

(f) * * *

(1) Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make loans with maturities of up to 20 years in the case of:

* * * *

(g) * * *

(1) *Authority.* Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

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§ 701.22 [Amended]

■ 4. Amend § 701.22(b)(1) by removing the words “§ 723.8” and adding in their place “§ 723.4”.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9852]

RIN 1545-BL96

Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document finalizes (with limited revisions) certain proposed regulations. The final regulations provide compliance requirements and verification procedures for sponsoring entities of foreign financial institutions (FFIs) and certain non-financial foreign entities (NFFE), trustees of certain trustee-documented trusts, registered deemed-compliant FFIs, and financial institutions that implement consolidated compliance programs (compliance FIs). These final regulations affect certain financial institutions and NFFEs.

DATES:

Effective date: These regulations are effective on March 25, 2019.

Applicability dates: For dates of applicability, see §§ 1.1471-1(c), 1.1471-4(j), 1.1471-5(m), and 1.1472-1(h).

FOR FURTHER INFORMATION CONTACT: Charles Rioux, at (202) 317-6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision contains amendments to 26 CFR part 1. On January 6, 2017, a notice of proposed rulemaking (REG-103477-14) proposing regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) relating to verification requirements for certain entities was published in the **Federal Register** (82 FR 1629). The notice of proposed rulemaking also included proposed regulations, unrelated to these verification requirements, by cross-reference to temporary regulations that were published in the same issue of the **Federal Register** (82 FR 2124; TD 9809). On September 15, 2017, a correction to the notice of proposed rulemaking was published in the **Federal Register** (82 FR 43314). No public hearing was requested or held. Written comments were received, and are available at www.regulations.gov or upon request. After consideration of the comments received, the proposed regulations relating to verification requirements for certain entities under chapter 4 are adopted (with limited modifications) by this Treasury decision. This Treasury decision does not finalize the proposed regulations in the notice of proposed rulemaking that cross-reference the temporary regulations. Those proposed regulations (REG-132857-17) will be adopted as final regulations at a later date. Hereinafter, the term “proposed regulations” when used in this preamble means the proposed regulations (REG-103477-14) relating to verification requirements for certain entities under chapter 4.

The existing chapter 4 regulations permit certain FFIs and NFFEs to be sponsored by other entities (sponsoring entities) for purposes of satisfying their chapter 4 requirements. Generally, a sponsoring entity is an entity that agrees to perform chapter 4 due diligence, withholding, and reporting requirements on behalf of certain FFIs (sponsored FFIs) or chapter 4 due diligence and reporting obligations on behalf of certain direct reporting NFFEs (sponsored direct reporting NFFEs). An FFI that is a sponsored FFI is a deemed-compliant FFI, and a NFFE that is a sponsored direct reporting NFFE is an

excepted NFFE. The proposed regulations provide verification requirements (including certifications of compliance) and events of default for sponsoring entities. The proposed regulations also provide certification requirements and procedures for the IRS’s review of trustees of certain trustee-documented trusts and procedures for the IRS’s review of periodic certifications provided by registered deemed-compliant FFIs. In addition, the proposed regulations describe the procedures for future modifications to the requirements for certifications of compliance for participating FFIs. The proposed regulations also clarify the requirements in the chapter 4 regulations for periodic certifications of compliance for consolidated compliance programs of participating FFIs and provide requirements for preexisting account certifications for these programs.

Summary of Comments and Explanation of Revisions

After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed below.

Definition of Responsible Officer

The proposed regulations require a sponsoring entity of a sponsored FFI to appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI. Proposed § 1.1471-1(b)(116) defines the term *responsible officer* with respect to a sponsoring entity as an officer of the sponsoring entity with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-5(j) or § 1.1472-1(f) (as applicable). A comment requested that the definition of responsible officer be expanded to include an officer of an FFI in the sponsoring entity’s expanded affiliated group that has responsibility for ensuring the compliance of the sponsoring entity. The comment noted that in some cases an investment manager that is a sponsoring entity is a member of an affiliated group in which one member of the group is designated to oversee the compliance of all members with their chapter 4 requirements.

The proposed regulations require the responsible officer of a sponsoring entity to be an individual who is an officer of the sponsoring entity because the certifications required under these regulations should be made by the individual in the best position to know and represent whether the sponsoring entity is complying with its obligations.

The Department of the Treasury (Treasury Department) and the IRS understand that in practice, the person in the best position to know and represent if the sponsoring entity is complying with its obligations under these regulations may be an individual other than an officer of the sponsoring entity given industry practices established by managers and administrators of investment funds and similar vehicles for both chapter 4 and operational purposes. Therefore, these final regulations define responsible officer with respect to a sponsoring entity to include an officer of an entity that establishes and maintains policies and procedures for, and has general oversight over, the sponsoring entity, provided such individual has sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-5(j) or § 1.1472-1(f) (as applicable).

A comment noted that many investment entities do not appoint officers but may appoint directors for corporate governance purposes who would be able to fulfill the requirements of responsible officers. The comment further noted that in many cases in which investment entities are partnerships, the general partner or managing member has authority to act on behalf of the partnership, and the general partner or managing member may be an entity rather than an individual. The comment requested that the definition of a responsible officer of an investment entity be expanded to include these persons. In response to these comments, these final regulations revise the definition of a responsible officer of a financial institution or sponsoring entity that is an investment entity to include, in addition to an officer of such entity, an individual who is a director, managing member, or general partner of such entity, or, if the general partner or managing member of the investment entity is itself an entity, an individual who is an officer, director, managing member, or general partner of such other entity.

The comment also requested that the term responsible officer be expanded to include, with respect to a participating FFI, an officer of a U.S. financial institution (USFI) in the participating FFI's expanded affiliated group (in addition to an officer of a participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group). This comment is not adopted because § 1.1471-4(f) already permits a USFI to act as a compliance FI for purposes of establishing a consolidated compliance program and making a consolidated certification on behalf of

one or more participating FFIs in an expanded affiliated group.

Coordination of Certification Requirements for Compliance FIs and Sponsoring Entities of Sponsored FFIs or Sponsored Direct Reporting NFFEs

A comment requested clarification that a certification of a compliance FI or sponsoring entity on behalf of an electing FFI, sponsored FFI, or sponsored direct reporting NFFE would satisfy the certification requirements of the electing FFI, sponsored FFI, or sponsored direct reporting NFFE. These final regulations clarify that to the extent a compliance FI or sponsoring entity satisfies the certification requirements in § 1.1471-4(f)(2)(ii), § 1.1471-5(j)(2) and (3), or § 1.1472-1(f)(2) on behalf of an electing FFI, sponsored FFI, or sponsored direct reporting NFFE, then the electing FFI, sponsored FFI, or sponsored direct reporting NFFE will not have a separate certification requirement under § 1.1471-4(f)(3), § 1.1471-5(f)(1)(ii)(B), or § 1.1472-1(c)(3)(vi). For example, if a participating FFI agrees to be a sponsored FFI, the FFI is not required to submit any certification with respect to its participating FFI status after it is registered as a sponsored FFI by its sponsoring entity provided its sponsoring entity certifies on behalf of the FFI to the extent required under § 1.1471-5(j)(3).

