

§ 1.1471-4

26 CFR Ch. I (4-1-21 Edition)

contained in 26 CFR part 1 revised April 1, 2016.)

[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; T.D. 9809, 82 FR 2152, Jan. 6, 2017; 82 FR 29729, June 30, 2017; T.D. 9890, 85 FR 204, Jan. 2, 2020]

§ 1.1471-4 FFI agreement.

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

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

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

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

and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in § 1.1471-4(d)(2)(ii)(F)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

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

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

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

to cure the event of default as described in paragraph (g) of this section.

(7) *Refunds.* A participating FFI may file a collective refund on behalf of certain account holders and payees for amounts withheld by the participating FFI or its withholding agent under chapter 4 in excess of the account holder or payee's U.S. tax liability to the extent permitted in paragraph (h) of this section. A participating FFI may also make an adjustment for overwithholding using either the reimbursement procedure described in §1.1474-2(a)(3) or the set-off procedure described in §1.1474-2(a)(4).

(b) *Withholding requirements*—(1) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after June 30, 2014, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of FFIs. See §1.1471-2 for the exceptions to and special rules for withholding and the exclusion from the definitions of the terms *withholdable payment* and *foreign passthru payment* that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See §1.1474-1(d)(4)(iii) for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts.

See §1.1474-6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) *Withholding determination.* Except as otherwise provided under §1.1471-2 and, with respect to certain preexisting accounts, under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in §1.1471-3(a)(3), the payee is the account holder. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made with respect to an obligation that is not an account, except as otherwise provided in §1.1471-3(a)(3), the payee is the person to whom the payment is made. See §1.1473-1(a) to determine when a payment is made in the case of a withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under §1.1471-3(c)(7) or may apply the procedures provided in §1.1474-2 when overwithholding occurs.

(3) *Satisfaction of withholding requirements*—(i) *In general.* A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees.

(ii) *Withholding not required.* A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under

section 1471(b)(3) not to assume withholding responsibility for a payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a withholding certificate described in § 1.1471-3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See § 1.1471-2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also § 1.1471-3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§ 1.1471-2(a) and 1.1472-1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

(iii) *Election to withhold under section 3406.* A participating FFI may elect to satisfy its withholding obligation under paragraph (b)(1) of this section with respect to recalcitrant account holders that are also U.S. non-exempt recipients subject to backup withholding under section 3406 receiving withholdable payments, to the extent that the payments also constitute reportable payments, by applying withholding under section 3406 at the backup withholding rate to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 with respect to payments to which backup withholding applies. Nothing in this paragraph relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See § 1.1474-6(f) for the general rule that satisfying withholding requirements under chapter 4 will satisfy backup withholding requirements under section 3406 for a payment that is both a withholdable payment and a reportable payment.

(4) *Foreign passthru payments.* A participating FFI is not required to deduct

and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a non-participating FFI before the later of January 1, 2019, or the date of publication in the FEDERAL REGISTER of final regulations defining the term *foreign passthru payment*.

(5) *Withholding on limited FFIs and limited branches—(i) Limited FFIs.* A participating FFI is required to withhold on a withholdable payment made to a limited FFI identifying itself as a non-participating FFI. A participating FFI that is a member of an expanded affiliated group that includes one or more limited FFIs will also be required to treat any such limited FFI as a non-participating FFI with respect to withholdable payments made to such limited FFI. A participating FFI will be considered to have made a withholdable payment to a limited FFI if such participating FFI receives a withholdable payment with respect to a security or instrument held on behalf of a limited FFI (or an account maintained by the limited FFI). A participating FFI will also be considered to have made a withholdable payment to a limited FFI when the limited FFI receives a payment with respect to a transaction between the limited FFI and such participating FFI that is in the same expanded affiliated group and such transaction hedges or otherwise provides total return exposure to another transaction between such participating FFI and a third party that gives rise to a withholdable payment.

(ii) *Limited branches.* A participating FFI is required to withhold on a withholdable payment made to a limited branch identifying itself as a non-participating FFI. A branch of the participating FFI other than the limited branch is also required to withhold on a withholdable payment when it receives the payment on behalf of a limited branch of the participating FFI. A branch of the participating FFI other than a limited branch will be considered to have received a withholdable payment on behalf of a limited branch when such other branch receives a withholdable payment with respect to a security or instrument it holds on behalf of a limited branch (or an account

maintained by the limited branch). A branch of a participating FFI other than a limited branch will be considered to hold a security or instrument on behalf of a limited branch when it executes a transaction with a limited branch that hedges or otherwise provides total return exposure to another transaction between such other branch and a third party that gives rise to a withholdable payment.

(6) *Special rule for dormant accounts.* A participating FFI that makes a withholdable payment not otherwise subject to withholding under chapter 3 or backup withholding under section 3406 to a recalcitrant account holder of a dormant account that it maintains must withhold on the account for purposes of chapter 4. However, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this paragraph (b)(6) may not delegate the responsibility to escrow withheld tax to the withholding agent from which it is receiving payment. Once a dormant account escheats irrevocably to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is no longer required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) *Withholding requirements for U.S. branches of FFIs treated as U.S. persons.* A U.S. branch of an FFI treated as a U.S. person must satisfy its backup withholding obligations under section 3406(a) with respect to accounts held at

the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61. See §§1.1441-1(b)(2)(iv)(C), 1.1471-2(a), and 1.1472-1(a) for additional withholding obligations for a U.S. branch of an FFI treated as a U.S. person. See paragraph (d)(2)(iii)(B) of this section for the reporting requirements applicable to U.S. branches of FFIs that are treated as U.S. persons.

(c) *Due diligence for the identification and documentation of account holders and payees—(1) Scope of paragraph.* Except to the extent that a participating FFI relies on the due diligence procedures set forth in an applicable Model 2 IGA, a participating FFI must follow this paragraph (c) to identify and document the chapter 4 status of each holder of an account maintained by the participating FFI to determine if the account is a U.S. account, non-U.S. account, or an account held by a recalcitrant account holder or nonparticipating FFI. Paragraph (c)(2) of this section provides the general rules for identification and documentation of account holders and payees, and paragraph (c)(2)(v) provides documentation requirements for certain U.S. branches of FFIs. Paragraph (c)(3) of this section provides the rules for documenting entity accounts and payees. Paragraph (c)(4) of this section provides the general rules for documenting individual accounts other than preexisting accounts. Paragraph (c)(5) of this section provides the identification and documentation procedure for preexisting individual accounts. Paragraph (c)(6) of this section provides examples illustrating the application of the documentation exceptions for entity accounts and individual accounts. Paragraph (c)(7) of this section outlines the certification requirement relating to the due diligence procedures of this paragraph (c) with respect to preexisting accounts within the specified periods of time.

(2) *General rules for the identification and documentation of account holders and payees—(i) Overview.* Except as otherwise provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section (documentation exceptions for certain preexisting accounts), a participating FFI is required to identify among accounts

maintained by the participating FFI each account that is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI, and to report information about such accounts in the manner provided in paragraph (d) of this section and § 1.1474-1(d)(4)(iii). See § 1.1471-5(a)(3) for rules to determine the holder of an account. The participating FFI is also required to retain a record of the documentation collected or otherwise maintained that meets the requirements described in this paragraph (c) when making certain payments to an account holder or payee (if other than an account holder) to determine whether withholding applies under paragraph (b) of this section or whether reporting applies under § 1.1474-1(d)(4)(iii)(C) and any payee for which it provides the certification described in § 1.1471-3(c)(9)(iii)(A) to another withholding agent.

(ii) *Standards of knowledge*—(A) *In general*. A participating FFI may rely on valid documentation that is collected pursuant to the due diligence procedures set forth in this paragraph (c) or that is otherwise maintained in the participating FFI's files, unless the participating FFI knows or has reason to know that such documentation is unreliable or incorrect. For purposes of a participating FFI documenting an account holder under this paragraph (c), the requirements for the validity of withholding certificates, written statements, and documentary evidence provided in § 1.1471-3(c) shall apply regardless of whether the participating FFI makes a payment to the account. Except as otherwise provided paragraph (c)(2)(ii)(B) of this section (certain mergers or bulk acquisitions) and in paragraph (c)(5)(iv) of this section (pre-existing individual accounts), to determine whether a participating FFI knows or has reason to know that the documentation collected or otherwise maintained with respect to the account holder is unreliable or incorrect, the standards of knowledge provided in § 1.1471-3(e) shall apply regardless of whether the participating FFI makes a payment to the account. See § 1.1471-3(c)(8) and (9) for the requirement to obtain documentation on an account-

by-account basis and the exceptions to this requirement.

(B) *Limits on reason to know with respect to certain accounts acquired in merger or bulk acquisition*. A participating FFI that acquires accounts of another financial institution either in a merger or bulk acquisition of accounts for value (other than a related party transaction described in § 1.1471-3(c)(9)(v)) may apply the limitations on reason to know provided in paragraphs (c)(2)(ii)(B)(1) or (2) of this section (as applicable and subject to the conditions therein), or the rules of § 1.1471-3(c)(9)(v) to rely upon documentation collected by another financial institution for an account acquired either in a merger or bulk acquisition of accounts for value.

(1) *In general*. The participating FFI may treat accounts acquired in a transaction described in this paragraph (c)(2)(ii)(B) as preexisting accounts for purposes of applying the identification and documentation procedures of this paragraph (c) by substituting the date of acquisition of such accounts for the effective date of the FFI agreement.

(2) *Participating FFIs and certain deemed-compliant FFIs that apply the due diligence rules, and U.S. financial institutions*. If a participating FFI (transferee FFI) acquires accounts of another participating FFI or deemed-compliant FFI (including a U.S. branch of either such FFI) that applies the due diligence requirements of this paragraph (c) as a condition of its status (as described in § 1.1471-5(f)), or of a U.S. financial institution (transferor FI), the transferee FFI may rely on the chapter 4 status determination made by the transferor FI for an account holder and will not be subject to the standards of knowledge set forth in paragraph (c)(2)(ii)(A) of this section until there is a change in circumstances with respect to the account if the following conditions are met—

(i) The transferee FFI does not have actual knowledge that the chapter 4 status determination provided by the transferor FI is unreliable or incorrect;

(ii) For the certification period following the acquisition of such accounts (described in paragraph (f)(3)(i) of this section), the transferee FFI acquiring

the accounts tests a sample of the acquired accounts to determine if the chapter 4 status determinations made by the transferor FI are reliable;

(iii) In the case of a transferor FI that is a participating FFI or a registered deemed-compliant FFI (or a U.S. branch of either such entity that is not treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

(iv) In the case of a transferor FI that is a U.S. financial institution or that is a U.S. branch of a participating FFI or of a registered deemed-compliant FFI that is treated as a U.S. person, the transferee FFI may rely on the chapter 4 status determinations for a payee that is an entity only if prior to the date of transfer the U.S. financial institution or U.S. branch made a withholdable payment to the payee or, for a payee that is an individual, only if the U.S. financial institution or U.S. branch made a reportable payment (as defined under section 3406(b)) to the payee.

