponsoring entity for the FFI.

(2) An FFI is a sponsored controlled foreign corporation described in this paragraph (f)(1)(i)(F)(2) if the FFI meets the following requirements—

(i) The FFI is a controlled foreign corporation as defined in section 957(a) that is not a QI, WP, or WT;

(ii) The FFI is wholly owned, directly or indirectly, by a U.S. financial institution that agrees with the FFI to act as a sponsoring entity for the FFI; and

(iii) The FFI shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account holders and payees of the FFI and to

access all account and customer information maintained by the FFI including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the account holder or payee.

(3) A sponsoring entity described in paragraph (f)(1)(i)(F)(I)(ii) or (f)(1)(i)(F)(2)(ii) of this section meets the requirements of this paragraph (f)(1)(i)(F)(3) if the sponsoring entity—

(i) Is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner);

(ii) Has registered with the IRS as a sponsoring entity;

(iii) Has registered the FFI with the IRS;

(iv) Agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI;

(v) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1; and

(vi) Has not had its status as a sponsor revoked.

(4) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(1)(i)(F)(3) of this section with respect to any sponsored FFI.

(5) A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(3) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(ii) *Procedural requirements for registered deemed-compliant FFIs.* A registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section may use one or more agents to perform the necessary due diligence to identify its account holders and to take any required action associated with obtaining and maintaining its deemed-compliant status. The FFI, however, remains responsible for ensuring that the requirements for its deemed-compliant status

are met. Unless otherwise provided in this section, a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section is required to—

(A) Register with the IRS pursuant to procedures prescribed by the IRS and agree to comply with the terms of its registered deemed-compliant status.

(B) Have its responsible officer certify every three years to the IRS, either individually or collectively for the FFI's expanded affiliated group, that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registers as a deemed-compliant FFI or December 31, 2013;

(C) Maintain in its records the confirmation from the IRS of the FFI's registration as a deemed-compliant FFI and GIIN or such other information as the IRS specifies in forms or other guidance; and

(D) Agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for the deemed-compliant status for which it has registered, and to do so within six months of the change in circumstances unless the FFI is able to resume its eligibility for its registered-deemed compliant status within the six month notification period.

(iii) *Deemed-compliant FFI that is merged or acquired.* A deemed-compliant FFI that becomes a participating FFI or a member of a participating FFI group as a result of a merger or acquisition will not be required to redetermine the chapter 4 status of any account maintained by the FFI prior to the date of the merger or acquisition unless that account has a subsequent change in circumstances.

(2) *Certified deemed-compliant FFIs.* A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471-3(d)(6) applicable to the relevant deemed-compliant category. An FFI that is described in paragraph (f)(2)(iv) of this section (a limited life debt investment entity) will be treated as a certified deemed-

compliant FFI prior to January 1, 2017. A certified deemed-compliant FFI also includes any nonreporting IGA FFI. A certified deemed-compliant FFI is not required to register with the IRS.

(i) *Nonregistering local bank.* An FFI is described in this paragraph (f)(2)(i) if the FFI meets the following requirements.

(A) The FFI operates solely as (and is licensed and regulated under the laws of its country of incorporation or organization as)—

(1) A bank; or

(2) A credit union or similar cooperative credit organization that is operated without profit.

(B) The FFI's business consists primarily of receiving deposits from and making loans to unrelated retail customers.

(C) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(D) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a Web site, provided that the Web site does not permit account opening, does not indicate that the FFI maintains accounts for or provides services to non-residents, and does not otherwise target or solicit U.S. customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the FFI maintains accounts for or provides services to non-residents and does not otherwise target or solicit U.S. customers or account holders.

(E) The FFI does not have more than \$175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group does not have more than \$500 million in total assets on its consolidated or combined balance sheets.

(F) With respect to an FFI that is part of an expanded affiliated group, each member of the expanded affiliated group is incorporated or organized in the same country and does not have a fixed place of business outside of that country. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions. Further, each FFI in the group, other than an FFI described in paragraph (f)(2)(ii) of this section or § 1.1471-6(f), meets the requirements set forth in this paragraph (f)(2)(i). For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(ii) *FFIs with only low-value accounts.* An FFI is described in this paragraph (f)(2)(ii) if the FFI meets the following requirements:

(A) The FFI is not an investment entity.

(B) No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of \$50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (b)(4) of this section, substituting the term *financial account* for the term *depository account* and the term *person* for the term *individual*.

(C) The FFI does not have more than \$50 million in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group does not have more than \$50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

(iii) *Sponsored, closely held investment vehicles.* Subject to the provisions of

paragraph (f)(2)(iii)(F) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (E) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QI, WP, or WT.

