

defined in § 1.1001-3(e). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) through (3)(iii) [Reserved] For further guidance, see § 1.1471-2(b)(3) through (b)(3)(iii).

(4) [Reserved] For further guidance, see § 1.1471-2(b)(4).

(i) [Reserved] For further guidance, see § 1.1471-2(b)(4)(i).

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

(iii) [Reserved] For further guidance, see § 1.1471-2(b)(4)(iii).

(c) [Reserved] For further guidance, see § 1.1471-2(c).

(d) *Expiration date.* The applicability of this section expires on February 28, 2017.

[T.D. 9657, 79 FR 12828, Mar. 6, 2014; 79 FR 37177, July 1, 2014]

§ 1.1471-3 Identification of payee.

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

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

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) Except as otherwise provided in paragraphs (a)(3)(iv) and (vi) of this section (applicable to territory financial institutions and certain U.S. branches), a foreign person that is acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if such foreign person is—

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

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

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

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

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

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

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

(4) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is effectively connected with

the conduct of a trade or business in the United States and that is excluded from the definition of a withholdable payment under § 1.1473-1(a)(4).

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

(iii) [Reserved] For further guidance, see § 1.1471-3T(a)(3)(iii).

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

(v) [Reserved] For further guidance, see § 1.1471-3T(a)(3)(v).

(vi) [Reserved] For further guidance, see § 1.1471-3T(a)(3)(vi).

(vii) *Foreign branch of a U.S. person.* A payment to a foreign branch of a U.S. person is generally a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to an FFI if the foreign branch is a QI that is acting as an intermediary with respect to the payment. Therefore, a foreign branch that is a QI will provide the withholding agent with an inter-

mediary withholding certificate and the withholding agent will report the payment as having been made to the foreign branch on a Form 1042-S.

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

(1) *Determining whether a payment is received by an intermediary.* A withholding agent must treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. A U.S. person's foreign branch that is acting in its capacity as a QI is treated as a foreign intermediary. A withholding agent that makes a payment with respect to an offshore obligation must also treat the person who receives the payment as an intermediary if the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the

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

(2) *Determination of entity type.* A person's entity classification for purposes of chapter 4 is the person's entity classification for U.S. federal income tax purposes. Thus, for example, an entity that is disregarded as a legal entity in its country of organization or an arrangement that does not have a legal personality and is not a juridical person in the country in which it was organized will be treated as an entity for

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

(3) [Reserved] For further guidance, see §1.1471-3T(b)(3).

(4) *Determination of whether the payee is receiving effectively connected income.* A withholding agent may treat a payment as being made to a payee that is receiving income that is effectively connected with a trade or business in the United States, or gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States, if it can reliably associate the payment with a valid Form W-8ECI described in paragraph (c)(3)(v) of this section or if it can do so under the presumption rule in paragraph (f)(6) of this section.

(c) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation—*(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it has obtained (either directly or through an agent) valid documentation appropriate to the payee's

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

(2) *Reliably associating a payment with documentation if a payment is made through an intermediary or flow-through entity that is not the payee—(i) In general.* A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation if, in addition to the documentation described in paragraph (d) of this section that is relevant to each payee, the withholding agent also has obtained a valid Form W-8IMY, described in paragraph (c)(3)(iii) of this section, from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a valid Form W-8IMY from each intermediary or flow-through entity in that chain). An intermediary or flow-

through entity that is a participating FFI or registered deemed-compliant FFI receiving a payment of U.S. source FDAP income may, in lieu of providing the withholding agent with documentation for each payee, provide pooled allocation information to the extent and in the manner permitted by paragraph (c)(3)(iii)(B)(2) of this section. With respect to the documentation provided for the owners of a foreign flow-through entity, the foreign flow-through entity is permitted to provide the documentary evidence described in paragraph (d) of this section applicable to each payee in lieu of a withholding certificate, regardless of whether the payment is made with respect to an offshore obligation.