(iii) *Change in circumstances*—(A) *Obligation to identify a change in circumstances*. A participating FFI is required to institute procedures to ensure that any change in circumstances, as described in paragraph (c)(2)(iii)(B) of this section, is identified by the participating FFI, including procedures to ensure that a relationship manager identifies any change in circumstances with respect to an account. For example, if a relationship manager is notified that the account holder has a mailing address in the United States when there was no U.S. address previously associated with the account, the participating FFI will be required to treat the new address as a change in circumstances and will be required to retain a record of the appropriate documentation from the account holder as

described in paragraph (c)(5)(iv)(B)(2)(iii) of this section.

(B) *Definition of change in circumstances*. For purposes of this section, a change in circumstances (as defined in § 1.1471-3(c)(6)(ii)(E)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in § 1.1471-5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. For example, if a holder of an account (including a preexisting account) opens another account that is linked to such account in the participating FFI's computerized system as described under § 1.1471-5(b)(4)(iii) and as part of the participating FFI's account opening procedures the account holder provides a U.S. telephone number for such other account, this is a change in circumstances with respect to the first mentioned account. With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value as of the end of the first subsequent year that causes the account no longer to meet the documentation exception.

(C) *Requirements following a change in circumstances*. With respect to an individual account or an account held by a passive NFFE for which there is a change in circumstances with respect to the information regarding its owners, following a change in circumstances the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) or (c)(5)(iv)(B)(2) of this section within the time period provided by § 1.1471-5(g)(3)(iii) or, if unable to do so, must treat such account as held by a recalcitrant account holder. With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating

FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the date that is 90 days after the change in circumstances or, if unable to do so, must treat such account as held by a nonparticipating FFI.

(iv) *Record retention.* A participating FFI must retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee pursuant to the requirements of this paragraph (c)(2)(iv). A participating FFI will be treated as having retained a record of a withholding certificate, written statement, or documentary evidence if the participating FFI retains either an original, certified copy, or photocopy (including a microfiche, scan, or similar means of record retention) of the withholding certificate, written statement, or documentary evidence collected to determine the chapter 4 status of the account holder for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the account. With respect to documentary evidence for an offshore obligation, however, a participating FFI that is not required to retain copies of documentation reviewed pursuant to its AML due diligence will be treated as having retained a record of such documentation if the participating FFI retains a record in its files noting the date the documentation was reviewed, each type of document, the document's identification number (if any) (for example, passport number), and whether any U.S. indicia were identified. 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. A participating FFI must also retain a record of any searches, including search results provided by third-party credit agencies as described in paragraph (c)(4)(ii) of this section, results from electronic searches, and requests made and responses to relationship manager inquiries for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the

account. A participating FFI may be required to extend the six year retention period if the IRS requests such extension prior to the end of the six year retention period. Notwithstanding the preceding sentences, a participating FFI must retain a record of the chapter 4 status of an account holder or payee for as long as the FFI maintains the account or obligation. See § 1.1471-3(c)(6)(iii)(A) for the record retention period applicable to a participating FFI that is a withholding agent with respect to documentation collected (or otherwise maintained) for a payee.

(v) *Documentation rules for U.S. branches of FFIs that are treated as U.S. persons.* A U.S. branch of an FFI that is treated as a U.S. person shall apply the due diligence requirements of § 1.1471-3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. See paragraph (b)(7) of this section for withholding rules and paragraph (d)(2)(iii)(B) of this section for reporting rules applicable to such U.S. branches.

(3) *Identification and documentation procedure for entity accounts and payees—(i) In general.* With respect to accounts held by entities, unless the documentation exception described in paragraph (c)(3)(iii) of this section applies, a participating FFI must determine if the account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI by applying the principles of § 1.1471-3(b), (c), and (d) to establish the chapter 4 status of each account holder and each payee regardless of whether the participating FFI makes a payment to the account. If an account holder receiving a payment is not the payee of the payment under §§ 1.1471-3(a) and 1.1472-1(d)(3), the participating FFI is also required to establish the chapter 4 status of the payee or payees in order to determine whether withholding applies under paragraph (b) of this section.

(ii) *Timeframe for applying identification and documentation procedure for entity accounts and payees.* For pre-existing entity accounts (including entity accounts that are opened on or

after July 1, 2014, and before January 1, 2015, that the FFI treats as preexisting obligations under § 1.1471-1(b)(104)(i)), a participating FFI must perform the requisite identification and documentation procedures within six months of the effective date of the FFI agreement for any account holder that is a prima facie FFI, as defined in § 1.1471-2(a)(4)(ii)(B), and within two years of the effective date of the FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(iii) of this section. For accounts that are not preexisting accounts, the participating FFI must perform the requisite identification and documentation procedures by the earlier of the date a withholdable payment or a foreign passthru payment is made with respect to the account or within 90 days of the date the participating FFI opens the account. Notwithstanding the foregoing sentences of this paragraph (c)(3)(ii), with respect to a preexisting obligation issued in non-registered (bearer) form by an investment entity, the investment entity is required to perform the requisite identification and documentation procedures at the time a payment is collected by the beneficial owner of the payment (including a beneficial owner that collects the payment through an intermediary or agent). If the participating FFI cannot obtain all the documentation described in § 1.1471-3(d) or if the participating FFI knows or has reason to know that the documentation provided for an entity account is unreliable or incorrect (by applying the standards of knowledge applicable to entities in § 1.1471-3(e) as modified by paragraph (c)(2)(ii)), the participating FFI shall apply the presumption rules of § 1.1471-3(f) (as applicable to entities) to determine the chapter 4 status of the account holder. In the case of an account held by a passive NFFE that provides the documentation described in § 1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners, see § 1.1471-5(g)(2)(iv) for the requirement to treat the account as held by a recalcitrant account holder.

(iii) *Documentation exception for certain preexisting entity accounts*—(A) *Accounts to which this exception applies.*

Unless the participating FFI elects otherwise pursuant to paragraph (c)(3)(iii)(C) of this section, a participating FFI is not required to perform the identification and documentation procedure contained in this paragraph (c)(3) with respect to a preexisting entity account the aggregate balance or value of which is \$250,000 or less if no holder of such account that has previously been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 is a specified U.S. person. For purposes of applying this exception, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(3)(iii)(B) of this section shall apply. An account that meets this exception will cease to meet this exception as of the end of any subsequent calendar year in which the account balance or value exceeds \$1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or as of the date on which there is another change in circumstances with respect to the account or any account aggregated with the account. The exception to the identification and documentation procedure described in this paragraph (c)(3)(iii)(A) does not apply to an entity account opened on or after July 1, 2014, and before January 1, 2015, that the FFI treats as a preexisting account under § 1.1471-1(b)(104)(i).

(B) *Aggregation of entity accounts.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(iii), an FFI is required to aggregate the balance or value of all accounts held (in whole or in part) by the same account holder to the extent required under § 1.1471-5(b)(4)(iii)(A) and (B).

(C) *Election to forgo exception.* A participating FFI may elect to forgo the exception described in this paragraph (c)(3)(iii) by applying the identification and documentation procedures provided in this paragraph (c)(3) within the time period provided by paragraph (c)(3)(ii) of this section or otherwise applying the presumption rules of § 1.1471-3(f) to determine the chapter 4 status of the account holder.

(4) *Identification and documentation procedure for individual accounts other*

than preexisting accounts—(i) *In general.* With respect to an individual account that is not a preexisting account or an account described under paragraph (c)(4)(iii)(B) of this section or § 1.1471-5(a)(4)(i) (providing an exception to U.S. account status for certain depository accounts with an aggregate balance or value of \$50,000 or less), a participating FFI must determine if the account is a U.S. account or non-U.S. account by retaining a record of certain documentation to establish the chapter 4 status of each account holder. Specifically, a participating FFI must retain a record of documentary evidence that meets the requirements of § 1.1471-3(c)(5) (as applicable to individuals), the information described in paragraph (c)(4)(ii) or (c)(4)(iii)(A) of this section, or a withholding certificate to establish an account holder's status as a foreign person. Except as otherwise provided in paragraph (c)(4)(iii)(A) of this section, the participating FFI must also review all information collected in connection with the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes, and apply the standards of knowledge in paragraph (c)(2)(ii) of this section to determine if an account holder's claim of foreign status is unreliable or incorrect. If the participating FFI is not able to establish an account holder's status as a foreign person, the participating FFI must retain a record of either a Form W-9 or U.S. TIN (in any manner) and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, to establish an account holder's status as a U.S. person and to confirm that the account is a U.S. account. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by § 1.1471-5(g)(3)(ii), or, if unable to do so, it must treat such account as held by a recalcitrant account holder. The presumption rules of § 1.1471-3(f) do not apply to individual account holders of a participating FFI.

(ii) *Reliance on third party for identification of individual accounts other than*

preexisting accounts. A participating FFI may establish an account holder's status as a foreign person based on information provided by a third-party credit agency only if the following conditions are met—

(A) As part of the participating FFI's account opening procedures, the account holder provides a residence address outside the United States and attests in writing that the account holder is not a U.S. citizen or resident;

(B) The third-party credit agency verifies the account holder's claimed residence with at least one government data source from the jurisdiction in which the participating FFI (or branch thereof) operates or the account holder claims residence; and

(C) The participating FFI (or branch thereof) relies on the information provided by the third-party credit agency for purposes of satisfying AML due diligence with respect to the account in a FATF-compliant jurisdiction.

(iii) *Alternative identification and documentation procedure for certain cash value insurance or annuity contracts—(A) Group cash value insurance contracts or group annuity contracts.* A participating FFI may treat an account that is a group cash value insurance contract or group annuity contract and that meets the requirements of this paragraph (c)(4)(iii)(A) as a non-U.S. account until the date on which an amount is payable to an employee/certificate holder or beneficiary, if the participating FFI obtains a certification from an employer that no employee/certificate holder (account holder) is a U.S. person. A participating FFI is also not required to review all the account information collected by the FFI to determine if an account holder's claim of foreign status is unreliable or incorrect. An account that is a group cash value insurance contract or group annuity contract meets the requirements of this paragraph (c)(4)(iii)(A) if—

(1) The group life insurance contract or a group annuity contract issued to an employer and covers twenty-five or more employee/certificate holders;

(2) The employee/certificate holders are entitled to receive any contract value and to name beneficiaries for the benefit payable upon the employee's death; and

(3) The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1,000,000.

(B) *Accounts held by beneficiaries of a cash value insurance contract that is a life insurance contract.* A participating FFI may presume that an individual beneficiary (other than the owner) of a cash value insurance contract that is a life insurance contract (account holder) receiving a death benefit is a foreign person and treat such account as a non-U.S. account unless the participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person. A participating FFI has reason to know that a beneficiary of a cash value insurance contract is a U.S. person if the information collected by the participating FFI and associated with the beneficiary contains U.S. indicia as described in paragraph (c)(5)(iv)(B)(1) of this section. If a participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(2) of this section.