(B) The FFI has a contractual arrangement with a sponsoring entity that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution and that is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a professional manager, trustee, or managing partner), under which the sponsoring entity agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) The FFI does not hold itself out as an investment vehicle for unrelated parties.

(D) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(E) The sponsoring entity complies with the following requirements—

(1) The sponsoring entity has registered with the IRS as a sponsoring entity;

(2) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(3) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1; and

(4) The sponsoring entity has not had its status as a sponsor revoked.

(F) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring enti-

ty to comply with its obligations under paragraph (f)(2)(iii)(E) of this section with respect to any sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(E) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(iv) *Limited life debt investment entities (transitional)*. An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements. An FFI that meets the requirements of this paragraph (f)(2)(iv) will be treated as a certified deemed-compliant FFI prior to January 1, 2017.

(A) The FFI is a collective investment vehicle formed pursuant to a trust indenture or similar fiduciary arrangement that is an FFI solely because it is an investment entity that offers interests primarily to unrelated investors.

(B) The FFI was in existence as of December 31, 2011, and the FFI's organizational documents require that the entity liquidate on or prior to a set date, and do not permit amendments to the organizational documents, including the trust indenture, without the agreement of all of the FFI's investors.

(C) The FFI was formed for the purpose of purchasing (and did in fact purchase) specific types of indebtedness and holding those assets (subject to reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle.

(D) All payments made to the investors of the FFI are cleared through a clearing organization that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a trustee that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(E) The FFI's trust indenture or similar fiduciary arrangement only authorizes the trustee or fiduciary to engage in activities specifically designated in the trust indenture, and the trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations that a participating FFI is subject to under § 1.1471-

4 absent a legal requirement to fulfill them, even if the consequence of the trustee failing to fulfill these obligations is to cause the FFI to be withheld upon. Further, no other person has the authority to fulfill the obligations that a participating FFI is subject to under § 1.1471-4 on behalf of the FFI.

(3) *Owner-documented FFIs*—(i) *In general.* An owner-documented FFI means an FFI that meets the requirements of paragraph (f)(3)(ii) of this section. An FFI may only be treated as an owner-documented FFI with respect to payments received from and accounts held with a designated withholding agent (or with respect to payments received from and accounts held with another FFI that is also treated as an owner-documented FFI by such designated withholding agent). A designated withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees to undertake the additional due diligence and reporting required under paragraphs (f)(3)(ii)(D) and (E) of this section in order to treat the FFI as an owner-documented FFI. An FFI meeting the requirements of this paragraph (f)(3) will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary.

(ii) *Requirements of owner-documented FFI status.* An FFI meets the requirements of this paragraph (f)(3)(ii) only if—

(A) The FFI is an FFI solely because it is an investment entity;

(B) The FFI is not owned by or in an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company;

(C) The FFI does not maintain a financial account for any nonparticipating FFI;

(D) The FFI provides the designated withholding agent with all of the documentation described in § 1.1471-3(d)(6) and agrees to notify the withholding agent if there is a change in circumstances; and

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information de-

scribed in § 1.1471-4(d) or § 1.1474-1(i) (as appropriate) with respect to any specified U.S. persons that are identified in § 1.1471-3(d)(6)(iv)(A)(I).

Notwithstanding the previous sentence, the designated withholding agent is not required to report information with respect to an indirect owner of the FFI that holds its interest through a participating FFI, a deemed-compliant FFI (other than an owner-documented FFI), an entity that is a U.S. person, an exempt beneficial owner, or an excepted NFFE.

(4) *Definition of a restricted distributor.* An entity is a restricted distributor for purposes of paragraph (f)(1)(i)(D) of this section (relating to registered deemed-compliant restricted funds) if it operates as a distributor that holds debt or equity interests in a restricted fund as a nominee and meets the following requirements.

(i) The distributor provides investment services to at least 30 unrelated customers and less than half of the distributor's customers are related persons.

(ii) The distributor is required to perform AML due diligence procedures under the anti-money laundering laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction).

(iii) The distributor operates solely in its country of incorporation or organization, does not have a fixed place of business outside that country, and, if such distributor belongs to an expanded affiliated group, has the same country of incorporation or organization as all other members of its expanded affiliated group. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(iv) The distributor does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, a distributor will not be considered to have solicited customers or account holders outside its country of organization merely because it operates a Web site, provided that the Web site does not permit account opening by persons identified as nonresidents, does not specifically



state that nonresidents may acquire securities from the distributor, and does not otherwise target U.S. customers or account holders. A distributor will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the distributor maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(v) The distributor does not have more than \$175 million in total assets under management and has no more than \$7 million in gross revenue on its income statement for the most recent financial accounting year and, if the distributor belongs to an expanded affiliated group, the entire group does not have more than \$500 million in total assets under management or more than \$20 million in gross revenue for its most recent financial accounting year on a combined or consolidated income statement.