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

(3) *Requirements for validity of certificates—(i) Form W-9.* A valid Form W-9, or a substitute form, must meet the requirements prescribed in §31.3406(h)-3 of this chapter, including the requirement that the form contain the payee's name and TIN, and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee pursuant to sections 6061 through 6063 and the regulations thereunder. A foreign person, including a

U.S. branch of a foreign person that is treated as a U.S. person under § 1.1441-1(b)(2)(iv), or a foreign branch of a U.S. financial institution that is a QI, may not provide a Form W-9.

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

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

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

(C) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(ii)(C).

(D) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(ii)(D).

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

(iii) *Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W-8IMY)*—(A) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(A).

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

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

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

(4) The person's chapter 4 status.

(5) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(A)(5).

(6) In the case of an intermediary certificate, a certification that, with respect to accounts listed on the with-

holding statement, the intermediary is not acting for its own account.

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

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

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

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

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

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

(B) *Withholding statement*—(1) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(1).

(2) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2).

(i) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(i).

(ii) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(ii).

(iii) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(2)(iii).

(3) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(3).

(4) [Reserved] For further guidance, see § 1.1471-3T(c)(3)(iii)(B)(4).

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

(D) *Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.* A QI that assumes primary withholding responsibility under chapter 3 for a payment may not make an election to be withheld upon, as described in § 1.1471-2(a)(2)(iii), with respect to that payment. Thus, if a QI assumes primary withholding responsibility under chapter 3 with respect to a payment of U.S. source FDAP income, in addition to the other requirements described in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has also indicated on the intermediary withholding certificate that it will assume primary withholding responsibility for that payment for purposes of chapter 4.

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

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

(G) *Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person for purposes of chapter 4 and the institution provides a withholding statement described in paragraphs (c)(3)(iii)(B)(1) and (3) of this section.

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

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

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

(4) *Requirements for written statements.* A written statement is a statement by the payee, or other person receiving the payment, that provides the person's chapter 4 status and any other information reasonably requested by the withholding agent to fulfill its obligations under chapter 4 with respect to the payment, such as whether the person is receiving the payment as a beneficial owner, intermediary, or flow-through entity. A written statement is

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

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

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

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

(B) *Individual government identification.* With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or

a municipality), that is typically used for identification purposes;

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

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

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

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

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

(B) [Reserved] For further guidance, see § 1.1471-3T(c)(5)(ii)(B).

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

(6) *Applicable rules for withholding certificates, written statements, and docu-*

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

(i) *Who may sign the withholding certificate or written statement.* A withholding certificate (including an acceptable substitute) or written statement may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate or written statement, as provided in sections 6061 through 6063 and the regulations thereunder. A person authorized to sign a withholding certificate or written statement includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate or written statement to sign documentation on such person's behalf.

(ii) *Period of validity—(A) General rule.* Except as provided otherwise in paragraphs (c)(6)(ii)(B) and (C), a withholding certificate or written statement will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed. Documentary evidence is generally valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Notwithstanding the validity periods permitted by paragraphs (c)(6)(ii)(A) through (D) of this

section, a withholding certificate, written statement, and documentary evidence will cease to be valid if the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect. Therefore, a withholding agent is required to institute procedures to ensure that any change to the customer master files that constitutes a change in circumstances described in paragraph (c)(6)(ii)(E) of this section is identified by the withholding agent. In addition, a withholding agent is required to notify any person providing documentation of the person's obligation to notify the withholding agent of a change in circumstances.

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

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

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

(3) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(3).

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

(5) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(5).

(6) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(6).

(7) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(B)(7).

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

(1) A withholding certificate or documentary evidence provided by an individual claiming foreign status if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee, does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and has not been provided standing instructions to make a payment in the United States for the obligation;

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

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

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

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

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

(v) A nonreporting IGA FFI;

(vi) A territory financial institution;

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

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

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

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

(3) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(3).