(5) *Identification and documentation procedure for preexisting individual accounts—(i) In general.* With respect to a preexisting individual account, unless the account is an account described in § 1.1471-5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of \$50,000 or less), a participating FFI may follow the identification and documentation procedures described below in paragraph (c)(5)(ii) through (iv) of this section (as applicable), in lieu of the identification and documentation procedures described in paragraph (c)(4) of this section, to determine if an account that is a preexisting account is a U.S. account, non-U.S. account, or account held by a recalcitrant account holder. A participating FFI must first determine whether there are any U.S. indicia associated with the account (as defined in paragraph (c)(5)(iv)(B)(1) of this section), and second, if there are U.S. indicia associated with the account, retain a record of the documentation described in paragraph (c)(5)(iv)(B)(2) of this section to establish the account holder's chapter 4 status. For this pur-

pose, the presumption rules of § 1.1471-3(f) do not apply. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by § 1.1471-5(g)(3)(i) or (ii) (as applicable) or, if unable to do so, must treat such account as held by a recalcitrant account holder. A participating FFI may continue to treat an account with no U.S. indicia or an account that meets a documentation exception described in paragraph (c)(5)(iii) of this section or § 1.1471-5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of \$50,000 or less) as a non-U.S. account, until there is a change in circumstances with respect to the account as described in paragraph (c)(2)(iii) of this section.

(ii) *Special rule for preexisting individual accounts previously documented as U.S. accounts for purposes of chapter 3 or 61.* If a participating FFI has documented an individual account holder as a U.S. person for purposes of chapter 3 or 61 and such account holder is a specified U.S. person, the account holder's account will be treated as a U.S. account for chapter 4 purposes and the identification and documentation procedures in paragraph (c)(5)(i) and (iv) of this section will not apply.

(iii) *Exceptions for certain low value preexisting individual accounts—(A) Accounts to which an exception applies.* Unless the participating FFI elects otherwise pursuant to paragraph (c)(5)(iii)(C) of this section, a participating FFI is not required to perform requisite identification and documentation procedures described in paragraph (c)(5)(i) and (iv) of this section with respect to either a preexisting individual account, other than a cash value insurance or annuity contract, the aggregate balance or value of which is \$50,000 or less, or a preexisting individual account that is a cash value insurance or annuity contract described in § 1.1471-5(b)(1)(iv) the aggregate balance or value of which is \$250,000 or less. For purposes of applying these exceptions, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(5)(iii)(B) of this

section shall apply. An account that meets either of these exceptions will cease to meet these exceptions as of the end of any subsequent calendar year in which the account balance or value exceeds \$1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or until there is another change in circumstances with respect to the account or any account aggregated with the account.

(B) *Aggregation of accounts.* For purposes of determining the aggregate balance or value of a preexisting individual account, other than an account that is cash value insurance or annuity contract, an FFI is required to aggregate the balance or value of all accounts that are not cash value insurance or annuity contracts to the extent required under § 1.1471-5(b)(4)(iii)(A) or (B). For purposes of determining the aggregate balance or value of preexisting individual account that is a cash value insurance or annuity contract, an FFI will be required to aggregate the balance or value of all accounts that are cash value insurance or annuity contracts to the extent required under § 1.1471-5(b)(4)(iii)(A) or (B).

(C) *Election to forgo exception.* A participating FFI may elect to forgo the exceptions described in paragraph (c)(5)(iii) of this section by applying the identification and documentation procedures provided in this paragraph (c) within the time provided by paragraph (c)(5)(i) of this section or otherwise treating the account as held by a recalcitrant account holder pursuant to § 1.1471-5(g).

(iv) *Specific identification and documentation procedures for preexisting individual accounts—(A) In general.* A participating FFI applying the identification and documentation procedures of this paragraph (c)(5)(iv) must review its preexisting individual accounts (applying the electronic search described in paragraph (c)(5)(iv)(C) of this section and, if appropriate, the enhanced review for high-value accounts described in paragraph (c)(5)(iv)(D) of this section) to determine if there are any U.S. indicia (as described in paragraph (c)(5)(iv)(B)(I) of this section) associated with the account. If no U.S. indi-

cia are identified with respect to an account, the participating FFI may treat the account as a non-U.S. account. If U.S. indicia are identified with respect to an account, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(2) of this section to establish the account holder's status as a foreign person. A participating FFI that follows the procedures described in this paragraph (c)(5)(iv) (as applicable) with respect to its preexisting individual accounts will not be treated as having reason to know that the determination made with respect to the account was unreliable or incorrect because of information contained in any account files that the participating FFI did not review and was not required to review under the applicable identification procedure. Thus, for example, if a participating FFI was only required to perform an electronic search with respect to a preexisting individual account and no U.S. indicia were identified in the results of the electronic search, the participating FFI would not have reason to know that the individual account holder was a U.S. person, even if the participating FFI had on file (but was not required to and did not review) a copy of the individual's passport that indicates that the individual was born in the United States.

(B) *U.S. indicia and relevant documentation rules—(1) U.S. indicia.* A participating FFI must review an account holder's account information to the extent required under paragraphs (c)(5)(iv)(C) and (D) of this section for any of the following U.S. indicia:

- (i) Designation of the account holder as a U.S. citizen or resident;
- (ii) A U.S. place of birth;
- (iii) A current U.S. residence address or U.S. mailing address (including a U.S. post office box);
- (iv) A current U.S. telephone number (regardless of whether such number is the only telephone number associated with the account holder);
- (v) Standing instructions to pay amounts from the account to an account maintained in the United States;
- (vi) A current power of attorney or signatory authority granted to a person with a U.S. address; or

(vii) An “in-care-of” address or a “hold mail” address that is the sole address the FFI has identified for the account holder.

(2) *Documentation to be retained upon identifying U.S. indicia.* If U.S. indicia are identified with respect to an account holder’s account information, a participating FFI must retain a record of the documentation described in paragraphs (c)(5)(iv)(B)(2)(i) through (vii) of this section, applicable to the U.S. indicia identified, to establish the account holder’s status as a foreign person. If the participating FFI cannot establish an account holder’s status as a foreign person based on such documentation, the participating FFI must retain a record of a Form W-9 and a valid and effective waiver as described in section 1471(b)(1)(F)(ii), if necessary, to confirm that the account is a U.S. account or, if unable to do so, must treat the account as held by a recalcitrant account holder.

(i) *Designation of account holder as a U.S. citizen or resident.* If the information required to be reviewed with respect to the account contains a designation of an account holder as a U.S. citizen or resident, the participating FFI must retain a record of a withholding certificate and documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States in order to establish the account holder’s status as a foreign person.

(ii) *Unambiguous indication of a U.S. place of birth.* If information required to be reviewed with respect to the account unambiguously indicates a U.S. place of birth for an account holder, the participating FFI must retain a record of a form of documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual’s Certificate of Loss of Nationality of the United States, or, alternatively, a withholding certificate, a form of documentary evidence described in §1.1471-3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the account holder’s renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship

at birth in order to establish the account holder’s status as a foreign person.

(iii) *U.S. address or U.S. mailing address.* If information required to be reviewed with respect to the account contains a U.S. address or a U.S. mailing address for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder’s status as a foreign person.

(iv) *Only U.S. telephone numbers.* If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and no other telephone numbers for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder’s status as a foreign person.

(v) *U.S. telephone numbers and non-U.S. telephone numbers.* If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and at least one telephone number outside the United States for an account holder, the participating FFI must retain a record of a withholding certificate or a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder’s status as a foreign person.

(vi) *Standing instructions to pay amounts.* If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and either a form of documentary evidence described in §1.1471-3(c)(5)(i)(A) through (C) or a written reasonable explanation (as defined in §1.1441-7(b)(12)) establishing the account holder’s status as a foreign person.

(vii) *Power of attorney or signatory authority granted to a person with a U.S. address or “in-care-of” address or “hold mail” address.* If information required

to be reviewed with respect to the account includes a power of attorney or signatory authority granted to a person with a U.S. address or contains an “in-care-of” address or “hold mail” address that is the sole address identified for the account holder, the participating FFI must retain a record of either a withholding certificate or a form of documentary evidence described in § 1.1471-3(c)(5)(i)(A) through (C) in order to establish the account holder’s status as a foreign person.

(C) *Electronic search for identifying U.S. indicia.* Except as provided in paragraph (c)(5)(iv)(D) of this section relating to the enhanced review for high-value accounts, a participating FFI may rely solely on a review of the electronically searchable information associated with an account and maintained by the participating FFI to determine if there are any of the U.S. indicia described in paragraph (c)(5)(iv)(B)(1) of this section associated with the account. For purposes of this paragraph (c)(5)(iv)(C), however, an FFI will not be required to treat as U.S. indicia an in-care-of address or a hold mail address that is the sole address identified for the account holder.

(D) *Enhanced review for identifying U.S. indicia in the case of certain high-value accounts—(1) In general.* With respect to preexisting individual accounts that have a balance or value that exceeds \$1,000,000 as of the effective date of the FFI agreement, or at the end of any subsequent calendar year (“high-value accounts”), a participating FFI must apply the enhanced review described in this paragraph (c)(5)(iv)(D) in addition to the electronic search described in paragraph (c)(5)(iv)(C) of this section to identify any U.S. indicia described in paragraph (c)(5)(iv)(B)(1) of this section associated with the account. For purposes of determining the balance or value of an account, a participating FFI must apply the aggregation rules § 1.1471-5(b)(4)(iii)(A) and (B). If a participating FFI applied the enhanced review described in this paragraph (c)(5)(iv)(D) to an account in a previous year, the participating FFI will not be required to reapply such procedures to such account in a subsequent year.

(2) *Relationship manager inquiry.* With respect to all high-value accounts, a participating FFI must identify accounts to which a relationship manager is assigned (including any accounts aggregated with such account) and for which the relationship manager has actual knowledge that the account holder is a U.S. citizen or resident.

(3) *Additional review of non-electronic records.* Except as provided in paragraph (c)(5)(iv)(E) of this section, and except with respect to any account for which the participating FFI has retained a record of a withholding certificate and documentary evidence described in § 1.1471-3(c)(5) establishing the account holder’s foreign status, a participating FFI must review to identify any U.S. indicia the current customer master file of a high-value account and, if not contained in the current customer master file, the following documents described in paragraphs (c)(5)(iv)(D)(3)(i) through (v) of this section that are associated with such an account and were obtained by the participating FFI within the five calendar years preceding the later of the effective date of the FFI agreement, or the end of the calendar year in which the account exceeded the \$1,000,000 threshold described in paragraph (c)(5)(iv)(D)(1) of this section. The documents to be reviewed by the participating FFI if not contained in the current customer master file are—

(i) The most recent withholding certificate, written statement, and documentary evidence;

(ii) The most recent account opening contract or documentation;

(iii) The most recent documentation obtained by the participating FFI for purposes of AML due diligence or for other regulatory purposes;

(iv) Any power of attorney or signature authority forms currently in effect; and

(v) Any standing instructions to pay amounts to another account.