The comment also requested that the certification period of a participating FFI that is a member of the expanded affiliated group that includes a compliance FI but is not an electing FFI under such compliance FI be aligned with the certification period of the compliance FI. The comment stated that coordinating the certification due dates of all FFIs in the expanded affiliated group would provide administrative benefits to the group. However, the comment did not explain why all FFIs could not join the consolidated compliance program. The Treasury Department and the IRS have decided not to revise the regulations in response to this request because a participating FFI already has the option of joining the consolidated compliance program under the compliance FI in order to align its certification period with that of the compliance FI.

Requirement for a Written Sponsorship Agreement

The proposed regulations require a responsible officer of a sponsoring entity to certify that the sponsoring entity is compliant with the requirements of a sponsoring entity and maintains effective internal controls

with respect to all sponsored FFIs for which it acts (or provide a qualified certification). One of the statements to which the responsible officer must certify is that the sponsoring entity has a written sponsorship agreement in effect with each sponsored FFI authorizing the sponsoring entity to fulfill the requirements of § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or an applicable Model 2 IGA.

A comment requested the elimination of the requirement that the sponsoring entity have a written sponsorship agreement in effect with each sponsored FFI. The comment stated that this requirement would increase administrative burden for sponsored FFIs. Another comment requested clarification of whether the sponsorship agreement must be a separate agreement between a sponsoring entity and a sponsored FFI that specifically refers to the requirements of a sponsoring entity with respect to a sponsored FFI under § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or an applicable Model 2 IGA. The comment stated that many sponsoring entities already have managerial agreements in place with sponsored FFIs that would allow the sponsoring entity to fulfill these requirements even without explicitly referring to them.

These final regulations retain the requirement that a sponsoring entity have a written sponsorship agreement in place with each sponsored FFI. A written sponsorship agreement memorializes the agreement between the parties, which helps to ensure compliance. However, in response to the comments and to reduce burden, the Treasury Department and the IRS have decided that it is not necessary for the sponsorship agreement to be a standalone agreement, and that a sponsorship agreement between a sponsoring entity and a sponsored FFI can refer generally to the obligations of the parties under FATCA. Accordingly, these final regulations provide that the written sponsorship agreement may be part of another agreement between the sponsoring entity and the sponsored FFI provided it refers to the requirements of a sponsored FFI under FATCA. For example, a provision in a fund manager agreement that states that the sponsoring entity agrees to satisfy the sponsored FFI's FATCA obligations would be sufficient. Additionally, the proposed regulations do not specify when a sponsorship agreement must be in place for purposes of a sponsoring entity's certification requirements. To allow sufficient time for a sponsoring entity to enter into sponsorship agreements (or revise existing agreements), these final regulations

provide that a sponsoring entity of a sponsored FFI must have the written sponsorship agreement in place with such sponsored FFI by the later of March 31, 2019, or the date when the sponsoring entity begins acting as a sponsoring entity for such sponsored FFI. See § 1.1471–5(j)(6). These final regulations include similar rules for a sponsoring entity of a sponsored direct reporting NFFE regarding the date by which the written sponsorship agreement must be in place and that it need not be a standalone agreement. See § 1.1472–1(f)(4).

Extension of Time for Certifications for the Certification Period Ending on December 31, 2017, for Sponsoring Entities of Sponsored FFIs or Sponsored Direct Reporting NFFEs and Trustees of Trustee-Documented Trusts

The proposed regulations provide that a sponsoring entity of a sponsored FFI or sponsored direct reporting NFFE and a trustee of a trustee-documented trust must make the certifications of compliance described in § 1.1471–5(j)(3), § 1.1471–5(l)(2), or § 1.1472–1(f)(2), as applicable, on or before July 1 of the calendar year following the end of the certification period. The proposed regulations also provide that a sponsoring entity of a sponsored FFI must submit the preexisting account certification described in § 1.1471–4(c)(7) by the due date of the sponsoring entity's certification of compliance for the certification period. The earliest certification period for a sponsoring entity or trustee of a trustee-documented trust ends on December 31, 2017, under the proposed regulations, making the earliest certification due date July 1, 2018. One comment requested that the certifications required of sponsoring entities be deferred to apply only for certification periods ending after 2018 in order to have sufficient time to prepare the certifications. The Treasury Department and the IRS understand that sponsoring entities need time to prepare for the certifications in light of the timing of the publication of these regulations. However, the Treasury Department and the IRS do not agree that sponsoring entities should not make certifications for the certification period ending December 31, 2017, because sponsoring entities have already had sufficient notice of their substantive requirements and because of the compliance value of certifications covering this period. These final regulations address the comment by providing additional time for sponsoring entities to make certifications that would otherwise be due on July 1, 2018. Under these final

regulations, certifications by sponsoring entities and trustees of trustee-documented trusts for the certification period ending on December 31, 2017, must be submitted on or before March 31, 2019.

Registration by a Sponsored FFI or Sponsored Direct Reporting NFFE After Termination of the Sponsoring Entity by the IRS

The proposed regulations provide that if a sponsoring entity of a sponsored FFI is terminated by the IRS, the sponsored FFI of the terminated sponsoring entity may not register as a sponsored FFI of a sponsoring entity that has a relationship described in section 267(b) with the terminated sponsoring entity unless the sponsored FFI obtains written approval from the IRS. The proposed regulations provide a similar rule regarding a terminated sponsoring entity of a sponsored direct reporting NFFE, but do not permit the sponsored direct reporting NFFE to obtain written approval from the IRS to register as a sponsored direct reporting NFFE of a section 267(b)-related sponsoring entity.

Section 267(b) describes certain relationships among individuals, corporations, trusts, tax-exempt organizations, and S corporations. The rules described in this paragraph are intended to prevent a sponsored FFI or sponsored direct reporting NFFE from registering under an entity that is related to the terminated sponsoring entity, such as an entity under common control with the terminated sponsoring entity. However, the proposed regulations inadvertently omitted certain relationships between sponsoring entities that are partnerships. These final regulations correct this omission by providing that the rules described in this paragraph generally prohibit registration by a sponsored FFI or sponsored direct reporting NFFE under a sponsoring entity that has a relationship described in section 267(b) or 707(b) to the terminated sponsoring entity. Thus, for example, a sponsored FFI of a terminated sponsoring entity that is a partnership may not register under another sponsoring entity that is a partnership if the same person owns, directly or indirectly, more than 50 percent of capital interests or profits interests of both sponsoring entities. Additionally, these final regulations conform the rule for sponsored direct reporting NFFEs with the rule for sponsored FFIs by allowing a sponsored direct reporting NFFE to register under a sponsoring entity, notwithstanding that there is the impermissible relationship described in this paragraph,

if the sponsored direct reporting NFFE obtains written approval from the IRS.

Sponsored Entities Located in a Model 1 IGA Jurisdiction

The preamble to the proposed regulations provides that a financial institution covered by a Model 1 IGA that chooses to qualify as a sponsored FFI under § 1.1471–5(f) instead of Annex II of the Model 1 IGA must satisfy all of the requirements of the regulations applicable to such an entity. 82 FR 1629 at 1631. Comments requested that a financial institution located in a jurisdiction with a Model 1 IGA that does not include a sponsored entity as a type of nonreporting financial institution in Annex II be allowed to comply with local guidance on sponsored entities or the Model 1 IGA Annex II rather than the regulations. The Treasury Department and the IRS are open to discussing the issue with the competent authorities of affected jurisdictions.