(4) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(4).

(5) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(C)(5).

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

(E) *Change in circumstances—(1) Defined.* For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change in circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia that is not otherwise cured by documentation on file and that is relevant to the chapter 4 status claimed) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(E) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools contained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(2) *Obligation to notify withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. If an intermediary or a flow-through entity becomes

aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change in circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances.

(3) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(ii)(E)(3).

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

(B) *Exception for documentary evidence received with respect to offshore obligations.* A withholding agent that is making a payment with respect to an offshore obligation and is not required to retain copies of documentation reviewed pursuant to its AML due diligence, may, in lieu of retaining the documents as set forth in paragraph (c)(6)(iii)(A), retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any) (for example, a passport number), and whether such documentation

contained any U.S. indicia. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation, except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. See also § 1.1471-4(c)(2)(iv) for the record retention requirements of a participating FFI.

(iv) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(iv).

(v) *Acceptable substitute withholding certificate*—(A) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(v)(A).

(B) [Reserved] For further guidance, see § 1.1471-3T(c)(6)(v)(B).

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

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

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

(i) *Curing inconsequential errors on a withholding certificate*. A withholding agent may treat a withholding certificate as valid, notwithstanding that the withholding certificate contains an inconsequential error, if the withholding agent has sufficient documentation on

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

(ii) *Documentation received after the time of payment*. Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of

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

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

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

(ii) *Universal account systems.* A withholding agent may rely on documenta-

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

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

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

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

(v) [Reserved] For further guidance, see § 1.1471-3T(c)(8)(v).

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

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

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

(A) The third-party data provider must have collected documentation that is sufficient to determine the chapter 4 status of the entity under paragraph (d) of this section.

(B) [Reserved] For further guidance, see § 1.1471-3T(c)(9)(ii)(B).

(C) The third-party data provider must notify the entity submitting the documentation that such entity must

notify the third-party data provider in the event of a change in circumstances within 30 days of the change in circumstances, and the third-party data provider must be obligated under its contract with the withholding agent to notify the withholding agent if a change in circumstances occurs.

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

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

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

(iii) *Reliance on certification provided by introducing brokers*—(A) A withholding agent may rely on a certification of a broker indicating the broker's determination of a payee's chapter 4 status and indicating that the broker holds valid documentation sufficient to determine the payee's chapter 4 status under paragraph (d) of this section with respect to any readily tradable instrument as defined in § 1.3406(h)-1(d) of this chapter if the conditions in paragraph (c)(9)(iii)(B) of this section are satisfied and the broker is either—

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

(2) A participating FFI or a reporting Model 1 FFI that is acting as the agent of the payee with respect to an obliga-

tion and receiving all payments from the withholding agent with respect to such obligation as an intermediary on behalf of the payee.

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

(iv) *Reliance on documentation and certifications provided between principals and agents*—(A) *In general*. Subject to the conditions under § 1.1474-1(a)(3), a withholding agent is permitted to use an agent to fulfill its chapter 4 obligations and such agent's actions are imputed to the principal. However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under § 1.1473-1(d) applies. Therefore, the paying agent will have its own obligation to determine the chapter 4 status of the payee and withhold upon the payment if required. Although a paying agent is generally a withholding agent for purposes of chapter 4, the financial accounts to which it makes payments are not necessarily financial accounts of the paying agent. See the rules under § 1.1471-5(b)(5) to determine when a financial institution maintains a financial account. In addition, the status of a payment as made with respect to an offshore obligation or as a preexisting obligation will be determined based on such obligation's status in relation to the principal. Further, the due diligence required with

respect to the payment will be determined by the status of the principal and not the paying agent. Consequently, a payment that is made, for example, by a paying agent that is a foreign entity on behalf of a principal that is a U.S. withholding agent will be subject to the due diligence applicable to the principal. See § 1.1474-1(a)(3) for rules regarding the reporting obligations of a principal and agent in the case of a payment made by an agent of behalf of a principal.