(4) *Limitations on the enhanced review in the case of comprehensive electronically searchable information.* A participating FFI is not required to apply the enhanced review of paragraph (c)(5)(iv)(D)(3) and may instead rely on the electronic search described in paragraph (c)(5)(iv)(C) of this section to

identify U.S. indicia to the extent the following information is available in the FFI's electronically searchable information—

- (i) The account holder's nationality and/or residence status;
- (ii) The account holder's current residence address and mailing address;
- (iii) The account holder's current telephone number(s);
- (iv) Whether there are standing instructions to pay amounts to another account;
- (v) Whether there is a current "in-care-of" address or "hold mail" address for the account holder if no other residence or mailing address is found for the account; and
- (vi) Whether there is any power of attorney or signatory authority for the account.

(E) *Exception for preexisting individual accounts previously documented as held by foreign individuals.* A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for such account. Additionally, a participating FFI with a U.S. payor as its paying agent is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(3) of this section for an account for which its paying agent that is a U.S. payor has previously obtained documentation to establish the account holder's status as a foreign individual under chapter 61. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(2) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(1) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI (or its paying agent

that is a U.S. payor) has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year that was properly reported in that year. In the case of a participating FFI that is a QI, WP, or WT, the participating FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation and reporting requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

(6) *Examples.* The following examples illustrate the documentation exceptions provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section:

Example 1. Aggregation rules applicable to preexisting individual accounts. U, a U.S. resident individual, holds 100 shares of common stock of FFII, an investment entity. On the effective date of FFII's FFI agreement, the common stock held by U is worth \$45,000. U also holds shares of preferred stock of FFII. On the effective date of FFII's FFI agreement, U's preferred stock in FFII is worth \$35,000. Neither FFII's common stock nor FFII's preferred stock is regularly traded on an established securities market. U also holds debt instruments issued by FFII that are not regularly traded on an established securities market. On the effective date of FFII's FFI agreement, U's FFII debt instruments are worth \$15,000. U's common and preferred equity interests are associated with U and with one another by reference to U's foreign tax identification number in FFII's computerized information management system. However, U's debt instruments are not associated with U's equity interests in FFII's computerized information management system. None of these accounts are managed by a relationship manager. Previously, FFII was not required to and did not obtain a Form W-9 from U for purposes of chapter 3 or 61. U's FFII debt interests are eligible for the paragraph (c)(5)(iii)(A) documentation exception because that account does not exceed the \$50,000 threshold described in paragraph (c)(5)(iii)(A)(1) of this section, taking into account the aggregation rule described in paragraph (c)(5)(iii)(A)(2) of this section. However, U's common and preferred equity interests are not eligible for the paragraph (c)(5)(iii)(A) documentation exception because the accounts exceed the \$50,000 threshold described in paragraph

(c)(5)(iii)(A)(I) of this section, taking into account the aggregation rules described in § 1.1471-5(b)(4)(iii) pursuant to the requirements of paragraph (c)(5)(iii)(A)(2) of this section.

Example 2. Aggregation rules for owners of entity accounts. In Year 1, U, a U.S. resident individual, maintains a depository account that is a preexisting account in CB, a commercial bank. The balance in U's depository account on the effective date of CB's FFI agreement is \$20,000. U also owns 100% of Entity X, which maintains a depository account that is a preexisting account in CB, and 50% of Entity Y, which maintains a depository account that is a preexisting account in CB. The balance in Entity X's account on the effective date of CB's FFI agreement is \$130,000, and the balance in Entity Y's account on the effective date of CB's FFI agreement is \$110,000. All three accounts are associated with one another in CB's computerized information management system by reference to U's foreign tax identification number. None of the accounts are managed by a relationship manager. Previously, CB was not required to and did not obtain a Form W-9 from U for purposes of chapter 3 or 61. U's depository account qualifies for the § 1.1471-5(a)(4)(i) exception to U.S. account status because it does not exceed the \$50,000 threshold, taking into account the aggregation rule described in § 1.1471-5(a)(4)(iii)(A). Entity X's account and Entity Y's account both qualify for the paragraph (c)(3)(iii) documentation exception because the accounts do not exceed the \$250,000 threshold described in paragraph (c)(3)(iii)(B)(I) of this section taking into account the aggregation rules described in § 1.1471-5(b)(4)(iii) pursuant to the requirements of paragraph (c)(3)(iii)(B)(2) of this section.

(7) *Certifications of responsible officer.* In order for a participating FFI to comply with the requirements of an FFI agreement with respect to its identification procedures for preexisting accounts, a responsible officer of the participating FFI must certify to the IRS regarding the participating FFI's compliance with the diligence requirements of this paragraph (c). The responsible officer must certify that the participating FFI has completed the review of all high-value accounts as required under paragraphs (c)(5)(iv)(D) and (E) of this section and treats any account holder of an account for which the participating FFI has not retained a record of any required documentation as a recalcitrant account holder as required under this section and § 1.1471-5(g). The responsible officer must also

certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and § 1.1471-5(g) or § 1.1471-3(f) (as applicable). The responsible officer must also certify to the best of the responsible officer's knowledge after conducting a reasonable inquiry, that the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date that is two years after the effective date of the FFI's FFI agreement to assist account holders in the avoidance of chapter 4. A reasonable inquiry for purposes of this paragraph (c)(7) is a review of the participating FFI's procedures and a written inquiry, such as email requests to relevant lines of business, that requires responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices during that period. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, suggesting that account holders split up accounts to avoid classification as a high-value account; suggesting that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; suggesting that an account holder remove U.S. indicia from its account information; or facilitating the manipulation of account balances or values to avoid thresholds. If the responsible officer is unable to make any of the certifications described in this paragraph (c)(7), the responsible officer must make a qualified certification to the IRS stating that such certification cannot be made and that corrective actions will be taken by the responsible officer. The certifications described in this paragraph (c)(7) must be submitted to the IRS by the due date of the FFI's first certification of compliance required under paragraph (f)(3) of this section.

(d) *Account reporting*—(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts. See chapter 61 for reporting requirements that may apply to a payor that is a participating FFI or registered deemed-compliant FFI with respect to payees. See §301.1474-1(a) of this chapter for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) *Reporting requirements in general*—(i)

(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vi) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is respon-

sible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to foreign reportable amounts and for transitional rules for participating FFIs to report certain foreign reportable amounts paid to accounts held by nonparticipating FFIs, see §1.1471-4(d)(2)(ii)(F).

(ii) *Financial institution required to report an account*—(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (G) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (d)(3), or (d)(5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under §1.1474-1(d)(4)(iii).

(B) *Special reporting of account holders of territory financial institutions.* In the

case of an account held by a territory financial institution that is a flow-through entity or acting as an intermediary with respect to a withholdable payment—

(1) If the territory financial institution agrees to be treated as a U.S. person with respect to the payment under § 1.1471-3(c)(3)(iii)(F), a participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to the account holders of the territory financial institution; or

(2) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of an entity that is treated as a passive NFFE with respect to which the territory financial institution acts as an intermediary or is a flow-through entity and provides the participating FFI with the information and documentation required under § 1.1471-3(c)(3)(iii)(G). The participating FFI shall be treated as having satisfied these reporting requirements if it reports with respect to each such specified U.S. person or substantial U.S. owner of a passive NFFE either—

(i) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section (except account number); or

(ii) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section (except account number and account balance or value).

(C) *Special reporting of account holders of a sponsored FFI.* A sponsoring entity that has agreed to fulfill the reporting responsibilities of this paragraph (d) on behalf of a sponsored FFI shall report in accordance with the requirements of paragraph (d)(2)(iii), (3), or (5) of this section (as applicable) with respect to each U.S. account and paragraph (d)(6) of this section with respect to each account held by a recalcitrant account holder of the sponsored FFI to the extent and in the manner required if such sponsored FFI were a participating FFI. The sponsoring entity shall identify each sponsored FFI for which it is reporting to the extent required on the forms for reporting U.S. accounts and

recalcitrant account holders and the accompanying instructions to the forms.

(D) *Special reporting of accounts held by owner-documented FFIs.* A participating FFI that maintains an account held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471-3(d)(6) shall report the information described in paragraph (d)(3)(iv) or (d)(5)(iii) of this section with respect to each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2). See § 1.1474-1(i) for the reporting obligations of a participating FFI with respect to a payee of an obligation other than an account that it has agreed to treat as an owner-documented FFI.

(E) *Requirement to identify the GIIN of a branch that maintains an account.* A participating FFI may report under paragraph (d)(3) or (d)(5) of this section either with respect to all of its U.S. accounts and recalcitrant accounts, or separately with respect to any clearly identified group of accounts (such as by line of business or the location of where the account is maintained). A participating FFI shall include the GIIN assigned to the participating FFI or its branches to identify the jurisdiction of the FFI or branch that maintains the accounts subject to reporting under paragraph (d)(3) or (d)(5) of this section. Additionally, a participating FFI shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(F) *Reporting by participating FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 8966, “FATCA Report” or in this paragraph (d)(2)(ii)(F), if a participating FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI must report on Form 8966

the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI's account by the participating FFI during the calendar year. With respect to calendar year 2015, however, a participating FFI is not required to report gross proceeds described in paragraph (d)(4)(iv)(B)(3) of this section paid to an account held by a nonparticipating FFI. In addition, the participating FFI must retain the account statements related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), through (vii) of this section for rules relating to reporting on recalcitrant account holders. Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates.

(G) *Combined reporting on Form 8966 following merger or bulk acquisition.* If a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under paragraph (d) of this section with respect to the calendar year in which the merger or acquisition occurs (acquisition year), provided that the requirements in paragraphs (d)(2)(ii)(G)(1) through (4) of this sec-

tion are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(1) through (4) of this section are not satisfied, both the predecessor and the successor are required to report the acquired accounts for the portion of the acquisition year that it maintains the account.

(1) The successor must acquire substantially all of the accounts maintained by the predecessor, or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value.

(2) The successor must agree to report the acquired accounts for the acquisition year on Form 8966 to the extent required in § 1.1471-4(d)(3) or (d)(5).

(3) The successor may not elect to report under section 1471(c)(2) and § 1.1471-4(d)(5) with respect to any acquired account that is a U.S. account for the acquisition year.

(4) The successor must notify the IRS on the form and in the manner prescribed by the IRS that Form 8966 is being filed on a combined basis.

(iii) *Special U.S. account reporting rules for U.S. payors—*

(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) shall be treated as having satisfied the chapter 4 reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts, or accounts held by owner-documented FFIs, if the participating FFI reports with respect to each such account either—

(1) The information required by chapter 61 and described in paragraph (d)(5)(ii) or (d)(5)(iii) of this section; or

(2) The information described in paragraph (d)(3)(ii), (d)(3)(iii), or (d)(3)(iv) of this section. However, such participating FFI that is required to report on such accounts under chapter 61 is not relieved of that obligation.