Nonsubstantive Changes

These final regulations include several minor nonsubstantive changes to the proposed regulations. Section 1.1471–4(f)(2)(ii)(B)(1) was reorganized for clarity. Minor clarifying edits were made in §§ 1.1471–4(f)(3)(i), 1.1471–5(f)(1)(i)(F)(4), (f)(1)(iv) introductory text, (f)(1)(iv)(A) and (B), (f)(2)(iii)(E), (j)(3)(ii) and (iii), (j)(4)(ii), (j)(5) and (6), (k)(4)(i), (ii), (iii), and (v), and (l)(2)(ii) and (iii), and 1.1472–1(f)(2)(ii) and (iii), (f)(3)(ii), (f)(4)(vii), and (g)(4)(i), (ii), and (iii).

Special Analyses

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has waived review of this rule in accordance with section 6(a)(3)(A) of Executive Order 12866. This rule is an E.O. 13771 regulatory action.

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2246. The collection of information in these final regulations is in §§ 1.1471–4, 1.1471–5 and 1.1472–1. The collection of information is on a certification filed with the IRS regarding the filer's compliance with its chapter 4 requirements. This information is required to enable the IRS to verify that a taxpayer is complying with its requirements under chapter 4. Certifications are required from compliance FIs, sponsoring entities, and

trustees of trustee-documented trusts. Information on the estimated number of compliance FIs, sponsoring entities, and trustees of trustee-documented trusts required to submit a certification under these final regulations is shown in table 1.

TABLE 1

	Number of respondents (estimated)
Compliance FIs	5,000–10,000
Sponsoring entities and trustees of trustee-documented trusts	10,000–15,000

Information on the number of compliance FIs, sponsoring entities, and trustees of trustee-documented trusts shown in table 1 is from the IRS's FATCA registration data. Comments are requested on the estimated number of respondents.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

It is hereby certified that the collection of information requirement in these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and IRS acknowledge that a small entity could be a compliance FI that is affected by these regulations, the Treasury Department and IRS have concluded this possibility is too small and the potential effect is too minimal to have a significant impact. Additionally, acting as a compliance FI is not required under the chapter 4 regulations. Furthermore, these regulations do not increase the regulatory burden on small entities because they clarify existing chapter 4 regulations regarding a compliance FI's certification obligations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Charles Rioux, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.1471–0 is amended by:

- 1. Adding entries for § 1.1471–4(f)(2)(ii)(B)(1), (f)(2)(ii)(B)(1)(i) and (ii), (f)(2)(ii)(B)(2), and (j)(1) and (2).
- 2. Adding entries for § 1.1471–5(f)(1)(iv), (f)(1)(iv)(A) and (B), (j)(1), (2), and (3), (j)(3)(i), (j)(3)(i)(A) and (B), (j)(3)(ii) through (vi), (j)(3)(vi)(A) and (B), (j)(3)(vii), (j)(4), (j)(4)(i) through (iii), (j)(5) and (6), (k)(1) through (4), (k)(4)(i) through (v).
- 3. Revising the entry for § 1.1471–5(l).
- 4. Adding entries for § 1.1471–5(l)(1) and (2), (l)(2)(i), (l)(2)(i)(A) and (B), (l)(2)(ii) through (iv), (l)(3), (l)(3)(i) and (ii), and (m).
- 5. Adding entries for § 1.1472–1(f)(1) and (2), (f)(2)(i), (f)(2)(i)(A) and (B), (f)(2)(ii) through (iv), (f)(3), (f)(3)(i) and (ii), (f)(4), (g)(1) through (g)(4), and (g)(4)(i) through (iv).

The additions and revisions read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

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§ 1.1471–4 FFI agreement.

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- (f) * * *
- (2) * * *
- (ii) * * *
- (B) * * *

- (1) Periodic certification.
 - (i) In general.
 - (ii) Late-joining electing FFIs.
- (2) Preexisting account certification.

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- (j) * * *
- (1) In general.
- (2) Special applicability date.

§ 1.1471–5 Definitions applicable to section 1471.

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- (f) * * *
- (1) * * *
- (iv) IRS review of compliance by registered deemed-compliant FFIs.
 - (A) General inquiries.
 - (B) Inquiries regarding substantial non-compliance.
- * * * * *
- (j) * * *
- (1) In general.
- (2) Compliance program.
- (3) Certification of compliance.
 - (i) Certification requirement.
 - (A) In general.
 - (B) Extension of time for the certification period ending on December 31, 2017.
 - (ii) Late-joining sponsored FFIs.
 - (iii) Certification period.
 - (iv) Additional certifications or information.
 - (v) Certifications regarding sponsoring entity and sponsored FFI requirements.
 - (vi) Certifications regarding internal controls.
 - (A) Certification of effective internal controls.
 - (B) Qualified certification.
 - (vii) Material failures defined.
 - (4) IRS review of compliance.
 - (i) General inquiries.
 - (ii) Inquiries regarding substantial non-compliance.
 - (iii) Compliance procedures for a sponsored FFI subject to a Model 2 IGA.
 - (5) Preexisting account certification.
 - (6) Sponsorship agreement.
 - (k) * * *
 - (1) Defined.
 - (2) Notice of event of default.
 - (3) Remediation of event of default.
 - (4) Termination.
 - (i) In general.
 - (ii) Termination of sponsoring entity.
 - (iii) Termination of sponsored FFI.
 - (iv) Reconsideration of notice of default or notice of termination.
 - (v) Sponsoring entity of sponsored FFIs subject to a Model 2 IGA.
 - (l) Trustee-documented trust verification.
 - (1) Compliance program.
 - (2) Certification of compliance.
 - (i) Certification requirement.
 - (A) In general.
 - (B) Extension of time for the certification period ending on December 31, 2017.
 - (ii) Late-joining trustee-documented trusts.
 - (iii) Certification period.
 - (iv) Certifications.
 - (3) IRS review of compliance by trustees of trustee-documented trusts.
 - (i) General inquiries.
 - (ii) Inquiries regarding substantial non-compliance.
 - (m) Applicability date.
 - * * * * *
 - § 1.1472–1 Withholding on NFFEs.*
 - * * * * *
 - (f) * * *
 - (1) In general.
 - (2) Certification of compliance.
 - (i) Certification requirement.
 - (A) In general.
 - (B) Extension of time for the certification period ending on December 31, 2017.

- (ii) Late-joining sponsored direct reporting NFFE.
- (iii) Certification period.
- (iv) Certifications.
- (3) IRS review of compliance.
- (i) General inquiries.
- (ii) Inquiries regarding substantial non-compliance.
- (4) Sponsorship agreement.
- (g) * * *
- (1) Defined.
- (2) Notice of event of default.
- (3) Remediation of event of default.
- (4) Termination.
- (i) In general.
- (ii) Termination of sponsoring entity.
- (iii) Termination of sponsored direct reporting NFFE.
- (iv) Reconsideration of notice of default or notice of termination.

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■ **Par. 3.** Section 1.1471–1 is amended by revising paragraphs (b)(116) and (121) and (c) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(116) *Responsible officer.* The term *responsible officer* means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471–4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term *responsible officer* means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of § 1.1471–5(f). The term *responsible officer* means, with respect to a sponsoring entity, an officer of an entity that establishes and maintains policies and procedures for, and has general oversight over, the sponsoring entity, provided such officer has sufficient authority to fulfill the duties of a responsible officer described in § 1.1471–5(j) or § 1.1472–1(f) (as applicable). If a participating FFI elects to be part of a consolidated compliance program, the term *responsible officer* means an officer of the compliance FI (as described in § 1.1471–4(f)) with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471–4(f)(2) and (3) on behalf of each FFI in the compliance group. In the case of an FI or sponsoring entity that is an investment entity, for purposes of this paragraph (b)(116), the responsible officer may be, in lieu of an officer of

the investment entity, an individual who is a director, managing member, or general partner of the investment entity or, if the general partner or managing member of the investment entity is itself an entity, an individual who is an officer, director, managing member, or general partner of such other entity.