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

(C) *Document sharing.* In lieu of obtaining a certification from the principal as described in paragraph (c)(9)(iv)(B) of this section, or when reliance upon such certification is not permitted, an agent that makes a payment on behalf of a principal may rely upon copies of documentation provided to the principal with respect to the payment. However, in such case, both the principal and the agent are obligated to determine the chapter 4 status of the payee based upon the documentation and ensure that adequate withholding occurs with respect to the payment. While a principal is imputed the knowledge of the agent with respect to the payment, the agent is not imputed the knowledge of the principal.

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

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

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

(v) [Reserved] For further guidance, see § 1.1471-3T(c)(9)(v).

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

correct or unreliable as described in paragraphs (d) and (e) of this section. If the chapter 4 status of a payee cannot be determined under this paragraph (d) based on documentation received, a withholding agent must apply the presumption rules in paragraph (f) to determine the chapter 4 status of the payee.

(1) [Reserved] For further guidance, see § 1.1471-3T(d)(1).

(2) *Identification of U.S. persons—(i)* [Reserved] For further guidance, see § 1.1471-3T(d)(2)(i).

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

(iii) [Reserved] For further guidance, see § 1.1471-3T(d)(2)(iii).

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

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

be an individual that is a foreign person under the presumption rules set forth in paragraph (f) of this section.

(4) *Identification of participating FFIs and registered deemed-compliant FFIs*—(i) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(i).

(ii) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(ii).

(iii) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(iii).

(A) The payee provides the withholding agent with—

(1) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(iii)(A)(1).

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

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

(iv) *Exceptions for payments to reporting Model 1 FFIs.* (A) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(iv)(A).

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

(C) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(iv)(C).

(D) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(iv)(D).

(v) [Reserved] For further guidance, see § 1.1471-3T(d)(4)(v).

(5) *Identification of certified deemed-compliant FFIs*—(i) [Reserved] For further guidance, see § 1.1471-3T(d)(5)(i).

(ii) [Reserved] For further guidance, see § 1.1471-3T(d)(5)(ii) through (d)(5)(ii)(B).

(A) [Reserved] For further guidance, see § 1.1471-3T(d)(5)(ii)(A).

(B) [Reserved] For further guidance, see § 1.1471-3T(d)(5)(ii)(B).

(iii) [Reserved] For further guidance, see § 1.1471-3T(d)(5)(iii) through (d)(5)(iii)(B).

(6) *Identification of owner-documented FFIs*—(i) *In general.* A withholding agent may treat a payee as an owner-documented FFI if all the following re-

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

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

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

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

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

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

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

(ii) *Auditor's letter substitute.* A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(6)(i)(C) and

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

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

“owner of the payee” or “debt holder” for “payee.”

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

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

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

(2) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a debt interest in the payee (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee), in either such case if the debt interest constitutes a financial account in excess of

\$50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEs, exempt beneficial owners, or U.S. persons other than specified U.S. persons).

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

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

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

(v) *Exception for preexisting obligations (transitional)*. A withholding agent may treat a payment made prior to January 1, 2017, with respect to a preexisting obligation as made to an owner-documented FFI if the withholding agent has collected, for purposes of satisfying its AML due diligence, documentation with respect to each individual and specified U.S. person that owns a direct or indirect interest in the payee, other than an interest as a creditor, within four years of the date of payment, that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account, the withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee, and the withholding agent does not know, or have reason to know, that any nonparticipating FFI owns an equity interest in the FFI or that any nonparticipating FFI or specified U.S. person owns a debt interest in the FFI constituting a financial account in excess of \$50,000.

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

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

(1) [Reserved] For further guidance, see § 1.1471-3T(d)(6)(vii)(A)(1).