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135)) shall be treated as having satisfied the reporting requirements described in paragraph

(d)(2)(i) of this section if it reports under—

(1) Chapter 61 with respect to account holders that are U.S. non-exempt recipients;

(2) Chapter 61 with respect to persons subject to withholding under section 3406;

(3) Section 1.1474-1(i) with respect to substantial U.S. owners of NFFEs that are not excepted NFFEs as defined in § 1.1472-1(c) and;

(4) Section 1.1474-1(i) with respect to specified U.S. persons identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2) of owner-documented FFIs.

(C) *Rules for U.S. branches of FFIs not treated as U.S. persons.* A U.S. branch of an FFI that is not treated as a U.S. person shall apply the due diligence rules in paragraph (c)(2) of this section to document its accounts and payees, and shall report its U.S. accounts and accounts held by owner-documented FFIs under paragraph (d)(3), (d)(5), or (d)(6) of this section, as if the U.S. branch were a participating FFI. In addition, the U.S. branch shall apply the withholding requirements in paragraph (b) of this section as if the U.S. branch were a participating FFI.

(3) *Reporting of accounts under section 1471(c)(1)—(i) In general.* The participating FFI (or branch thereof) that is responsible for reporting an account that it is required to treat as a U.S. account or accounts held by owner-documented FFIs under paragraph (d)(2)(ii) of this section shall be required to report such account under this paragraph (d)(3) for each calendar year unless it elects to report its U.S. accounts or accounts held by owner-documented FFIs under paragraph (d)(5) of this section.

(ii) *Accounts held by specified U.S. persons.* In the case of an account described in paragraph (d)(3)(i) of this section that is held by one or more specified U.S. persons, a participating FFI is required to report the following information under this paragraph (d)(3)—

(A) The name, address, and TIN of each account holder that is a specified U.S. person;

(B) The account number;

(C) The account balance or value of the account;

(D) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iii) *Accounts held by U.S. owned foreign entities.* With respect to each U.S. account described in paragraph (d)(3)(i) of this section that is held by a passive NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

(A) The name of the U.S. owned foreign entity that is the account holder;

(B) The name, address, and TIN of each substantial U.S. owner of such entity;

(C) The account number;

(D) The account balance or value of the account held by the NFFE;

(E) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iv) *Special reporting of accounts held by owner-documented FFIs.* With respect to each account held by an owner-documented FFI, a participating FFI is required to report under this paragraph (d)(3)(iv)—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2);

(C) The account number of the account held by the owner-documented FFI;

(D) The account balance or value of the account held by the owner-documented FFI;

(E) The payments made with respect to the account held by the owner-documented FFI, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under

this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(v) *Form for reporting accounts under section 1471(c)(1)*. The information described in paragraphs (d)(3)(ii) through (iv) of this section shall be reported on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) with respect to each account subject to reporting under paragraph (d)(3)(i) of this section maintained at any time during the calendar year. This form shall be filed in accordance with its requirements and its accompanying instructions.

(vi) *Time and manner of filing*. Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(vii) *Extensions in filing*. The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809-I, "Application for Extension of Time to File FATCA Form 8966," (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(4) *Descriptions applicable to reporting requirements of § 1.1471-4(d)(3)*—(i) *Address*. The address to be reported with respect to an account held by a specified U.S. person is the residence address recorded by the participating FFI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or for other purposes by the participating FFI. In the case of an account held by a passive NFFE that is a U.S. owned foreign entity, the address to be reported is the address of each substantial U.S. owner of such entity. In the case of an ac-

count held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(I) and (2).

(ii) *Account number*. The account number to be reported with respect to an account is the identifying number assigned by the participating FFI for purposes other than to satisfy the reporting requirements of this paragraph (d), or, if no such number is assigned to the account, a unique serial number or other number such participating FFI assigns to the financial account for purposes of reporting under paragraph (d)(3) of this section that distinguishes the account from other accounts maintained by such institution.

(iii) *Account balance or value*—(A) *In general*. The participating FFI shall report the average balance or value of the account if the FFI reports average balance or value to the account holder for a calendar year. If the participating FFI does not report the average balance or value of the account to the account holder, the participating FFI shall report the balance or value of the account as of the end of the calendar year as determined in accordance with § 1.1471-5(b)(4). In the case of an account that is a cash value insurance or annuity contract, a participating FFI shall report the balance or value of the account as determined in accordance with § 1.1471-5(b)(4).

(B) *Currency translation of account balance or value*. The account balance or value of an account may be reported in U.S. dollars or in the currency in which the account is denominated. In the case of an account denominated in one or more foreign currencies, the participating FFI may elect to report the account balance or value in a currency in which the account is denominated and is required to identify the currency in which the account is reported. If the participating FFI elects to report such an account in U.S. dollars, the participating FFI must calculate the account balance or value of the account in the manner described in § 1.1471-5(b)(4).

(iv) *Payments made with respect to an account*—(A) *Depository accounts*. The payments made during a calendar year with respect to a depository account

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consist of the aggregate gross amount of interest paid or credited to the account during the year.

(B) *Custodial accounts.* The payments made during a calendar year with respect to a custodial account consist of—

(1) The aggregate gross amount of dividends paid or credited to the account during the calendar year;

(2) The aggregate gross amount of interest paid or credited to the account during the calendar year;

(3) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and

(4) The aggregate gross amount of all other income paid or credited to the account during the calendar year.

(C) *Other accounts.* In the case of an account described in § 1.1471-5(b)(1)(iii) (relating to a debt or equity interest other than an interest as a partner in a partnership) or § 1.1471-5(b)(1)(iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account. In the case of an account that is a partner's interest in a partnership, the payments made during the calendar year with respect to such account are the amount of the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The payments required to be reported under this paragraph (d)(4)(iv)(C) with respect to a partner may be determined based on the partnership's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the partnership's financial statements or any other reasonable method used by the partnership for calculating the partner's share of partnership income by such date.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity finan-*

cial accounts. In the case of an account closed or transferred in its entirety during a calendar year that is a depository account, custodial account, or a cash value insurance contract or annuity contract, the payments made with respect to the account shall be—

(1) The payments and income paid or credited to the account that are described in paragraph (d)(4)(iv)(A) or (B) of this section for the calendar year until the date of transfer or closure; and

(2) The amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

(E) *Amount and character of payments subject to reporting.* For purposes of reporting under paragraph (d)(3) of this section, the amount and character of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and character of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it

must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. federal income tax principles to determine such amounts.

(F) *Currency translation.* A payment described in this paragraph (d)(4)(iv) may be reported in the currency in which the payment is denominated or in U.S. dollars. In the case of payments denominated in one or more foreign currencies, a participating FFI may elect to report the payments in a currency in which payments are denominated and is required to identify the currency in which the account is reported. If such a payment is reported in U.S. dollars, the participating FFI must calculate the amount in the manner described in § 1.1471-5(b)(4).

(v) *Record retention requirements.* A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account for any calendar year in which the account was required to be reported under paragraph (d)(3) of this section must retain a record of such account statements. The record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(5) *Election to perform chapter 61 reporting—(i) In general—(A) Election under section 1471(c)(2).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect under section 1471(c)(2) and this paragraph (d)(5) to report under sections 6041, 6042, 6045, and 6049, as appropriate, with respect to any account required to be reported under this paragraph (d). Such reporting must be done as if such participating FFI were a U.S. payor and each holder of an account that is a specified U.S. person, passive NFFE that is a U.S. owned foreign entity, or owner-documented FFI were a payee who is an individual and citizen of the United States. If a participating FFI makes

such an election, the FFI is required to report the information required under this paragraph (d)(5) with respect to each such U.S. account or account held by an owner-documented FFI, regardless of whether the account holder of such account qualifies as a recipient exempt from reporting by a payor or middleman under sections 6041, 6042, 6045, or 6049, including the reporting of payments made to such account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report an account under the election described in this paragraph (d)(5) is required to report the information described in paragraph (d)(5)(ii) or (iii) of this section for a calendar year regardless of whether a reportable payment was made to the U.S. account during the calendar year. A participating FFI that reports an account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) of this section with respect to the account. The election under section 1471(c)(2) described in this paragraph (d)(5)(i)(A) does not apply to cash value insurance contracts or annuity contracts that are financial accounts described in § 1.1471-5(b)(1)(iv). See paragraph (d)(5)(i)(B) of this section for an election to report cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons in a manner similar to section 6047(d).

(B) *Election to report in a manner similar to section 6047(d).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect to report with respect to any of its cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons under section 6047(d), modified as follows. The amount to be reported is any amount paid under the contract during such reporting period as if such participating FFI were a U.S. payor. Each holder of a U.S. account that is a specified U.S. person is treated for purposes of reporting under this paragraph (d)(5)(i)(B) as a contract holder or payee who is an individual and citizen of the United States.

(ii) *Additional information to be reported.* In addition to the information otherwise required to be reported under

sections 6041, 6042, 6045, 6047(d) (in the manner described in paragraph (d)(5)(i)(B) of this section with respect to U.S. accounts held by specified U.S. persons), and 6049, including the reporting of payments made to such accounts subject to reporting under the applicable section, a participating FFI that elects to report under this paragraph (d)(5)(ii) must report with respect to each account that it is required to treat as a U.S. account—

(A) In the case of an account holder that is a specified U.S. person—

(1) The name, address, and TIN of the account holder; and

(2) The account number; and

(B) In the case of an account holder that is a U.S. owned foreign entity that is a passive NFFE—

(1) The name of such entity;

(2) The name, address, and TIN of each substantial U.S. owner of such entity; and

(3) The account number.

(iii) *Special reporting of accounts held by owner-documented FFIs.* With respect to each account held by an owner-documented FFI, a participating FFI that elects to report under this paragraph (d)(5) must report payments made to the owner-documented FFI under the requirements of sections 6041, 6042, 6045, 6047(d), and 6049, the other information required under each applicable section, and the following information—

(A) The name of such FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2); and

(C) The account number for the account held by the owner-documented FFI.

(iv) *Branch reporting.* A participating FFI that reports the information described in paragraphs (d)(5)(ii) and (iii) of this section shall also report the jurisdiction of the branch that maintains the account being reported.

(v) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the end of the calendar year for which the

election is made. A participating FFI may make an election under this paragraph (d)(5) either with respect to all of its U.S. accounts and recalcitrant accounts or, separately, with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained).

(vi) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) of this section (as a whole or with regard to any clearly identified group of accounts) by reporting the information described in paragraph (d)(3) of this section beginning on the first reporting date with respect to the calendar year that follows the calendar year for which it last reports an account under this paragraph (d)(5).

(vii) *Filing of information under election.* In the case of an account holder that is a specified U.S. person, the information required to be reported under the election described in this paragraph (d)(5) shall be filed with the IRS and issued to the account holder in the time and manner prescribed in sections 6041, 6042, 6045, 6047(d), and 6049 and in accordance with the forms referenced therein and their accompanying instructions provided by the IRS for reporting under each of these sections. If the account holder is a passive NFFE that is a U.S. owned foreign entity or owner-documented FFI, however, the information required to be reported under the election described in this paragraph (d)(5) shall be filed on Form 8966 in accordance with its requirements and its accompanying instructions.