(121) *Sponsored FFI.* The term *sponsored FFI* means any entity described in § 1.1471–5(f)(1)(i)(F) (describing sponsored investment entities and sponsored controlled foreign corporations) or § 1.1471–5(f)(2)(iii) (describing sponsored, closely held investment vehicles). The term *sponsored FFI* also means a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle treated as deemed-compliant under an applicable Model 2 IGA.

(c) *Applicability date.* This section generally applies beginning on January 6, 2017, except for paragraphs (b)(116) and (121) of this section, which apply beginning on 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 otherwise apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

- **Par. 4.** Section 1.1471–4 is amended by:
- 1. Revising paragraphs (f)(2)(ii)(A).
 - 2. Adding paragraphs (f)(2)(ii)(B)(1) and (2).
 - 3. Revising paragraphs (f)(3)(i), (g)(2), and (j)(1).

The revisions and additions read as follows:

§ 1.1471–4 FFI agreement.

* * * * *

- (f) * * *
- (2) * * *
- (ii) * * * (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)), or 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) * * *

(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)(1)(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 GIN 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) * * *

(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.

* * * * *

(g) * * *
(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.

* * * * *

(j) * * * (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 26, 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 26, 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.)

* * * * *

- **Par. 5.** Section 1.1471-5 is amended by:
 - 1. Revising paragraph (f)(1)(i)(F)(3)(vi).
 - 2. Removing paragraph (f)(1)(i)(F)(3)(vii).
 - 3. Redesignating paragraph (f)(1)(i)(F)(3)(viii) as paragraph (f)(1)(i)(F)(3)(vii).
 - 4. Revising paragraph (f)(1)(i)(F)(4).
 - 5. Adding paragraph (f)(1)(iv).
 - 6. Revising paragraph (f)(2)(iii)(D)(4).
 - 7. Removing paragraph (f)(2)(iii)(D)(5).
 - 8. Redesignating paragraph (f)(2)(iii)(D)(6) as paragraph (f)(2)(iii)(D)(5).
 - 9. Revising paragraph (f)(2)(iii)(E).
 - 10. Revising paragraphs (j) and (k).
 - 11. Redesignating paragraph (l) as paragraph (m).
 - 12. Adding new paragraph (l).
 - 13. Revising newly redesignated paragraph (m).

The revisions and additions read as follows:

§ 1.1471-5 Definitions applicable to section 1471.

* * * * *

- (f) * * *
- (1) * * *
- (i) * * *
- (F) * * *
- (3) * * *

(vi) Complies with the verification procedures described in paragraph (j) of this section; and

* * * * *

(4) The IRS may revoke a sponsoring entity's status with respect to one or more sponsored FFIs based on the provisions of paragraphs (k)(2), (3), and (4) of this section (describing notice of event of default, remediation, and termination procedures) if there is an event of default as defined in paragraph (k)(1) of this section.

* * * * *

(iv) *IRS review of compliance by registered deemed-compliant FFIs—(A) General inquiries.* With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A), (C), or (D) of this section, the IRS, based upon the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in § 1.1471-4(d)(4)(v), or confirmation that the FFI has no reporting requirements for the calendar year. The IRS may request additional information from the FFI to determine the FFI's compliance with § 1.1471-4 (if applicable) and to assist the IRS with its review of account holder compliance with tax reporting requirements. For IRS review of compliance with respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(F) of this section (describing sponsored investment entities and controlled foreign corporations), see paragraph (j)(4) of this section.

(B) *Inquiries regarding substantial non-compliance.* With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section, the IRS may determine in its discretion that the FFI may not have substantially complied with the requirements of the deemed-compliant status claimed by the FFI. This determination is based on the information reporting forms described in § 1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), the certifications made by the responsible officer described in paragraph (f)(1)(ii)(B) of this section (or the absence of such certifications), or any other information related to the FFI's

compliance with the requirements of the deemed-compliant status claimed by the FFI. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the FFI's compliance with the requirements for the deemed-compliant status claimed by the FFI. For example, in the case of a local FFI under paragraph (f)(1)(i)(A) of this section, the IRS may request a description or copy of the FFI's policies and procedures for identifying accounts held by specified U.S. persons not resident in the jurisdiction in which the FFI is incorporated or organized, identifying entities controlled or beneficially owned by such persons, and identifying nonparticipating FFIs. 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 requirements of the deemed-compliant category claimed by the FFI. If the IRS determines that the FFI has not complied with the requirements of the deemed-compliant status claimed by the FFI, the IRS may terminate the FFI's deemed-compliant status. If the FFI's deemed-compliant status is terminated, the FFI must 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 within 30 days after the termination. An FFI that has had its deemed-compliant status terminated may not reregister on the FATCA registration website as a registered deemed-compliant FFI or register on the FATCA registration website as a participating FFI unless it receives written approval from the IRS. A registered deemed-compliant FFI may request, within 90 days of a notice of termination, reconsideration of the notice of termination by written request to the IRS.

- (2) * * *
- (iii) * * *
- (D) * * *

(4) Complies with the verification procedures described in paragraph (j) of this section; and

* * * * *

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to one or more sponsored FFIs based on the provisions of paragraphs (k)(2), (3), and (4) of this section (describing notice of event of

default, remediation, and termination procedures) if there is an event of default as defined in paragraph (k)(1) of this section. A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

* * * * *

(j) *Sponsoring entity verification—(1) In general.* This paragraph (j) describes the requirements for a sponsoring entity of a sponsored FFI to establish and implement a compliance program for satisfying its requirements as a sponsoring entity and to provide a certification of compliance with its requirements. This paragraph (j) also describes the procedures for the IRS to review the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. For purposes of a sponsoring entity's certification of compliance under this paragraph (j), a sponsoring entity must have in place a written sponsorship agreement described in paragraph (j)(6) of this section with each sponsored FFI. See paragraph (j)(3)(v)(B) of this section for the certification regarding a sponsoring entity's sponsorship agreement with each sponsored FFI.

(2) *Compliance program.* The sponsoring entity must appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. The responsible officer must (either personally or through designated persons) establish a compliance program that includes policies, procedures, and processes sufficient for the sponsoring entity to satisfy the

requirements described in the preceding sentence. The responsible officer (or designee) must periodically review the sufficiency of the sponsoring entity's compliance program, the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, and the compliance of each sponsored FFI with the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA during the certification period described in paragraph (j)(3)(iii) of this section. The results of the periodic review must be considered by the responsible officer in making the periodic certifications described in paragraph (j)(3) of this section.

(3) *Certification of compliance*—(i) *Certification requirement*—(A) *In general*. In addition to the certification required under paragraph (j)(5) of this section (preexisting account certification), and except as otherwise provided in paragraph (j)(3)(i)(B) or (j)(3)(ii) of this section, on or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make the certification described in paragraph (j)(3)(v) of this section and either the certification described in paragraph (j)(3)(vi)(A) of this section or the certification described in paragraph (j)(3)(vi)(B) of this section with respect to all sponsored FFIs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS. To the extent that a sponsoring entity satisfies the certification requirements of paragraph (j)(3) of this section on behalf of a sponsored FFI, the sponsored FFI does not have a certification requirement under paragraph (f)(1)(ii)(B) of this section.