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

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

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

(5) The withholding agent does not know, or have reason to know, that the payee has any contingent beneficiaries or designated classes with unidentified beneficiaries or owners, that any nonparticipating FFI owns a direct or indirect equity interest in the payee, or

that any specified U.S. persons or non-participating FFIs own a debt interest constituting a financial account in excess of \$50,000 in the payee (other than specified U.S. persons that the withholding agent has sufficient information to report).

(B) For example, a withholding agent that is required to obtain a certification from the payee identifying all persons owning an interest in the payee as part of its AML due diligence will not be required to obtain an FFI owner reporting statement, provided the other conditions of this paragraph (d)(6)(vii) are met. On the other hand, a withholding agent that has only obtained documentation for persons owning a certain threshold percentage of the payee will be required to obtain additional documentation to satisfy the requirements of this paragraph (d)(6)(vii). A withholding agent that treats a payee as an owner-documented FFI pursuant to this paragraph (d)(6)(vii) will not be required to obtain new documentation, including the FFI owner reporting statement, until there is a change in circumstances or until the account balance or value exceeds \$1,000,000 on the last day of the calendar year.

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

(ii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a nonreporting IGA FFI if it can reliably associate the payment with a written statement identifying the payee (or the relevant branch of the payee) as a nonreporting IGA FFI and, with respect to a payment of U.S. source FDAP income, the written statement indicates that the payee is the beneficial owner of the income and is accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat a payee as a nonreporting IGA FFI if the withholding

agent has a permanent residence address for the payee, or an address of the relevant branch of the payee, and has obtained a notification, either orally or in writing, indicating that the payee is not acting as an intermediary and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to reasonably determine that the payee is an entity listed as a nonreporting IGA FFI pursuant to a Model 1 or Model 2 IGA.

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

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

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

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(1) and (4) of this section and contains the associated documentation necessary to establish the chapter 4 status of the exempt beneficial owner in accordance with paragraph (d)(9) of this section as if the exempt beneficial owner were the payee.

(9) *Identification of exempt beneficial owners*—(i) *Identification of foreign governments, governments of U.S. territories, international organizations, and foreign central banks of issue*—(A) *In general.* A withholding agent may treat a payee

as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and indicates that the payee is not engaged in commercial financial activities with respect to the payments or accounts identified on the form. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288f) and other facts surrounding the transaction reasonably indicate that the international organization is not receiving the payment as an intermediary on behalf of another person. A withholding agent may treat a payee as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA if it has a withholding certificate that identifies the payee as such an entity and indicates that the payee is the beneficial owner of the payment.

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

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign government, government of a U.S. terri-

tory, international organization, or foreign central bank of issue if—

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

(2) The withholding agent does not know that the payee is not the beneficial owner, within the meaning of § 1.1471-6(b) through (e) (disregarding any presumption that a financial institution is assumed to be an intermediary absent documentation indicating otherwise) or a foreign central bank of issue receiving the payment in connection with a commercial activity.

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

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

(c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a retirement fund meeting the requirements of § 1.1471-6(f).

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

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

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

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

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

(10) *Identification of territory financial institutions—(i) Identification of territory financial institutions that are beneficial owners—(A) In general.* A withholding

agent may treat a payee as a territory financial institution if the withholding agent has a withholding certificate identifying the payee as a territory financial institution that beneficially owns the payment. See paragraph (d)(11)(viii) of this section for rules for documenting territory NFFEs.

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a pre-existing obligation may treat the payee as a territory financial institution if the withholding agent receives written notification, whether signed or not, that the payee is the beneficial owner of the payment and the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or pre-existing account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee was organized or incorporated under the laws of any U.S. territory and is a depository institution, custodial institution, or specified insurance company.

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

the withholding certificate of the territory financial institution in this case.