(6) *Reporting on recalcitrant account holders—*(i) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(i)(A) through (E) of this section. See § 1.1474-1(d)(4)(ii) for a participating FFI or registered deemed-compliant FFI's requirement to report chapter 4 reportable amounts paid to such account holders and tax withheld.

(A) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in § 1.1471-5(g)(2)(iv) (referencing passive NFFEs that are recalcitrant account holders).

(B) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in § 1.1471-5(g)(2)(ii) and (iii) (referencing U.S. persons that are recalcitrant account holders).

(C) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A), (B), or (E) of this section, that have U.S. indicia.

(D) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A) or (E) of this section, that do not have U.S. indicia.

(E) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are dormant accounts.

(ii) *Definition of dormant account.* A dormant account is an account (other than a cash value insurance contract or annuity contract) that is a dormant or inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be a dormant account if—

(A) The account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and

(B) The account holder has not communicated with the FFI that maintains such account regarding the account or any other account held by the

account holder with the FFI in the past six years.

(iii) *End of dormancy.* An account that is a dormant account under paragraph (d)(6)(ii) of this section ceases to be a dormant account when—

(A) The account holder initiates a transaction with regard to the account or any other account held by the account holder with the FFI;

(B) The account holder communicates with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI; or

(C) The account ceases to be a dormant account under applicable laws or regulations or the participating FFI's normal operating procedures.

(iv) *Forms.* Reporting under paragraph (d)(6)(i) of this section shall be filed on Form 8966 in accordance with its requirements and accompanying instructions.

(v) *Time and manner of filing.* Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(vi) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809-I, "Application for Extension of Time to File FATCA Form 8966," (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(vii) *Record retention requirements.* A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account held by a recalcitrant account holder described in paragraph (d)(6)(i)(B) of this section for any calendar year in which the account was required to be reported

under paragraph (d)(6) of this section must retain a record of such account statements. Such record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(7) Special reporting rules with respect to the 2014 and 2015 calendar years—

(i) *In general.* If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2015, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that it is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2014 and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) *Participating FFIs that report under § 1.1471-4(d)(3).* With respect to accounts that a participating FFI is required to report in accordance with paragraph (d)(2) of this section, the participating FFI may, instead of the information described in paragraphs (d)(3)(i) and (iii) of this section, report only the following information—

(A) *Reporting with respect to the 2014 calendar year.* With respect to accounts maintained during the 2014 calendar year—

(1) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is a passive NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2);

(2) The account balance or value as of the end of the relevant calendar year, or if the account was closed after the effective date of the FFI agreement, the amount or value withdrawn or transferred from the account in connection with closure; and

(3) The account number of the account.

(B) *Reporting with respect to the 2015 calendar year.* With respect to the 2015 calendar year, the participating FFI may report only—

(1) The information described in paragraph (d)(7)(ii)(A) of this section; and

(2) The payments made with respect to the account except for those payments described in paragraph (d)(4)(iv)(B)(3) of this section (certain gross proceeds).

(iii) *Participating FFIs that report under § 1.1471-4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(1) and (3) of this section for its 2014 calendar year. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) *Forms for reporting—(A) In general.* Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vi) of this section. Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) *Special determination date and timing for reporting with respect to the 2014 calendar year.* With respect to the 2014 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on or after the effective date of the participating FFI's FFI agreement. Reporting for the 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135))) that reports in accordance

with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 6I with respect to the 2014 calendar year.

(8) *Reporting requirements of QIs, WPs, and WTs.* In general, the reporting requirements with respect to the U.S. accounts maintained by a participating FFI that is a QI, WP, or WT will be consistent with the reporting requirements with respect to such accounts of a participating FFI that is not a QI, WP, or WT. See the QI, WP, or WT agreement for the coordination of the chapter 4 reporting obligations of a participating FFI that also is a QI, WP, or WT.

(9) *Examples.* The following examples illustrate the provisions of this paragraph (d):

Example 1. Financial institution required to report U.S. account. PFFI1, a participating FFI, issues shares of stock that are financial accounts under §1.1471-5(b). Such shares are held in custody by PFFI2, another participating FFI, on behalf of U, a specified U.S. person that holds an account with PFFI2. The shares of PFFI1 held by PFFI2 will not be subject to reporting by PFFI1 if PFFI1 may treat PFFI2 as a participating FFI under §1.1471-3(d)(4). See paragraph (d)(2)(ii)(A) of this section.

Example 2. Financial institution required to report U.S. account. U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under §1.1471-5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under §1.1471-5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI1, if PFFI2 may treat PFFI1 as a participating FFI under §1.1471-3(d)(4). See paragraph (d)(2)(ii)(A) of this section.

Example 3. U.S. owned foreign entity. FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See §1.1473-1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(v) of this section and report the information described in paragraph

(d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

Example 4. Election to perform Form 1099 reporting with regard to an NFFE. Same facts as in *Example 3*, except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for FC, treating FC as if it were an individual and citizen of the United States and must identify Q as a substantial U.S. owner of FC on such form. See paragraph (d)(5)(ii) of this section. PFFI1 shall not complete the forms described in paragraph (d)(5)(vii) with regard to U.

Example 5. Owner-documented FFI. DC, an owner-documented FFI under §1.1471-3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in §1.1471-3(d)(6)(iv)(A)(1) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 6. Election to perform Form 1099 reporting with regard to an owner-documented FFI. Same facts as in *Example 5*, except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for U and Q.

Example 7. Sponsored FFI. DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under §1.1471-5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under §1.1471-5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) *Expanded affiliated group requirements—(1) In general.* Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in paragraph (e)(3)(v) of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner

in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI other than a certified deemed-compliant FFI or exempt beneficial owner that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to its limited branches and its affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) *Limited branches*—(i) *In general.* An FFI that otherwise satisfies the requirements for participating FFI status as described in this section will be allowed to become a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of a participating FFI as described in this section if—

(A) All branches (as defined in paragraph (e)(2)(ii) of this section) that cannot satisfy all of the requirements of a participating FFI as described in this section are limited branches as described in paragraph (e)(2)(iii) of this section;

(B) The FFI maintains at least one branch that complies with all of the requirements of a participating FFI, even if the only branch that can comply is a U.S. branch; and

(C) The FFI agrees to and complies with the conditions in paragraph (e)(2)(iv) of this section.

(ii) *Branch defined.* The term *branch* has the meaning set forth in § 1.1471-1(b)(10).

(iii) *Limited branch defined.* A limited branch is a branch of an FFI that, under the laws of the jurisdiction that

apply with respect to the accounts maintained by the branch, cannot satisfy the conditions of both paragraphs (e)(2)(iii)(A) and (B) of this section, but with respect to which the FFI will agree to the conditions of paragraph (e)(2)(iv) of this section.

(A) With respect to accounts that pursuant to this section the participating FFI is required to treat as U.S. accounts, either report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account (as defined in this paragraph), close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI. For purposes of this paragraph (e)(2)(iii)(B), an account is a blocked account if the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account is closed, transferred, or the account holder provides the documentation described in paragraph (c) of this section for the FFI to determine the U.S. or non-U.S. status of the account and report the account if required under paragraph (d) of this section.

(iv) *Conditions for limited branch status.* An FFI with one or more limited branches must satisfy the following requirements when applying for participating FFI status with the IRS—

(A) Identify the relevant jurisdiction of each branch for which it seeks limited branch status;

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years

from the effective date of the FFI agreement or for as long as the branch maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

(C) Agree to treat each such branch as an entity separate from its other branches for purposes of the withholding requirements described in paragraph (b)(5) of this section;

(D) Except as otherwise provided in paragraph (e)(2)(vi) of this section, agree that each such branch will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any branch of the FFI or from any member of its expanded affiliated group; and

(E) Agree that each limited branch will identify itself to withholding agents as a nonparticipating FFI (including to affiliates of the FFI in the same expanded affiliated group that are withholding agents).

(v) *Term of limited branch status (transitional)*. An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2016, unless otherwise provided pursuant to Model 1 IGA or Model 2 IGA. A branch will cease to be a limited branch as of the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, a participating FFI will retain its status as a participating FFI if it notifies the IRS by the date such branch ceases to be a limited branch that it will comply with the requirements of an FFI agreement with respect to such branch, or if otherwise provided pursuant to a Model 1 IGA or Model 2 IGA.

(vi) *Exception from restriction on opening U.S. accounts and accounts held by nonparticipating FFIs*. Notwithstanding the requirements of paragraph (e)(2)(iv)(D) of this section, a branch may open U.S. accounts for persons resident in the same jurisdiction in which such branch is located or operating and accounts for nonpartici-

pating FFIs that are resident in the same jurisdiction provided that—

(A) The branch does not solicit U.S. accounts or accounts for nonparticipating FFIs from persons not resident in the same jurisdiction in which such branch is located or operating; and

(B) The branch is not used by the FFI or any FFI in its expanded affiliated group to circumvent the obligations of such FFI under section 1471.

(3) *Limited FFI*—(i) *In general*. An FFI will be allowed to become either a participating FFI or a registered deemed-compliant FFI notwithstanding that one or more of the FFIs in the expanded affiliated group of which the FFI is a member cannot comply with all of the requirements of a participating FFI as described in this section if each such FFI is a limited FFI under paragraph (e)(3)(ii) of this section.

(ii) *Limited FFI defined*. A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions described in paragraph (e)(3)(iii) of this section to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, the affiliate cannot satisfy the conditions of both paragraphs (e)(3)(ii)(A) and (B) of this section.

(A) With respect to accounts that are U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account, close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI. See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked.

(iii) *Conditions for limited FFI status*. An FFI that seeks to become a limited FFI must—

(A) Except as otherwise provided in paragraph (e)(3)(v) of this section, register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of its registration as a limited FFI or for as long as the FFI maintains the account or obligation, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

(C) Except as otherwise provided in paragraph (e)(3)(vi) of this section, agree as part of such registration that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group; and

(D) Agree as part of such registration that it will identify itself to withholding agents as a nonparticipating FFI.

(iv) *Period for limited FFI status (transitional)*. A limited FFI will cease to be a limited FFI after December 31, 2016. An FFI will also cease to be a limited FFI when it becomes a participating FFI or deemed-compliant FFI, or as of the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, participating FFIs and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by the date that an FFI ceases to be a limited FFI, such FFI enters into an FFI agreement or becomes a registered deemed-compliant FFI, unless otherwise provided pursuant to an applicable Model 1 IGA or Model 2 IGA.

(v) *Exception from registration requirement—(A) Conditions for exception*. An FFI that seeks to become a limited FFI is exempted from the registration re-

quirement of paragraph (e)(3)(iii)(A) of this section provided that—

(1) The FFI is prohibited under local law from registering as a limited FFI;

(2) A member of the FFI's expanded affiliated group that is a U.S. financial institution or an FFI seeking status as (or that is) a participating FFI or reporting Model 1 FFI registers as a lead FI (defined in the Instructions for Form 8957, "Foreign Account Tax Compliance Act (FATCA) Registration") with respect to the limited FFI; and

(3) The lead FI identifies the limited FFI on the lead FI's FATCA registration. However, if the limited FFI is prohibited under applicable law from being identified by its legal name on the FATCA registration Web site, the lead FI may use the term *Limited FFI* in place of the limited FFI's name and indicate the limited FFI's jurisdiction of residence or organization.