(B) *Extension of time for the certification period ending on December 31, 2017*. The certifications required for a certification period ending on December 31, 2017, must be submitted on or before March 31, 2019.

(ii) *Late-joining sponsored FFIs*. In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the six-month period before the end of the sponsoring entity's certification period, provided that the sponsoring entity makes certifications for such sponsored 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 sponsoring entity during which such FFI was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored FFI that, immediately before the FFI agrees to be sponsored by the sponsoring entity, was a participating FFI, registered deemed-compliant FFI, or sponsored, closely held investment vehicle of another sponsoring entity. The sponsoring entity may certify for a sponsored FFI described in the preceding sentence for the portion of the certification period of the sponsoring entity before the date that the FFI first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the FFI (or the FFI's sponsoring entity, 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 sponsoring entity does not know that such certification is unreliable or incorrect; and the certification for the sponsored 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 sponsored by the sponsoring entity.

(iii) *Certification period*. The first certification period of a sponsoring entity begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity 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.

(iv) *Additional certifications or information*. The certification of compliance described in paragraph (j)(3) of this section may be modified to include additional certifications or information (such as quantitative or factual information related to the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA), provided that such additional information or certifications are published at least 90 days before being made effective in order to allow for public comment.

(v) *Certifications regarding sponsoring entity and sponsored FFI requirements*. The responsible officer of the sponsoring entity must certify to the following statements—

(A) The sponsoring entity meets all of the requirements of a sponsoring entity as described in paragraph (f)(1)(i)(F)(3) or (f)(2)(iii)(D) of this section or an

applicable Model 2 IGA, including the chapter 4 status required of such entity;

(B) The sponsoring entity has a written sponsorship agreement in effect with each sponsored FFI authorizing the sponsoring entity to fulfill the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA with respect to each sponsored FFI; and

(C) Each sponsored FFI treated as a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle by the sponsoring entity meets the requirements of its respective status.

(vi) *Certifications regarding internal controls*—(A) *Certification of effective internal controls*. The responsible officer of the sponsoring entity must certify to the following statements—

(1) The responsible officer of the sponsoring entity has established a compliance program that is in effect as of the date of the certification and that has been subject to the review as described in paragraph (j)(2) of this section;

(2) With respect to material failures (defined in paragraph (j)(3)(vii) of this section)—

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

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

(3) With respect to any failure to withhold, deposit, or report to the extent required under § 1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI for any year during the certification period, the sponsored FFI has corrected such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return).

(B) *Qualified certification*. If the responsible officer of the sponsoring entity has identified an event of default (defined in paragraph (k)(1) of this section) or a material failure (defined in paragraph (j)(3)(vii) of this section) that the sponsoring entity has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(1) The responsible officer of the sponsoring entity 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 (j)(2) of this section;

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

(i) The responsible officer (or designee) has identified an event of default; or

(ii) The responsible officer has determined that there are one or more material failures as defined in paragraph (j)(3)(vii) of this section and that appropriate actions will be taken to prevent such failures from reoccurring;

(3) With respect to any failure to withhold, deposit, or report to the extent required under § 1.1471–4 or an applicable Model 2 IGA with respect to any sponsored FFI for any year during the certification period, the sponsored FFI will correct such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return); and

(4) The responsible officer (or designee) will respond to any notice of default under paragraph (k)(2) of this section or will provide to the IRS a description of each material failure and a written plan to correct each such failure when requested under paragraph (j)(4) of this section.

(vii) *Material failures defined.* A material failure is a failure of the sponsoring entity with respect to each sponsored FFI to satisfy the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA if the failure was the result of a deliberate action on the part of one or more employees of the sponsoring entity or was an error attributable to a failure of the sponsoring entity to implement internal controls sufficient for the sponsoring entity to meet its requirements. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a sponsoring entity has not substantially complied with the requirements described in the preceding sentence. Material failures include the following—

(A) With respect to any sponsored FFI, the deliberate or systematic failure of the sponsoring entity to report accounts that such sponsored FFI was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld to the extent required, accurately report recalcitrant account holders (or non-consenting U.S. accounts under an applicable Model 2 IGA), or accurately report with respect to nonparticipating FFIs as required under § 1.1471–4(d)(2)(ii)(F) or an applicable Model 2 IGA;

(B) A criminal or civil penalty or sanction imposed on the sponsoring

entity or any sponsored FFI (or any branch or office of the sponsoring entity or any sponsored FFI) by a regulator or other governmental authority or agency with oversight over the sponsoring entity's or sponsored 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;

(C) A potential future tax liability of any sponsored FFI related to its compliance (or lack thereof) with the due diligence, withholding, and reporting requirements of § 1.1471–4 or an applicable Model 2 IGA for which such sponsored FFI has established, for financial statement purposes, a tax reserve or provision;

(D) A potential contractual liability under the agreement described in paragraph (j)(3)(v)(B) of this section of the sponsoring entity to any sponsored FFI related to such sponsoring entity's compliance (or lack thereof) with paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA for which the sponsoring entity has established, for financial statement purposes, a reserve or provision; and

(E) Failure to register with the IRS as a sponsoring entity or to register each sponsored FFI required to be registered under paragraph (f)(1)(i)(F)(3)(iii) of this section or an applicable Model 2 IGA.

(4) *IRS review of compliance—(i) General inquiries.* The IRS, based upon the information reporting forms described in § 1.1471–4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsoring FFI, may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in § 1.1471–4(d)(4)(v) with respect to one or more sponsored FFIs, or confirmation that the FFI has no reporting requirements. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) necessary to determine the compliance with the due diligence, withholding, and reporting requirements of § 1.1471–4 or an applicable Model 2 IGA with respect to each sponsored FFI and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* The IRS may determine in its discretion that a

sponsoring entity may not have substantially complied with the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA with respect to any sponsored FFI. This determination is based on the information reporting forms described in § 1.1471–4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored FFI (or the absence of reporting), the certifications made by the responsible officer described in paragraphs (j)(3) and (5) of this section (or the absence of such certifications), or any other information related to the sponsoring entity's compliance with respect to any sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the sponsoring entity's compliance with such requirements. The IRS may request, for example, a description or copy of the sponsoring entity's policies and procedures for fulfilling the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, a description or copy of the sponsoring entity's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review. 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 sponsoring entity's potential failure to comply with respect to each sponsored FFI with the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA.

(iii) *Compliance procedures for a sponsored FFI subject to a Model 2 IGA.* In the case of a sponsored FFI subject to the requirements of an applicable Model 2 IGA, the procedures described in paragraph (j)(4) of this section apply, except as otherwise provided in the applicable Model 2 IGA.

(5) *Preexisting account certification.* The responsible officer of a sponsoring entity must make the certification described in § 1.1471–4(c)(7) (preexisting account certification of a participating FFI) with respect to each sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the certification period (as defined in paragraph (j)(3)(iii) of this section).