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

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

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

(1) A written statement in which the payee certifies that it is a foreign entity operating primarily as an excepted nonfinancial group entity for a group that primarily engages in a business other than a financial business described in §1.1471-5(e)(4) and, with respect to a payment of U.S. source

FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

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

(ii) *Identification of excepted nonfinancial start-up companies—*(A) *In general.* A withholding agent may treat a payee as an excepted nonfinancial start-up company described in §1.1471-5(e)(5)(ii) if the withholding agent has a withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides a formation date for the payee that is less than 24 months prior to the date of the payment.

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

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

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

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

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

(iii) *Identification of excepted non-financial entities in liquidation or bankruptcy*—(A) *In general.* A withholding agent may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent has a withholding certificate that identifies the payee as such an entity and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or bankruptcy.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a copy of a bankruptcy filing, or similar documentation, establishing that the payee is a foreign entity in liquidation or bankruptcy and establishing that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution. A withholding agent may also treat the payee with respect to an offshore obligation as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent ob-

tains a written statement stating that the payee is a foreign entity in the process of liquidating or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution, the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years (unless the withholding agent has obtained additional documentary evidence to support the claim that the entity remains in bankruptcy or liquidation), and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471-5(e)(5)(iii), if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is not a financial institution and is a foreign entity that entered liquidation or bankruptcy within the three years preceding the date of the payment.

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

(B) *Reason to know.* A withholding agent must cease to treat a foreign organization's claim that it is a section 501(c) organization as valid beginning on the earlier of the date on which

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

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

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

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

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

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

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

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

(D) *Reason to know.* A withholding agent will have reason to know that a payee is not a nonprofit organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

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

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

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

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

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

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

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

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

(2) A written statement that the payee is a foreign corporation that is not a financial institution, that the

payee is an affiliate of another non-financial entity whose stock is regularly traded on an established securities exchange, providing the name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

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

(1) Documentation or other information confirming that the payee is affiliated with a corporation that is listed on a public securities exchange or on a stock market index;

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

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

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

(A) [Reserved] For further guidance, see § 1.1471-3T(d)(11)(viii)(A).

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

(2) Has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section), preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section), or a prospectus establishing that the

payee is an entity other than a depository institution, custodial institution, or specified insurance company; and

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

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

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

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

(C) [Reserved] For further guidance, see § 1.1471-3T(d)(11)(viii)(C).

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

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

(1) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of

this section) providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution; or

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

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

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

(x) [Reserved] For further guidance, see § 1.1471-3T(d)(11)(x).

(xi) [Reserved] For further guidance, see § 1.1471-3T(d)(11)(xi).

(xii) [Reserved] For further guidance, see § 1.1471-3T(d)(11)(xii) through (d)(11)(xii)(C).

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

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

to a passive NFFE if the withholding agent has—

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

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

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

(iii) *Required owner certification for passive NFFEs*—(A) [Reserved] For further guidance, see § 1.1471-3T(d)(12)(iii)(A).

(B) [Reserved] For further guidance, see § 1.1471-3T(d)(12)(iii)(B).

(e) *Standards of knowledge*—(1) *In general.* The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, intermediaries, flow-through entities, and persons that own an interest in an owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section

may also be liable for tax, interest, and penalties. See paragraph (e)(4) in this section for the specific standards of knowledge applicable to a person's specific claims of chapter 4 status.

(2) [Reserved] For further guidance, see § 1.1471-3T(e)(2).

(3) [Reserved] For further guidance, see § 1.1471-3T(e)(3).

(i) [Reserved] For further guidance, see § 1.1471-3T(e)(3)(i).

(ii) [Reserved] For further guidance, see § 1.1471-3T(e)(3)(ii).

(iii) [Reserved] For further guidance, see § 1.1471-3T(e)(3)(iii).

(iv) [Reserved] For further guidance, see § 1.1471-3T(e)(3)(iv).

(4) [Reserved] For further guidance, see § 1.1471-3T(e)(4).

(i) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(i).

(ii) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(ii) through (e)(4)(ii)(B).

(A) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(ii)(A).

(B) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(ii)(B).