(vi) The distributor provides the restricted fund (or another distributor of the restricted fund that is a participating FFI or registered deemed-compliant FFI, and with which the distributor has entered into its distribution agreement) with a valid Form W-8 indicating that the distributor satisfies the requirements to be a restricted distributor.

(vii) The agreement governing the distributor's distribution of debt or equity interests of the restricted fund—

(A) Prohibits the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs;

(B) Requires that if the distributor does distribute securities to any of the persons described in this paragraph (f)(4)(vii), it will cause the restricted fund to redeem or retire those interests, or it will transfer those interests to a distributor that is a participating

FFI or reporting Model 1 FFI, within six months and the commission paid to the distributor will be forfeited to the restricted fund or to the participating FFI to which those interests are transferred; and

(C) Requires the distributor to notify the restricted fund (or another distributor of the restricted fund that is a participating FFI, reporting Model 1 FFI, or registered deemed-compliant FFI and with which the distributor has entered into its distribution agreement) of a change in the distributor's chapter 4 status within 90 days of the change in status.

(viii) With respect to sales after December 31, 2011, and prior to the time the restrictions described in paragraph (f)(4)(vii) of this section were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI contained a prohibition of the sale of such securities to U.S. entities or U.S. resident individuals, or the distributor reviews all accounts relating to such sales in accordance with the procedures (and time frames) described in § 1.1471-4(c) applicable to preexisting accounts and certifies that it has caused the restricted fund to redeem or retire, or it has transferred all securities sold to any of the persons described in paragraph (f)(4)(vii) of this section. If the distribution agreement addressed in the prior sentence contained only a prohibition on the sale of securities to U.S. resident individuals, the distributor will not be required to review the individual accounts relating to such sales but must review and make certifications with respect to all entity accounts in the manner described in the previous sentence.

(g) *Recalcitrant account holders*—(1) *Scope.* This paragraph (g) provides rules for determining when an account holder of a participating FFI or registered deemed-compliant FFI is a recalcitrant account holder. Paragraph (g)(2) of this section defines the term recalcitrant account holder. Paragraphs (g)(3) and (4) of this section provide timing rules for when an account holder will begin to be treated as a recalcitrant account holder by a participating FFI and when an account holder will cease to be

treated as a recalcitrant account holder by such institution. For rules for determining the holder of an account, see paragraph (a)(3) of this section. For the withholding requirements of an FFI with respect to its recalcitrant account holders, see paragraph (f) of this section and § 1.1471-4(b). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see § 1.1471-4(d)(6), and, for the reporting required with respect to payments made to such account holders, see § 1.1474-1(d)(4)(iii). The rules provided in this paragraph (g) to classify certain account holders as recalcitrant account holders shall not, however, apply to a U.S. branch of a participating FFI. Instead, a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person shall apply the presumption rules of § 1.1471-3(f) (for foreign entity account holders) and chapter 3 or 61 (for individual payees) to determine the status of a payee if it cannot reliably associate a reportable payment made to the payee with valid documentation.

(2) *Recalcitrant account holder.* The term *recalcitrant account holder* means any holder of an account maintained by an FFI if such account holder is not an FFI (or presumed to be an FFI under § 1.1471-3(f)), the account does not meet the requirements of the exception to U.S. account status described in paragraph (a)(4) of this section (for depository accounts with a balance of \$50,000 or less) and does not qualify for any of the exceptions from the documentation requirements described in § 1.1471-4(c)(3)(iii), (c)(4)(iii), (c)(5)(iii), (c)(5)(iv)(E) (or the participating FFI elects to forego such exceptions) and—

(i) The account holder fails to comply with requests by the FFI for the documentation or information that is required under § 1.1471-4(c) for determining the status of such account as a U.S. account or other than a U.S. account;

(ii) The account holder fails to provide a valid Form W-9 upon request from the FFI or fails to provide a correct name and TIN combination upon request from the FFI when the FFI has received notice from the IRS indicating that the name and TIN com-

bination reported by the FFI for the account holder is incorrect;

(iii) If foreign law would (but for a waiver) prevent reporting by the FFI (or branch or division thereof) of the information described in § 1.1471-4(d)(3) or (5) with respect to such account, the account holder (or substantial U.S. owner of an account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver to permit such reporting; or

(iv) The account holder provides the documentation described in § 1.1471-3(d)(12) to establish its status as a passive NFFE (other than a WP or WT) but fails to provide the information regarding its owners required under § 1.1471-3(d)(12)(iii).