However, the preexisting account certification is not required for a sponsored FFI that, immediately before the FFI first agrees to be sponsored by the sponsoring entity, was a participating FFI, a sponsored FFI of another sponsoring entity, or a registered deemed-compliant FFI that is a local FFI or a restricted fund, if the FFI (or the FFI's former sponsoring entity, if applicable) provides a written certification to the sponsoring entity that the FFI has made the preexisting account certification required under § 1.1471-4(c)(7) or paragraph (f)(1)(i)(A)(7) or (f)(1)(i)(D)(6) of this section (as applicable), unless the sponsoring entity knows that such written certification is unreliable or incorrect. In addition, the preexisting account certification is not required for a sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the two year period before the end of the sponsoring entity's certification period, provided that the sponsoring entity makes the preexisting account certification for such FFI for the subsequent certification period. The certification described in this paragraph (j)(5) for the certification period must be submitted by the due date of the sponsoring entity's certification of compliance required under paragraph (j)(3)(i) of this section for the certification period (or the extended due date described in paragraph (j)(3)(i)(B) of this section for the certification period ending on December 31, 2017), on the form and in the manner prescribed by the IRS. With respect to a sponsored FFI for which the sponsoring entity makes a preexisting account certification, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the sponsored FFI that is outstanding on the earlier of the date the FFI is issued a GIN as a sponsored FFI or the date the FFI first agrees to be sponsored by the sponsoring entity.

(6) *Sponsorship agreement.* A sponsoring entity must have a written sponsorship agreement (which may be part of another agreement between the sponsoring entity and the sponsored FFI) that refers to the requirements of a sponsored FFI under FATCA and that must be in place with each sponsored FFI for which the sponsoring entity acts by the later of March 31, 2019, or the date that the sponsoring entity begins acting as a sponsoring entity for the applicable sponsored FFI.

(k) *Sponsoring entity event of default*—(1) *Defined.* An event of default with regard to a sponsoring

entity occurs if the sponsoring entity fails to perform material obligations required with respect to the due diligence, withholding, and reporting requirements of § 1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI, to establish or maintain a compliance program as described in paragraph (j)(2) of this section, or to perform a periodic review described in paragraph (j)(2) of this section. An event of default also includes the occurrence of any of the following—

(i) With respect to any sponsored FFI, failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under § 1.1471-4(d), valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under § 1.1471-4(i);

(ii) With respect to any sponsored FFI, failure to significantly reduce, over a period of time, the number of account holders or payees that such sponsored FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the sponsoring entity failing to comply with the due diligence procedures set forth in § 1.1471-4(c);

(iii) With respect to any sponsored FFI, failure to fulfill the requirements of § 1.1471-4(i) in any case in which foreign law prevents or otherwise limits withholding under § 1.1471-4(b);

(iv) Failure to take timely corrective actions to remedy a material failure described in paragraph (j)(3)(vii) of this section after making a qualified certification described in paragraph (j)(3)(vi)(B) of this section;

(v) Failure to make the preexisting account certification required under paragraph (j)(5) of this section or the periodic certification required under paragraph (j)(3) of this section with respect to any sponsored FFI within the specified time period;

(vi) Making incorrect claims for refund on behalf of any sponsored FFI;

(vii) Failure to cooperate with an IRS request for additional information under paragraph (j)(4) of this section;

(viii) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity for an entity other than an entity for which it acts as a sponsoring entity;

(ix) The sponsoring entity is no longer authorized to perform the requirements of a sponsoring entity with respect to one or more sponsored FFIs; or

(x) Failure to have the written sponsorship agreement described in

paragraph (j)(3)(v)(B) of this section in effect with each sponsored FFI.

(2) *Notice of event of default.*

Following an event of default known by or disclosed by the sponsoring entity to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored FFI to which the notice relates. The IRS will request that the sponsoring entity remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) *Remediation of event of default.* A sponsoring entity 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 sponsoring entity to remediate an event of default described in paragraph (k)(1) of this section with respect to a sponsored FFI by providing specific information regarding the U.S. accounts maintained by such sponsored FFI when the sponsoring entity has been unable to report all of the information with respect to such accounts as required under § 1.1471-4(d) and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity or the performance of the specified review procedures described in paragraph (j)(4)(ii) of this section.

(4) *Termination*—(i) *In general.* If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (k)(2) of this section or does not remediate the event of default as described in paragraph (k)(3) of this section, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored FFIs as deemed-compliant FFIs, or the status of both the sponsoring entity and one or more sponsored FFIs.

(ii) *Termination of sponsoring entity.* If the IRS terminates the status of the sponsoring entity, the sponsoring entity must send notice of the termination within 30 days after the date of termination to each sponsored FFI for which it acts, as well as to each withholding agent from which each sponsored FFI receives payments and each financial institution with which each sponsored FFI holds an account for which a withholding certificate or other

documentation was provided. A sponsoring entity that has had its status terminated cannot register on the FATCA registration website to act as a sponsoring entity for any sponsored FFI or for any entity that is a sponsored entity under a Model 1 IGA unless it receives written approval from the IRS to register. Unless the status of a sponsored FFI has been terminated, the sponsored FFI may register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI (as applicable). However, a sponsored FFI whose sponsoring entity has been terminated may not register or represent its status as a sponsored FFI of a sponsoring entity that has a relationship described in section 267(b) or 707(b) with the sponsoring entity that was terminated without receiving written approval from the IRS.

(iii) *Termination of sponsored FFI.* If the IRS notifies the sponsoring entity that the status of a sponsored FFI is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored FFI from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination within 30 days after the date of termination to each withholding agent from which the sponsored FFI receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided with respect to such sponsored FFI. A sponsored FFI that has had its status as a sponsored FFI terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS.

(iv) *Reconsideration of notice of default or notice of termination.* A sponsoring entity or sponsored FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

(v) *Sponsoring entity of sponsored FFIs subject to a Model 2 IGA.* Subject to the provisions of an applicable Model 2 IGA, the IRS may revoke the status of a sponsoring entity with respect to one or more sponsored FFIs subject to a Model 2 IGA based on the provisions of paragraphs (k)(2), (3), and (4) of this section (describing notice of event of default and termination procedures) if there is an event of default as defined in paragraph (k)(1) of this section.

(l) *Trustee-documented trust verification—(1) Compliance program.* A trustee of a trust treated as a trustee-documented trust under an applicable Model 2 IGA must establish and implement a compliance program for purposes of satisfying the requirements of an applicable Model 2 IGA with respect to each such trust. The trustee must appoint a responsible officer who must (either personally or through designated persons) establish policies, procedures, and processes sufficient for the trustee to implement the compliance program. The responsible officer (or designee) must periodically review the sufficiency of the trustee's compliance program and the trustee's compliance with respect to each trust for purposes of satisfying the requirements of an applicable Model 2 IGA for each certification period described in paragraph (l)(2) of this section. The results of the periodic review must be considered by the responsible officer in making the certification described in paragraph (l)(2) of this section.

(2) *Certification of compliance—(i) Certification requirement—(A) In general.* Except as otherwise provided in paragraph (l)(2)(i)(B) or (l)(2)(ii) of this section, on or before July 1 of the calendar year following the end of the certification period, the responsible officer of the trustee must make a certification for the certification period with respect to all trustee-documented trusts described in paragraph (l)(1) of this section on the form and in the manner prescribed by the IRS.

(B) *Extension of time for the certification period ending on December 31, 2017.* The certifications required for a certification period ending on December 31, 2017, must be submitted on or before March 31, 2019.