(iii) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(iii).

(iv) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(iv) through (e)(4)(iv)(B)(2).

(v) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(v).

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

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

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

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

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

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

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

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

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

(1) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(v)(B)(1).

(2) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(v)(B)(2).

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

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

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

less the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

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

(B) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(vi)(B).

(vii) *Limits on reason to know—*(A) *Scope of review for preexisting obligations of entities.* For purposes of determining whether a withholding agent that makes a payment with respect to a preexisting obligation to an entity has reason to know that the chapter 4 status applied to the entity is unreliable or incorrect, the withholding agent is only required to review information contradicting the chapter 4 status claimed if such information is contained in the current customer master

file, the most recent withholding certificate, written statement, and documentary evidence for the person, the most recent account opening contract, the most recent documentation obtained by the withholding agent for purposes of AML due diligence or for other regulatory purposes, any power of attorney or signature authority forms currently in effect, and any standing instructions to pay amounts that is currently in effect.

(B) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(vii)(B).

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

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

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

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

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

(A) The individual certifies that he or she—

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

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

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

(4) [Reserved] For further guidance, see § 1.1471-3T(e)(4)(viii)(A)(4).

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

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

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

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

(6) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence to establish a payee's chapter 4 status is unreliable or incorrect in addition to the circumstances described in this paragraph (e).

(f) *Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation—*(1) [Reserved] For further guidance, see §1.1471-3T(f)(1).

(2) [Reserved] For further guidance, see §1.1471-3T(f)(2).

(3) [Reserved] For further guidance, see §1.1471-3T(f)(3).

(4) [Reserved] For further guidance, see §1.1471-3T(f)(4).

(5) [Reserved] For further guidance, see §1.1471-3T(f)(5).

(6) [Reserved] For further guidance, see §1.1471-3T(f)(6).

(7) [Reserved] For further guidance, see §1.1471-3T(f)(7) through (f)(7)(ii).

(i) [Reserved] For further guidance, see §1.1471-3T(f)(7)(i).

(ii) [Reserved] For further guidance, see §1.1471-3T(f)(7)(ii).

(8) [Reserved] For further guidance, see §1.1471-3T(f)(8).

(9) [Reserved] For further guidance, see §1.1471-3T(f)(9) through (f)(9)(ii).

(g) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§1.1471-3(d)(1); 1.1471-3(d)(4)(i), (ii), and (iv); 1.1471-3(d)(6)(v); 1.1471-3(d)(11)(viii)(A); 1.1471-3(d)(12)(iii)(B); 1.1471-3(e)(3)(ii); and 1.1471-3(e)(4)(vii)(B).

[T.D. 9610, 78 FR 5916, Jan. 28, 2013; 78 FR 55204, Sept. 10, 2013, as amended by T.D. 9657, 79 FR 12830, Mar. 6, 2014]

§ 1.1471-3T Identification of payee (temporary).

(a) [Reserved] For further guidance, see §1.1471-3(a).

(1) through (2) [Reserved] For further guidance, see §1.1471-3(a)(1) through (2).

(3) [Reserved] For further guidance, see §1.1471-3(a)(3).

(i) through (ii)(B) [Reserved] For further guidance, see §1.1471-3(a)(3)(i) through (a)(3)(ii)(B).

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

(iv) [Reserved] For further guidance, see §1.1471-3(a)(3)(iv).

(v) *Disregarded entity or limited branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under §301.7701-2(c)(2)(i) as an entity separate from its single owner must treat the single owner as the payee. The rules under §1.1471-3(d)(4) and (e)(3) apply to determine the circumstances under which a withholding agent may treat a payment made to a disregarded entity owned by an FFI as made to a payee that is a participating FFI or registered deemed-compliant FFI, and not as a payment made to a payee that is a nonparticipating FFI. A withholding agent that makes a payment to a limited branch (including an entity disregarded as a separate entity from its owner if such owner is an FFI and the