(B) *Confirmation requirements of lead FI*. By identifying a limited FFI on the FATCA registration Web site pursuant to paragraph (e)(3)(v)(A)(2) of this section, the lead FI is confirming that—

(1) The limited FFI has represented to the lead FI that it will meet the conditions for limited FFI status described in paragraph (e)(3)(iii) of this section;

(2) The limited FFI has agreed to notify the lead FI within 30 days of the date that such FFI ceases to meet the requirements of a limited FFI or the date that such FFI can comply with the requirements of a participating FFI or deemed-compliant FFI (and will separately register for that status); and

(3) The lead FI, if it receives a notification described in paragraph (e)(3)(v)(B)(2) of this section or otherwise knows that the limited FFI has not complied with the conditions for limited FFI status or can comply with the requirements of a participating FFI or deemed-compliant FFI, will, within 90 days of such notification or acquiring such knowledge, remove the FFI from the lead FI's registration on the FATCA registration Web site and maintain a record of the date on which the FFI ceased to be a limited FFI and (if applicable) the circumstances of the limited FFI's non-compliance, which

will be available to the IRS upon request.

(vi) *Exception from restriction on opening U.S. accounts and accounts held by nonparticipating FFIs.* Notwithstanding paragraph (e)(3)(iii)(C) of this section, a limited FFI may open U.S. accounts for persons resident in the same jurisdiction in which such FFI is resident or organized and accounts for nonparticipating FFIs that are resident in the same jurisdiction provided that—

(A) Such FFI does not solicit U.S. accounts or accounts for nonparticipating FFIs from persons not resident in the same jurisdiction in which the FFI is resident or organized; and

(B) The FFI is not used by another FFI in the FFI's expanded affiliated group to circumvent the obligations of such other FFI under section 1471.

(4) *Special rule for QIs.* An FFI that has in effect a QI agreement with the IRS will be allowed to become a limited FFI notwithstanding that none of the FFIs in the expanded affiliated group of which the FFI is a member can comply with the requirements of a participating FFI as described in this section if the FFI that is a QI meets the conditions of a limited FFI under paragraph (e)(3)(iii) of this section.

(f) *Verification*—(1) *In general.* This paragraph (f) describes the requirement for a participating FFI to establish and implement a compliance program for satisfying its requirements under this section. Paragraph (f)(2) of this section provides the requirement for a participating FFI to establish a compliance program and the option for a group of FFIs to adopt a consolidated compliance program. Paragraph (f)(3) of this section describes the periodic certification that the participating FFI must make to the IRS regarding the participating FFI's compliance with the requirements of an FFI agreement. Paragraph (f)(4) describes IRS information requests related to compliance with an FFI agreement.

(2) *Compliance program*—(i) *In general.* The participating FFI must appoint a responsible officer to oversee the participating FFI's compliance with the requirements of the FFI agreement. The responsible officer must (either personally or through designated persons) establish a compliance program

that includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement. The responsible officer (or designee) must periodically review the sufficiency of the FFI's compliance program and the FFI's compliance with the requirements of an FFI agreement during the certification period described in paragraph (f)(3) of this section. The results of the periodic review must be considered by the responsible officer in making the periodic certifications required under paragraph (f)(3) of this section.

(ii) *Consolidated compliance program*—(A) *In general.* A participating FFI that is a member of an expanded affiliated group that includes one or more FFIs may elect to be part of a consolidated compliance program (and perform a consolidated periodic review) under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) that is a member of the electing FFI's expanded affiliated group, regardless of whether all such members so elect. In addition, when an FFI elects to be part of a consolidated compliance program, each branch that it maintains (including a limited branch or a branch described in § 1.1471-5(f)(1)), other than a branch located in a Model 1 IGA jurisdiction, must be subject to periodic review as part of such program and included on the periodic certification (described in paragraph (f)(2)(ii)(B)(1) of this section). To the extent that a compliance FI satisfies the certification requirements of paragraph (f)(2)(ii)(B) of this section on behalf of an electing FFI, such electing FFI does not have a certification requirement under paragraph (f)(3) of this section. See § 1.1471-5(j) for the requirement of a sponsoring entity to establish and implement a compliance program for its sponsored FFIs.

(B) *Requirements of compliance FI.* A participating FFI, reporting Model 1 FFI, or U.S. financial institution that agrees to establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of one or more FFIs (the compliance group), must agree to identify itself as the compliance FI and identify each FFI for which it acts (an electing FFI) to the extent required by the IRS

as part of the FFI registration process or certification procedures. The agreement between the compliance FI and each electing FFI must permit either the compliance FI or the electing FFI to terminate the agreement upon a finding by the IRS or by either party that the other party to the agreement is not fulfilling its obligations under the agreement or is no longer able to fulfill such obligations.

(1) *Periodic certification—(i) In general.* On or before July 1 of the calendar year following the end of the certification period, the responsible officer of the compliance FI must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section with respect to all electing FFIs for which it acts during the certification period on the form and in the manner prescribed by the IRS. The certification must be made on behalf of all electing FFIs in the compliance group during the certification period, except as otherwise provided in paragraph (f)(2)(ii)(B)(J)(ii) of this section. The first certification period for a compliance group begins on the later of the date the compliance FI is issued a GIIN or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three-calendar-year period following the previous certification period.

(ii) *Late-joining electing FFIs.* In general, with respect to a certification period, a compliance FI is not required to make a certification for an electing FFI that first elects to be part of the consolidated compliance program of the compliance FI during the six-month period before the end of the certification period, provided that the compliance FI makes certifications for such electing FFI for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period of the compliance group during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. However, the preceding sentence does not apply to an electing FFI that, immediately before the electing FFI elects to be part of the consolidated compliance program, was a participating FFI or registered

deemed-compliant FFI. The compliance FI may certify for an electing FFI described in the preceding sentence for the portion of the certification period of the compliance group before the date that the electing FFI elects to be part of the consolidated compliance program if the compliance FI obtains from the FFI (or the FFI's former compliance FI, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: The compliance FI does not know that such certification is unreliable or incorrect; and the certification for the electing FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI.

(2) *Preexisting account certification.* The responsible officer of a compliance FI must make the certification described in paragraph (c)(7) of this section (preexisting account certification of a participating FFI) with respect to each electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the certification period. However, a preexisting account certification is not required for an electing FFI if immediately before electing to be part of the consolidated compliance program under the compliance FI the FFI was a participating FFI or a registered deemed-compliant FFI that is a local FFI or restricted fund, and the FFI (or the FFI's former compliance FI, if applicable) provides a written certification to the compliance FI that the FFI has made the preexisting account certification required under paragraph (c)(7) of this section or § 1.1471-5(f)(1)(i)(A)(7) or (f)(1)(i)(D)(6) (as applicable), unless the compliance FI knows that such written certification is unreliable or incorrect. In addition, a preexisting account certification is not required for an electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the two year period before the end of the certification period, provided that the compliance FI makes

the preexisting account certification for such FFI for the subsequent certification period. The certification required under this paragraph (f)(2)(ii)(B)(2) for the certification period must be submitted by the due date of the FFI's certification of compliance required under paragraph (f)(2)(ii)(B)(1)(i) of this section for the certification period, on the form and in the manner prescribed by the IRS.

(3) *Certification of compliance*—(i) *In general.* In addition to the certifications required under paragraph (c)(7) of this section, on or before July 1 of the calendar year following the end of each certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section on the form and in the manner prescribed by the IRS. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three-calendar-year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has identified an event of default (defined in paragraph (g) of this section) or a material failure (defined in paragraph (f)(3)(iv) of this section) that it has not corrected as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section. The certification of compliance described in paragraph (f)(3)(ii) or (iii) of this section may be modified through an amendment to the FFI agreement to include any additional certifications or information (such as quantitative or factual information related to the FFI's compliance with the FFI agreement), provided that any additional information or certifications are published at least 90 days before being incorporated into the FFI agreement to allow for public comment.

(ii) *Certification of effective internal controls.* The responsible officer must certify to the following statements—

(A) The responsible officer (or designee) has established a compliance program that is in effect as of the date of the certification and that has been subjected to the review as described in paragraph (f)(2)(i) of this section;

(B) With respect to material failures—

(1) There are no material failures for the certification period; or

(2) If there are any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and

(C) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).

(iii) *Qualified certification.* If the responsible officer has identified an event of default or a material failure that the participating FFI has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(A) With respect to the event of default or material failure—

(1) The responsible officer (or designee) has identified an event of default as defined in paragraph (g)(1) of this section; or

(2) The responsible officer has determined that as of the date of the certification, there are one or more material failures with respect to the participating FFI's compliance with the FFI agreement and that appropriate actions will be taken to prevent such failures from reoccurring;

(B) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(C) The responsible officer (or designee) will respond to any notice of default (if applicable) or will provide to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

(iv) *Material failures defined.* A material failure is a failure of the participating FFI to fulfill the requirements

of the FFI agreement if the failure was the result of a deliberate action on the part of one or more employees of the participating FFI (its agent, sponsor, or compliance FI) to avoid the requirements of the FFI agreement or was an error attributable to a failure of the participating FFI to implement internal controls sufficient for the participating FFI to meet the requirements of this section. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a participating FFI has not substantially complied with the requirements of an FFI agreement. Material failures include the following—

(A) The deliberate or systemic failure of the participating FFI to report accounts that it was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld, or accurately report recalcitrant account holders or payees that are nonparticipating FFIs as required;

(B) A criminal or civil penalty or sanction imposed on the participating FFI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over the participating FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures; and

(C) A potential future tax liability related to the participating FFI's compliance (or lack thereof) with the FFI agreement for which the FFI establishes, for financial statement purposes, a tax reserve or provision.

(4) *IRS review of compliance*—(i) *General inquiries*. The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS (or the absence of such reporting) for each calendar year, may request additional information with respect to the information reported (or required to be reported) on the forms or may request the account statements described in paragraph (d)(4)(v) of this section, or confirmation that the FFI has no accounts that it was required to report.

The IRS may also request any additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance*. If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vii), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the participating FFI may not have substantially complied with the requirements of its FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement. The IRS may make these requests to a sponsoring entity with respect to any sponsored FFI.