(ii) *Late-joining trustee-documented trusts.* In general, with respect to a certification period, the responsible officer of a trustee is not required to make a certification for a trustee-documented trust for which the trustee first agreed to act as the trustee under Annex II of an applicable IGA during the six-month period before the end of the trustee's certification period, provided that the responsible officer of the trustee makes certifications for such trustee-documented trust 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 trustee during which the trustee acted as the trustee of the trustee-documented trust. However, the preceding sentence does not apply to a trustee-documented trust that, immediately before the trustee first agrees to act as the trustee

under Annex II of an applicable IGA, was a trustee-documented trust of another trustee. The trustee of a trustee-documented trust may certify for a trustee-documented trust described in the preceding sentence for the portion of the certification period of the trustee before the date that the trustee first agrees to act as the trustee under Annex II of an applicable IGA if the trustee obtains from the trustee-documented trust (or the trust's former trustee, if applicable) a written certification that the trust has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: The trustee does not know that such certification is unreliable or incorrect; and the certification for the trustee-documented trust for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which the trustee acts as the trustee under Annex II of an applicable IGA.

(iii) *Certification period.* The first certification period of the trustee begins on the later of the date the trustee is issued a GIIN to act as a trustee of a trustee-documented trust 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.

(iv) *Certifications.* The responsible officer of the trustee must certify to the following statements—

(A) The responsible officer of the trustee has established a compliance program that is in effect as of the date of the certification and has performed a periodic review described in paragraph (l)(1) of this section for the certification period; and

(B) The trustee has reported to the IRS on Form 8966, "FATCA Report" (or such other form as the IRS may prescribe), all of the information required to be reported pursuant to the applicable Model 2 IGA with respect to all U.S. accounts of each trustee-documented trust for which the trustee acts during the certification period by the due date of Form 8966 (including extensions) for each year.

(3) *IRS review of compliance by trustees of trustee-documented trusts—*

(i) *General inquiries.* Based upon the information reporting forms filed with the IRS (or the absence of such reporting) by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year, and subject to the requirements of an applicable Model 2 IGA, the IRS may request from the trustee additional information with respect to the

information reported on the forms with respect to any trustee-documented trust or a confirmation that the trustee has no reporting requirements with respect to any trustee-documented trust. The IRS may also request any additional information to determine the trustee's compliance for purposes of satisfying the trust's requirements as a trustee-documented trust under an applicable Model 2 IGA or to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* The IRS may determine in its discretion that the trustee may not have substantially complied with the requirements applicable to a trustee of a trustee-documented trust. This determination is based on the information reporting forms filed with the IRS by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year (or the absence of such reporting), the certification described in paragraph (l)(2) of this section (or the absence of such certification), or any other information related to the trustee's compliance with respect to any trustee-documented trust for purposes of satisfying the trust's applicable Model 2 IGA requirements. In such a case, the IRS may request from the responsible officer information necessary to verify the trustee's compliance with such requirements. 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 circumstances surrounding the trustee's potential failure to comply with the requirements of an applicable Model 2 IGA with respect to one or more trustee-documented trusts. The IRS may notify the applicable Model 2 IGA jurisdiction that the trustee has not complied with its requirements as a trustee of one or more trustee-documented trusts.

(m) *Applicability date.* This section generally applies beginning on January 6, 2017, except for paragraphs (f)(1)(i)(F)(3)(vi), (f)(1)(i)(F)(4), (f)(1)(iv), (f)(2)(iii)(D)(4), (f)(2)(iii)(E), (j), (k), and (l) of this section, which apply March 26, 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 26, 2019, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2018. For the rules that otherwise apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and

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

■ **Par. 6.** Section 1.1472-1 is amended by revising paragraphs (c)(5)(iii), (f), (g), and (h) to read as follows:

§ 1.1472-1 Withholding on NFFEs.

* * * * *

(c) * * *

(5) * * *

(iii) *Revocation of status as sponsoring entity.* The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is an event of default as defined in paragraph (g) of this section with respect to any sponsored direct reporting NFFE.

* * * * *

(f) *Sponsoring entity verification—(1) In general.* This paragraph (f) describes the requirements for a sponsoring entity to provide a certification of compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section and defines the certification period for such certifications. This paragraph (f) also describes the procedures for the IRS to review the sponsoring entity's compliance with such requirements during the certification period. Finally, this paragraph (f) describes the requirement that a sponsoring entity have in place a written sponsorship agreement with each sponsored direct reporting NFFE for which it acts and specifies the terms of such agreement. See paragraph (g)(1)(i) of this section, describing an event of default for a sponsoring entity that does not have a sponsorship agreement with each sponsored direct reporting NFFE for which it acts as a sponsoring entity. References in this paragraph (f) or paragraph (g) of this section to a sponsored direct reporting NFFE mean a sponsored direct reporting NFFE for which the sponsoring entity acts as a sponsoring entity under paragraph (c)(5)(ii) of this section.

(2) *Certification of compliance—(i) Certification requirement—(A) In general.* The sponsoring entity must appoint a responsible officer to oversee the sponsoring entity's compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section. Except as otherwise provided in paragraph (f)(2)(i)(B) or (f)(2)(ii) of this section, on or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make a certification for the

certification period with respect to all sponsored direct reporting NFFEs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS. To the extent that a sponsoring entity satisfies the certification requirements of paragraph (f)(2) of this section on behalf of a sponsored direct reporting NFFE, the NFFE does not have a certification requirement under paragraph (c)(3)(vi) of this section.

(B) *Extension of time for the certification period ending on December 31, 2017.* The certifications required for a certification period ending on December 31, 2017, must be submitted on or before March 31, 2019.

(ii) *Late-joining sponsored direct reporting NFFEs.* In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored direct reporting NFFE that first agrees to be sponsored by the sponsoring entity during the six-month period before the end of the sponsoring entity's certification period, provided that the sponsoring entity makes certifications for such sponsored direct reporting NFFE 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 sponsoring entity during which the sponsored direct reporting NFFE was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored direct reporting NFFE that, immediately before the NFFE agrees to be sponsored by the sponsoring entity, was a direct reporting NFFE or sponsored direct reporting NFFE of another sponsoring entity. The sponsoring entity may certify for a sponsored direct reporting NFFE described in the preceding sentence for the portion of the certification period of the sponsoring entity before the date that the NFFE first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the NFFE (or the NFFE's sponsoring entity, if applicable) a written certification that the NFFE has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: The sponsoring entity does not know that such certification is unreliable or incorrect; and the certification for the sponsored direct reporting NFFE for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such NFFE was sponsored by the sponsoring entity.

(iii) *Certification period.* The first certification period of a sponsoring entity begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014, and ends at the close of the third full calendar year after such date. Each subsequent certification period is the three-calendar-year period following the close of the previous certification period.

(iv) *Certifications.* The certification will require the responsible officer of the sponsoring entity to certify to the following statements—

(A) The sponsoring entity meets all of the requirements of a sponsoring entity described in paragraph (c)(5)(ii) of this section;

(B) The sponsoring entity has the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(C) There were no events of default (as defined in paragraph (g) of this section) with respect to the sponsoring entity, or, to the extent there were any such events of default, appropriate measures were taken by the sponsoring entity to remediate and prevent such events from reoccurring; and

(D) With respect to any failure to report to the extent required under paragraph (c)(3)(ii) of this section with respect to one or more sponsored direct reporting NFFEs, the sponsoring entity has corrected such failure by filing the appropriate information returns.

(3) *IRS review of compliance—(i) General inquiries.* The IRS, based upon the information reporting forms described in paragraph (c)(3)(ii) of this section filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE, may request additional information with respect to the information reported (or required to be reported) on the forms about any substantial U.S. owner reported on the form or the records for each direct reporting NFFE described in paragraph (c)(3)(iv) of this section. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) to determine its compliance with paragraph (f) of this section with respect to each sponsored direct reporting NFFE and to assist the IRS with its review of any substantial U.S. owners' compliance with tax reporting requirements.