(3) *Start of recalcitrant account holder status—(i) Preexisting accounts identified under the procedures described in § 1.1471-4(c) for identifying U. S. accounts—(A) In general.* An account holder of a preexisting account described in paragraph (g)(2) of this section maintained by a participating FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraphs (g)(3)(B) through (D) of this section. An account holder of a preexisting account described in paragraph (g)(2) of this section that is maintained by a registered deemed-compliant FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraph (f) of this section (setting forth the time by which the FFI must identify its accounts in accordance with the requirements of § 1.1471-4(c) in order to meet the requirements of its applicable registered deemed-compliant status).

(B) *Accounts other than high-value accounts.* Account holders of preexisting accounts maintained by a participating FFI that are not high-value accounts (as described in § 1.1471-4(c)(8)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is two years after the effective date of the FFI agreement.

(C) *High-value accounts.* Account holders of preexisting accounts maintained by a participating FFI that are high-value accounts (as described in

§1.1471-4(c)(5)(iv)(D)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is one year after the effective date of the FFI agreement.

(D) *Preexisting accounts that become high-value accounts.* With respect to a calendar year beginning after the later of the effective date of the FFI agreement and December 31, 2014, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to §1.1471-4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following the calendar year end in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) *Accounts that are not preexisting accounts and accounts requiring name/TIN correction.* An account holder of an account that is not a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment is made to the account is opened by the participating FFI. An account holder for which the participating FFI received a notice from the IRS indicating that the name and TIN combination provided for the account holder is incorrect will be treated as a recalcitrant account holder following the date of such notice within the time prescribed in §31.3406(d)-5(a) of this chapter.

(iii) *Accounts with changes in circumstances.* An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment is made to the account or the date that is 90 days after

the change in circumstances. For the definition of a change in circumstances with respect to an account, see §1.1471-4(c)(2)(iii).

(4) *End of recalcitrant account holder status.* An account holder that is treated as a recalcitrant account holder under paragraphs (g)(2) and (3) of this section will cease to be so treated as of the date on which the account holder is no longer described in paragraph (g)(2) of this section.

(h) *Passthru payment*—(1) *Defined.* The term *passthru payment* means any withholdable payment and any foreign passthru payment.

(2) *Foreign passthru payment.* [Reserved]

(i) *Expanded affiliated group*—(1) *Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see §1.1471-4(e).

(2) *Expanded affiliated group defined*—(i) *In general.* Except as otherwise provided in this paragraph (i), an *expanded affiliated group* means an affiliated group as defined in section 1504(a), determined—

(A) By substituting “more than 50 percent” for “at least 80 percent” each place it appears;

(B) Without regard to paragraphs (2) and (3) of section 1504(b);

(C) Without application of section 1504(a)(3); and

(D) Without application of §1.1504-4(b)(2)(i)(A).

(ii) *Partnerships and entities other than corporations.* A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3), without regard to whether such entity is foreign or domestic) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraph (i)(2) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of

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seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to unrelated investors;

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(3)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(3)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(4) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

(5) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(2) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant

to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(5), a change in voting rights includes a separation of voting rights and value.

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see § 1.1471-5(f)(2)(iv).

[T.D. 9610, 78 FR 5961, Jan. 28, 2013]

**§ 1.1471-6 Payments beneficially owned by exempt beneficial owners.**

(a) *In general.* This section describes classes of beneficial owners that are identified in section 1471(f) (exempt beneficial owners). Except as otherwise provided in paragraphs (d) (regarding securities held by foreign central banks of issue) and (f) (regarding retirement funds) of this section, a person must be a beneficial owner of a payment to be treated as an exempt beneficial owner with respect to the payment. The following classes of persons are exempt beneficial owners: any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing described in paragraph (b) of this section; any international organization or any wholly owned agency or instrumentality thereof described in paragraph (c) of this section; any foreign central bank of issue described in paragraph (d) of this section; any government of a U.S. territory described in paragraph (e) of this section; certain foreign retirement funds described in paragraph (f) of this section; and certain entities described in paragraph (g) of this section that are wholly owned by one or more other exempt beneficial owners. In addition, an exempt beneficial owner includes any person treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA. See §§ 1.1471-2(a)(4)(v) and 1.1472-1(c)(2) for the exemptions from withholding for payments beneficially owned by an exempt beneficial owner; § 1.1471-3(d)(9) for the documentation requirements applicable to a withholding agent for purposes of determining when a withholdable payment is beneficially owned by an exempt beneficial owner; and § 1.1471-3(d)(8)(ii)