(g) *Event of default*—(1) *Defined*. An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An

event of default also includes the occurrence of the following—

(i) Failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under paragraph (d) of this section, valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under paragraph (i) of this section;

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or non-participating FFIs, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;

(iii) Failure, in any case in which foreign law prevents or otherwise limits withholding to the extent required under paragraph (b) of this section, to fulfill the requirements of paragraph (i) of this section;

(iv) Failure to establish or maintain a compliance program for fulfilling the requirements of the FFI agreement or to perform a periodic review of the participating FFI's compliance;

(v) Failure to take timely corrective actions to remedy a material failure described in paragraph (f)(3)(iv) of this section after making the qualified certification described in paragraph (f)(3)(iii) of this section;

(vi) Failure to make the initial certification required under paragraph (c)(7) of this section or to make the periodic certification required under paragraph (f)(3) of this section within the specified time period;

(vii) Making incorrect claims for refund under the collective refund procedures described in paragraph (h) of this section;

(viii) Failure to cooperate with an IRS request for additional information or making any fraudulent statement or misrepresentation of material fact to the IRS; or

(ix) Any transaction relating to sponsorship, promotion, or noncustodial distribution for or on behalf of any Local FFI, as described in §1.1471-

5(f)(1)(i)(A), that is an investment entity.

(2) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. If the FFI's participating FFI status is terminated, in addition to the requirements in §1.1471-3(c)(6)(ii)(E)(2), the FFI must, within 30 days of the termination, send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided. An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS to register. A participating FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of a notice of default or notice of termination by written request to the IRS.

(3) *Remediation of event of default.* A participating FFI will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a participating FFI to remediate an event of default described in paragraph (g)(1)(iii) of this section by providing specific information regarding its U.S. accounts when the FFI has been unable to report all of the information with respect to such accounts as required under paragraph (d)

of this section and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the FFI or the performance of the specified review procedures described in paragraph (f)(4)(ii) of this section.

(h) *Collective credit or refund procedures for overpayments*—(1) *In general.* Except as otherwise provided in the FFI agreement, if there has been an overpayment of tax with respect to an account holder or payee of a participating FFI or reporting Model 1 FFI resulting from tax withheld under chapter 4 by either the participating FFI or reporting Model 1 FFI or by its withholding agent during a calendar year and the amount withheld has not been recovered under the reimbursement or set-off procedures described in § 1.1474-2(a) (applied by either the withholding agent or the participating FFI or reporting Model 1 FFI), the participating FFI or reporting Model 1 FFI may request a credit or refund from the IRS of the overpayment to the extent permitted under this paragraph (h) on behalf of such account holder or payee. For purposes of this paragraph (h), an overpayment means an amount withheld in excess of the account holder or payee's U.S. tax liability with respect to the payment (including overwithholding as defined § 1.1474-2(a)(2)). If a participating FFI or reporting Model 1 FFI does not elect the procedure provided in this paragraph (h) to request a credit or refund, the participating FFI or reporting Model 1 FFI is required to (or must request that its withholding agent) file and furnish within a reasonable period a Form 1042-S (or such other form as the IRS may prescribe) and Form 1042 (or amended forms) to report to any account holder or payee that has requested such form with regard to the tax withheld by the participating FFI or reporting Model 1 FFI or its withholding agent.

(2) *Persons for which a collective refund is not permitted.* A participating FFI or reporting Model 1 FFI cannot include in its collective refund claim any payments made to an account holder or payee that is a nonparticipating FFI, a participating FFI or reporting Model 1 FFI that is a flow-through entity (including a WP or WT) or that is acting

as an intermediary (including a QI), a U.S. person, or a passive NFFE that is a flow-through entity with respect to taxes allocated to its substantial U.S. owners. A participating FFI or reporting Model 1 FFI must follow the procedures set forth under sections 6402 and 6414 and the regulations thereunder, as modified by this paragraph (h), to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511.

(3) *Payments for which a collective refund is permitted.* A collective refund is permitted only for payments withheld upon under chapter 4.

(4) *Procedural and other requirements for collective refund.* A participating FFI or reporting Model 1 FFI may use the collective refund procedures of this paragraph (h) under the following conditions—

(i) All account holders and payees for which the participating FFI or reporting Model 1 FFI seeks a refund must have been included on a Form 1042-S in a reporting pool of nonparticipating FFIs or recalcitrant account holders described in § 1.1474-1(d)(4)(iii) with respect to the payments for which refund is sought and the participating FFI or reporting Model 1 FFI (or the withholding agent) has not filed or furnished a Form 1042-S to any such account holder or payee with respect to which the refund is sought;

(ii) If a refund is sought on the grounds that the account holder or payee of a payment that is U.S. source FDAP income subject to withholding under chapter 3 is entitled to a reduced rate of tax by reason of any treaty obligation of the United States, the participating FFI or reporting Model 1 FFI has also obtained valid documentation that meets the requirements of chapter 3 for a reduced rate of tax and such documentation is available to the IRS upon request with respect to each such account holder or payee; and

(iii) In filing a claim for refund with the IRS under this paragraph (h), the participating FFI or reporting Model 1 FFI submits the following, together with its Form 1042 (or amended Form 1042) on which it provides a reconciliation of amounts withheld and claims a credit or refund, a schedule identifying

the taxes withheld with respect to each account holder or payee to which the claim relates, and, if applicable, a copy of the Form 1042-S (or such other form as the IRS may prescribe) furnished to the participating FFI or reporting Model 1 FFI by its withholding agent reporting the taxes withheld to which the claim relates, and a statement that includes the following representations and explanation—

(A) The reason(s) for the overpayment;

(B) A representation that the participating FFI or reporting Model 1 FFI or its withholding agent deposited the tax for which a refund is being sought under section 6302 and has not applied the reimbursement or set-off procedure of § 1.1474-2 to adjust the tax withheld to which the claim relates;

(C) A representation that the participating FFI or reporting Model 1 FFI has repaid or will repay the amount for which refund is sought to the appropriate account holders or payees;

(D) A representation that the participating FFI or reporting Model 1 FFI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by the participating FFI or reporting Model 1 FFI, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each account holder and payee and also showing the repayment to such account holders or payees for the amount of tax for which a refund is being sought;

(E) A representation that the participating FFI or reporting Model 1 FFI retains valid documentation that meets the requirements of chapters 3 (if applicable) and 4 to substantiate the amount of overwithholding with respect to each account holder and payee for which a refund is being sought and that such documentation is available to the IRS upon request; and

(F) A representation that the participating FFI or reporting Model 1 FFI will not issue a Form 1042-S (or such other form as the IRS may prescribe) to any account holder or payee for which a refund is being sought.

(i) *Legal prohibitions on reporting U.S. accounts and withholding*—(1) *In general.* Except to the extent otherwise pro-

vided in a Model 2 IGA, a participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. A participating FFI (or branch thereof) that is prohibited by law from withholding with respect to a recalcitrant account holder or nonparticipating FFI as required under paragraph (b) of this section is required to perform the procedures of paragraph (i)(3) of this section to obtain an authorization to withhold on payments made to the account holder or payee to the extent required under paragraph (b) of this section, close the account or terminate the obligation (as applicable), or to sell the assets in the account that produce (or could produce) withholdable payments and, if such authorization is not obtained within a reasonable period of time, to transfer or block such account or obligation. An FFI that cannot comply with any of the requirements of this paragraph (i) is not eligible to enter into an FFI agreement with the IRS, but may obtain status as a limited FFI if the FFI meets the requirements and agrees to the conditions of paragraph (e)(3) of this section. If a branch of an FFI cannot comply with the requirements of this paragraph (i), then the FFI must agree to the conditions of a limited branch as described in paragraph (e)(2) of this section to obtain status as a participating FFI.

(2) *Requesting waiver or closure of a U.S. account*—(i) *In general.* If a participating FFI (or branch thereof) is prohibited by law from reporting the information required under paragraph (d) of this section with respect to a U.S. account that it maintains unless a valid and effective waiver of such law is obtained, the participating FFI must request a valid and effective waiver (including by obtaining waivers from all relevant account holders if necessary). For accounts other than preexisting accounts, the participating FFI must obtain a valid and effective waiver

upon opening the account or, if prohibitions on disclosure cannot by law be waived, the participating FFI must refrain from opening accounts that are U.S. accounts or must transfer such accounts as described in paragraph (i)(2)(iii) of this section. Beginning on the date provided in § 1.1471-5(g)(3) and until such time as the holder of a U.S. account either consents to disclosure or closure of the account or until the account is transferred, the participating FFI is required to treat the account as held by a recalcitrant account holder.

(ii) *Valid and effective waiver for a U.S. account.* For purposes of this paragraph (i)(2), a valid and effective waiver is a waiver that, under the applicable law governing the participating FFI's agreement with the account holder, permits the participating FFI (or branch thereof) to report to the IRS all of the information specified in paragraph (d) of this section with respect to the U.S. account and permits the FFI to provide the IRS with additional information concerning such account as specified in paragraph (f) or (g) of this section.

(iii) *Closure or transfer of U.S. account.* If the participating FFI (or branch thereof) is prohibited by law from reporting a U.S. account to the IRS under paragraph (d) of this section and the participating FFI either does not obtain a valid and effective waiver (and Form W-9) or prohibitions on disclosure cannot by law be waived, the participating FFI (or branch thereof) must close or transfer the account within a reasonable time. If the participating FFI cannot close or transfer the account absent the account holder consenting to closure, the participating FFI must request such a consent from such account holder and, if obtained, close or transfer the account within a reasonable period of time.

(3) *Legal prohibitions preventing withholding—(i) In general.* If the participating FFI (or branch thereof) is prohibited by law from withholding with respect to payments subject to withholding under paragraph (b) of this section, the participating FFI (or a branch thereof) must obtain the authorization described in this paragraph (i)(3)(i) from each account holder or payee re-

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

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

(j) *Effective/applicability date—(1) In general.* This section generally applies beginning on January 6, 2017, except for paragraphs (f)(2)(ii)(A), (f)(2)(ii)(B)(1) and (2), (f)(3)(i), and (g)(2) of this section, which apply March 25, 2019. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that otherwise apply beginning on January 6, 2017, and before March 25, 2019, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2018. For rules that apply beginning on January 23, 2013 and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

(2) *Special applicability date.* Paragraph (d)(4)(iv)(C) of this section applies beginning with reporting with respect to calendar year 2017. (For rules that apply to reporting under paragraph (d)(4)(iv)(C) with respect to calendar years before 2017, see this section

as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

[T.D. 9610, 78 FR 5942, Jan. 28, 2013; 78 FR 55205, Sept. 10, 2013, as amended by T.D. 9657, 79 FR 12843, Mar. 6, 2014; 79 FR 37178, July 1, 2014; T.D. 9809, 82 FR 2167, Jan. 6, 2017; 82 FR 29729, June 30, 2017; T.D. 9852, 84 FR 10980, Mar. 25, 2019; 84 FR 13121, Apr. 4, 2019; T.D. 9890, 85 FR 205, Jan. 2, 2020]

§ 1.1471-5 Definitions applicable to section 1471.

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

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

(3) *Account holder*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the account holder is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraph (a)(3)(ii) of this section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners

in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701-2(c)(2)(i) of this chapter, the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471-6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

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

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

(iv) *Account holder for insurance and annuity contracts.* An insurance or annuity contract is held by each person that is entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or change a beneficiary under the contract. If no person can access the contract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a