(ii) *Inquiries regarding substantial non-compliance.* The IRS may determine in its discretion that a

sponsoring entity may not have substantially complied with the requirements of a sponsoring entity with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section. This determination is based on the information reporting forms referenced in paragraph (c)(3)(ii) of this section filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE (or the absence of such reporting), the certification made by the responsible officer described in paragraph (f)(2) of this section (or the absence of such certification), or any other information related to the sponsoring entity's compliance with the requirements of a sponsoring entity with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section. In such a case, the IRS may request from the responsible officer information necessary to verify the sponsoring entity's compliance with such requirements. 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 circumstances surrounding the sponsoring entity's potential failure to comply with the requirements of a sponsoring entity.

(4) *Sponsorship agreement.* The sponsoring entity must have a written sponsorship agreement (which may be part of another agreement between the sponsoring entity and the sponsored direct reporting NFFE) in place with each sponsored direct reporting NFFE for which it acts by the later of March 31, 2019, or the date that the sponsoring entity begins acting as a sponsoring entity for the applicable sponsored direct reporting NFFE, under which—

(i) The sponsored direct reporting NFFE agrees to provide the sponsoring entity access to the sponsored direct reporting NFFE's books and records regarding each of its owners (including AML/KYC documentation regarding the sponsored direct reporting NFFE's owners provided by the sponsored direct reporting NFFE with respect to each financial account it holds) and such other information sufficient for the sponsoring entity to determine the direct and indirect substantial U.S. owners of the sponsored direct reporting NFFE, including the information about such owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966, "FATCA Report" (or such other form as the IRS may prescribe);

(ii) The sponsored direct reporting NFFE obtains a valid and effective waiver of any legal prohibitions on reporting the information about its direct and indirect substantial U.S. owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966 (or such other form as the IRS may prescribe);

(iii) The sponsored direct reporting NFFE authorizes the sponsoring entity to act on the sponsored direct reporting NFFE's behalf with respect to the sponsored direct reporting NFFE's obligations as a sponsored direct reporting NFFE (for example, authorizing the sponsoring entity to file Form 8966 on the sponsored direct reporting NFFE's behalf, responding to the IRS inquiries described in paragraph (f)(3) of this section, and providing the certification described in paragraph (f)(2) of this section);

(iv) The sponsored direct reporting NFFE agrees to identify to the sponsoring entity on request each withholding agent and financial institution to which the sponsored direct reporting NFFE reports its status as a sponsored direct reporting NFFE and agrees to provide to the sponsoring entity a copy of the withholding certificate or written statement prescribed in § 1.1471-3(d)(11)(x)(B) (as applicable) that the sponsored direct reporting NFFE provides to each such withholding agent or financial institution;

(v) The sponsored direct reporting NFFE represents that it does not have any formal or informal practices or procedures to assist its substantial U.S. owners with the avoidance of the requirements of chapter 4;

(vi) The sponsored direct reporting NFFE agrees to cooperate with the sponsoring entity in responding to any IRS inquiries under paragraph (f)(3) of this section with respect to the sponsored direct reporting NFFE; and

(vii) The sponsoring entity retains the records described in paragraphs (c)(3)(iii) and (iv) of this section for the longer of six years or the retention period under the sponsoring entity's normal business procedures. A sponsoring entity may be required to extend the retention period if the IRS requests such an extension before the expiration of the period.

(g) *Sponsoring entity event of default—(1) Defined.* An event of default by the sponsoring entity means the occurrence of any of the following—

(i) Failure to have the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(ii) Failure to satisfy the requirements of paragraph (c)(3)(iii) of this section with respect to each sponsored direct reporting NFFE that the NFFE would have been required to satisfy as a direct reporting NFFE;

(iii) Failure to report to the IRS on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) all of the information required under paragraph (c)(3)(ii) of this section with respect to each sponsored direct reporting NFFE and each of its substantial U.S. owners (or report to the IRS on Form 8966 that the sponsored direct reporting NFFE had no substantial U.S. owners) by the due date of the form (including any extensions);

(iv) Failure to make the certification required under paragraph (f)(2) of this section;

(v) Failure to cooperate with an IRS request for additional information described in paragraph (f)(3) of this section, including requests for the records described in paragraph (c)(3)(iv) of this section and requests to extend the retention period for these records as described in (f)(4)(vii) of this section;

(vi) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity under paragraph (c)(5) of this section for an entity other than an entity for which it acts as a sponsoring entity; or

(vii) Failure to obtain from each sponsored direct reporting NFFE the information required to report on Form 8966.

(2) *Notice of event of default.*

Following an event of default known by or disclosed to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored direct reporting NFFE to which the notice relates. The IRS will request that the sponsoring entity remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) *Remediation of event of default.* A sponsoring entity will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity, remedial actions, or the performance of the specified review procedures

described in paragraph (f)(3)(ii) of this section.

(4) *Termination—(i) In general.* If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (g)(2) of this section, or if the sponsoring entity does not satisfy the conditions of the remediation plan within the time period specified by the IRS, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored direct reporting NFFEs as a direct reporting NFFE, or the status of both the sponsoring entity and one or more sponsored direct reporting NFFEs.

(ii) *Termination of sponsoring entity.* If the IRS notifies the sponsoring entity that its status is terminated, the sponsoring entity must send notice of the termination within 30 days after the date of termination to each withholding agent from which each sponsored direct reporting NFFE receives payments and each financial institution with which each sponsored direct reporting NFFE holds an account for which a withholding certificate or written statement prescribed in § 1.1471–3(d)(11)(x)(B) (as applicable) was provided. A sponsoring entity that has had its status terminated cannot reregister on the FATCA registration website to act as a sponsoring entity for any sponsored direct reporting NFFE unless it receives written approval from the IRS. Unless the status of the sponsored direct reporting NFFEs has been terminated, the sponsored direct reporting NFFEs may register on the FATCA registration website as direct reporting NFFEs or as sponsored direct reporting NFFEs of another sponsoring entity, other than a sponsoring entity that is related to the sponsoring entity that was terminated (absent written approval from the IRS allowing the registration). An entity is related to the terminated sponsoring entity if they have a relationship with each other that is described in section 267(b) or 707(b).

(iii) *Termination of sponsored direct reporting NFFE.* If the IRS notifies the sponsoring entity that the status of a sponsored direct reporting NFFE is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored direct reporting NFFE from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination within 30 days after the date of termination to each withholding agent from which the sponsored direct reporting NFFE receives payments and each financial institution with which it holds an account for which a withholding

certificate or written statement prescribed in § 1.1471–3(d)(11)(x)(B) (as applicable) was provided with respect to such sponsored direct reporting NFFE. A sponsored direct reporting NFFE that has had its status as a sponsored direct reporting NFFE terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a direct reporting NFFE or as a sponsored direct reporting NFFE of another sponsoring entity unless it receives written approval from the IRS.

(iv) *Reconsideration of notice of default or notice of termination.* A sponsoring entity or sponsored direct reporting NFFE may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

(h) *Applicability date.* This section generally applies beginning on January 6, 2017, except for paragraphs (c)(5)(iii), (f), and (g) of this section, which apply March 26, 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 26, 2019, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2018. For rules that otherwise apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: February 27, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2019–0001; 190E1700D2 ETISF0000.EAQ000 EEEE500000]

RIN 1014–AA42

Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Civil Penalty Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.